

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 28.07.2022

DELIVERED ON: 01.09.2022

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.(MD).No.21561 of 2021

and

W.M.P.(MD).No.18120 of 2021

G.Mangai Kasthuri

Vs.

... Petitioner

- 1.The State of Tamil Nadu,
Represented by,
The Secretary to Government,
Department of Collegiate Education,
St.George Fort,
Chennai – 600 009.
- 2.The Director,
Directorate of Collegiate Education,
E.V.K. Sampath Maligai,
College Road,
Chennai – 600 006.
- 3.The Joint Director,
Joint Director of Collegiate Education,
E.V.K. Sampath Maligai,
College Road,
Chennai – 600 006.

4.The Principal,
Sri Meenakshi Government
Arts College for Women (Autonomous),
Goripalayam,
Madurai – 625 001.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the entire records, relating to the impugned order in O.Mu.(ஒ.மு). No.49441/C4/2018 dated 12.09.2019 passed by the second respondent and the consequential order in K.Dis.No.016758/C4/2020 dated 22.12.2020 passed by the third respondent and to quash the same as it is arbitrary and illegal and consequently direct the respondents to restore the petitioner's original Probation Completion order passed in Na.Ka.(ந.க).No.28507/D5/2012 dated 28.09.2012 passed by the second respondent and modify the order of third respondent K.Dis.No.016758/C4/2020 dated 22.12.2020 to give with effect from 25.12.2011 and to disburse all monetary and service benefits thereon.

For Petitioner : Mr.T.Lajapathi Roy
for M/s.A.Selvam

For R-1 to R-3 : Mr.S.Shaji Bino,
Special Government Pleader.

ORDER

The brief facts of the case are as follows:

(i) The petitioner herein was appointed to the post of Assistant Professor (Botany) on 07.12.2007 and her services were regularized with effect from 26.12.2007. Under Rule 12A(b) of the Tamil Nadu State and Subordinate Service Rules, 1955 (Section 21 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, such an employee is required to pass the second language test in Tamil, within a period of two years from the date of his appointment. The petitioner had passed the Tamil language test on 07.09.2016 and hence, her probation was declared from 08.09.2016 onwards, through the impugned order, dated 12.09.2019.

2. Under G.O.Ms.No.350 Higher Education (H1) Department, dated 09.09.2009, the petitioner is entitled for upward movement from Academic Grade Pay (AGP) of Rs.6000/- to Rs.7000/-, on completion of four years of service. Likewise, the petitioner would also be entitled for further career advancement to AGP of Rs.8000/- and Associate Professorship with AGP of Rs.9000/-. In consequence to the petitioner's declaration of probation from

08.09.2016 onwards through the impugned order, dated 12.09.2019, the third respondent herein had passed an order, dated 22.12.2020, increasing the petitioner's AGP from Rs.6000/- to Rs.7000/- with effect from 09.09.2016.

3. The petitioner now claims for upward movement of her AGP of Rs.6000/- to Rs.7000/- from 25.12.2011, which is the date of completion of four years of service, together with consequential further career advancements.

4. The learned Special Government Pleader appearing for the official respondents submitted that as per Rule 12A(b) of the Tamil Nadu Subordinate Service Rules, 1955, it is mandatory for the Government employee to qualify in the linguistic language test, within two years from the date of his appointment. Since the petitioner herein had however passed the Tamil language test only on 07.09.2016, her probation was declared on 08.09.2016 and therefore, there is no infirmity in the impugned order, dated 12.09.2019, passed by the Director of Collegiate Education, as well as the consequential order, dated 22.12.2020, qualifying the petitioner for placement as Assistant Professor in AGP of Rs.7000/- with effect from 09.09.2016.

5. Section 21 of the Tamil Nadu Government Servants (Conditions of Service) Act 2016, mandates every employee appointed on or after 9th February, 1996 to pass the second class language test in Tamil conducted by the Tamil Nadu Public Service Commission or the test conducted by the appointing authority, within a period of two years from the date of his appointment, failing which he shall be discharged from service. Through G.O.(Ms).No.216 Higher Education (F2) Department, dated 02.08.2017, the Government had extended the time limit for passing of such test. Even before such extension was granted by the Government, the petitioner had completed her Tamil language test on 07.09.2016 itself. The second respondent has now issued the impugned order, dated 12.09.2019, by altering the date of completion of the petitioner's probation from 25.12.2009 to 08.09.2016. Thus, the next day on which the petitioner had completed her Tamil language test was taken as the date of completion of probation. The case of the petitioner is that she would be entitled for the upward movement of AGP of Rs.6000/- to AGP of Rs.7000/- with effect from 25.12.2011, i.e., on completion of four years from 26.12.2007, which is the date of her regularization in the services.

6. The consequences of the extension of probation / delay in completion of probation is governed under Section 33(3) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which reads as follows:

“(3) In cases where the probation of probationer is extended, a condition shall, unless there are special reason to the contrary, be attached to the order of extension of probation that the probationer’s increment shall be stopped until he is declared to have satisfactorily completed his probation. Such stoppage of increment shall not be treated as a penalty, but only as a condition of extension of probation and shall not have the effect of postponing future increments after he has passed the prescribed tests, or examinations or after he is declared to have satisfactorily completed his probation.”

7. As per the aforesaid provision, when a Government servant fails to satisfactorily complete his probation within the prescribed time, the probationer's increment would be stopped till the declaration of his probation. It is further provided therein that, in case such probation is not completed before the prescribed period, the stoppage of increment provided therein shall not be treated as a penalty, but only as a condition of extension of probation and shall not have further adverse effects, affecting the service. The aforesaid

provision does not lay down any pre-condition with regard to sanctioning of career advancement from the next day of completion of the probation. No Government Orders have also been passed specifically in this regard, which provides that such career advancement can be granted only from the date on which the probation is completed.

8. G.O.Ms.No.350 Higher Education (H1) Department, dated 09.09.2009, facilitates the upward movement from AGP of Rs.6000/- to AGP of Rs.7000/- for all Assistant Professors, subject to their satisfying other conditions, as laid down by the UGC or by the University or by the State Government. It is not in dispute that the UGC Regulations restricts the upward movement of the AGP from the date of completion of the probation. Nor does G.O.(Ms).No.350 dated 09.09.2009 or any other Government Order, provide for such a restriction. In the absence of such restrictions, the present impugned order, dated 12.09.2019, declaring the petitioner's probation, from the next date of completion of her Tamil language test, is unfounded. Likewise, the consequential order, 22.12.2020, passed by the third respondent herein, giving effect to the petitioner's placement as Assistant Professor in AGP of Rs.7000/- with effect from 09.09.2016, also cannot be sustained.

9. In the result, the impugned order, dated 12.09.2019, on the file of the second respondent and the consequential order, dated 22.12.2020, on the file of the third respondent are set aside. Consequently, there shall be a direction to the third respondent herein to pass appropriate orders, declaring that the petitioner herein had qualified for placement as Assistant Professor in AGP of Rs.7000/-, with effect from 25.12.2011 and her further career advancement to AGP of Rs.8000/-, with effect from 25.12.2016, on par with her immediate junior, together with all service and monetary benefits, within a period of four (4) weeks from the date of receipt of a copy of this order.

10. This Writ Petition stands allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

01.09.2022

Index : Yes / No
Internet : Yes/ No
Lm

To

- 1.The Secretary to Government,
The State of Tamil Nadu,
Department of Collegiate Education,
St.George Fort,
Chennai – 600 009.
- 2.The Director,
Directorate of Collegiate Education,
E.V.K. Sampath Maligai,
College Road,
Chennai – 600 006.
- 3.The Joint Director,
Joint Director of Collegiate Education,
E.V.K. Sampath Maligai,
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Chennai – 600 006.

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M.S.RAMESH, J.

Lm

Order made in
W.P.(MD).No.21561 of 2021

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