



WEB COPY

W.P.(MD)No.20779 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.20779 of 2015

and

M.P. (MD)No.1 of 2015

and

W.M.P. (MD)No.3875 of 2017

R.Natarajan

... Petitioner

VS

1. The Secretary to Government,
Revenue Department,
Secretariat,
Chennai.

2. The Principle Secretary/Commissioner of Revenue
Administration Department,
Chepauk,
Chennai - 5.

3. The District Collector,
Dindigul,
Dindigul District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.26657/2012/A3 dated 26.06.2015 on the file of the respondent No.3 and quash the same as illegal and consequently, direct the respondent No.3 to declare Probation to the petitioner from the period 28.12.2001.

For Petitioner : Mr.G.Karthik
for Mr.T.Lajapathy Roy

For Respondents : Mr.J.K.Jayaselan
Government Advocate (Civil side)

O R D E R

The writ petition is filed to quash the impugned order, dated 26.06.2015 and consequently, direct the third respondent to declare probation to the petitioner from the period 28.12.2001.



2. The brief facts of the case are that the petitioner was recruited as Office Assistant in Revenue Department in 01.10.1986. Thereafter, the petitioner was promoted as Junior Assistant on 29.11.1999 and he was declared probation. The petitioner attended Bhavani Sagar Training from 23.09.2006 to 07.11.2006. The delay in conducting the Bhavani Sagar Training was purely due to Administrative reasons and the same was also conceded by the second respondent vide letter, dated 26.12.2013. The Revenue Inspector (Flying Squad) inspected during the year 2010 and the Criminal Case was instituted against the petitioner in Crime No.03 of 2010.

3. The contention of the petitioner is that he was falsely implicated in the case. On 24.12.2010, Charge sheet in C.C.No.09 of 2010 has been filed on the file of Principle District Judge. On 29.12.2010, the trial has commenced and still the case is pending for disposal. Pending disposal of the Criminal Case, the petitioner submitted an application before the authorities to declare his probation and the same was rejected vide the impugned order.

4. The respondents have filed a counter affidavit stating there was a delay in sending the petitioner for the Bhavani Sagar Training and the petitioner has completed the Bhavani Sagar Training in the year 2006. Before declaring the probation in the year 2010, the petitioner was prosecuted in a Criminal Case and the same is pending. When a Criminal Case is pending, the petitioner is not entitled to the relief of declaring probation. Whenever there is a relief in granting training at Bhavani Sagar Training, then the necessary orders of the Government ought to be granted for relaxing Rule under 34(A) of Tamil Nadu Ministerial Service Rules and Rule No.23(a) and 28 of Tamil Nadu State and Sub-ordinate Service Rules. To get relaxation orders, necessary proposals were forwarded to the first respondent by the second respondent, vide dated 26.12.2013. In the meanwhile, the corruption charges were registered against the petitioner in C.C.No.09 of 2010 and a charge memo under Rule 17 (b) of Tamil Nadu Civil Service of (Appeal and Disciplinary) Rules are pending against the petitioner. Therefore, the petitioner is not entitled to claim declaration of probation. For declaration of probation Rule 27 (b) of the Tamil Nadu State and Sub-ordinate Service Rules is applicable. Therefore, the petitioner is not entitled to the relief and the writ petition is liable to be dismissed.

5. Heard Mr.G.Karthik, learned Counsel appearing for the petitioner and Mr.J.K.Jayaselan, learned Government Advocate appearing for the respondents.



6. It is an admitted fact that the petitioner was promoted as Junior Assistant on 29.11.1999 and he was declared probation on 28.12.2001. It is also an admitted fact that due to Administrative reasons the petitioner was sent to Bavasagar Training belatedly from 23.09.2006 to 07.11.2006 and the petitioner has completed his two years of probation on 28.12.2001 under Rule 7 of the Tamil Nadu State and Sub-ordinate Service Rules. Under Clause-B it has been stated as under:

"If the appointing authority decides that a probationer is suitable for such full membership, it shall, as soon as possible, issue an order declaring the probationer to have satisfactorily completed his probation. If no such order is issued within six months from the date on which he is eligible for such declaration, the probationer shall be deemed to have satisfactorily completed his probation on the date of expiry of the prescribed or extended period of probation. A formal order declaring the completion of probation shall, however, be issued by the competent authority. In all cases where serious charges are pending and therefore probation cannot be declared, an order to the effect that the question of declaration of probation cannot be considered till the charges are disposed of shall be issued by the competent authority within six months from the due date for completion of probation and the final order on probation shall be passed as early as possible and in any case within one month after the disposal of the charges or six months after the due date for completion of probation, whichever is later".

It has been stated that Appointing Authority shall issue an order declaring probation if the probationer has satisfactorily completed his probation. If no such order is issued within six months from the date on which the candidate is eligible for such declaration, the probationer shall be deemed to have satisfactorily completed his probation on the date of expiry of the copy prescribed or extended period of probation. In this case, the respondents also admitted that the petitioner has completed his probation on 28.12.2001 except the Bhavani Sagar Training. The Bhava Sagar Training is delayed due to Administrative reasons and there are several number of judgments where it says that the delay due to Administrative reasons. In this case even the petitioner has completed Bhavani Sagar Training on 07.11.2006 and he is entitled to declare probation with effect from 28.12.2001. As per the Rule 27 (b), if the authority is not passing any order within six months, then the candidate is eligible for



deemed to have been declared probation. So from any angle the petitioner is entitled for declaration of probation on 07.11.2006 with effect from 28.12.2001.

7. The reasons of the respondents are since there is a Criminal Case, the petitioner cannot be declared probation. It is seen from the records that the Criminal Case is instituted in the year 2010 but the petitioner is eligible for declaration in the year 2006. If the six months period is calculated then the petitioner is entitled to declare on or before 08.05.2007. In the said Rule 7(B), it is stated that if "*serious charges are pending and probation cannot be declared*", it should be construed "*during the probation period if serious charges are there then probation cannot be declared*". If this harmonious construction is not construed, then the deemed declaration after the period of 6 months would become redundant. Therefore, the respondents are incorrect in stating that the petitioner is not entitled to declaration for his probation because of Criminal Case. This Court is of the considered opinion that the petitioner is entitled to declaration of probation on or before 08.05.2007.

8. In this writ petition, the petitioner has challenged the communication letter of the District Collector, dated 26.05.2016. But the petitioner has not challenged the order passed by the first respondent dated 12.05.2015. The petitioner submitted that the order dated 12.04.2014 was not served to the petitioner. Hence this Court is modifying the prayer and granting the following relief:

a. The impugned order, dated 12.05.2015 passed by the first respondent in letter No.4996/பணி6(2)/2013-7 and the consequential order in Na.Ka.No.26657/2012/அ3, dated 26.06.2015 both are quashed.

b. The respondents are directed to declare probation with effect from 28.12.2001 within four weeks from the date of receipt of a copy of this order.

9. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

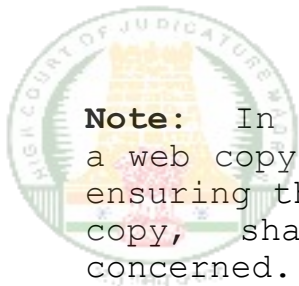
Assistant Registrar (A.D.II)

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/ /2022

Sub Assistant Registrar(CS)

jbr



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

WEB COPY

To

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Secretariat,
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2. The Principle Secretary/Commissioner of Revenue
Administration Department,
Chepauk,
Chennai - 5.
3. The District Collector,
Dindigul,
Dindigul District.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-4107[F] dated 04/02/2022)

W.P. (MD) No.20779 of 2015
03.02.2022

RD(17.03.2022) 5P 5C