



WEB COPY

W.P.(MD)No.14018 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.14018 of 2017

and

W.M.P. (MD)Nos.10957 & 10958 of 2017

P.Rajupandi

... Petitioner

vs

1. The State of Tamil Nadu

represented by its Secretary to Government, Most
Backward Classes and Minorities Welfare Department,
Secretariat, Chennai-600 009.

2. The Commissioner

Most Backward Classes and Minorities Welfare Department,
Chennai-600 005.

3. The Joint Director

Kallar Reclamation, Collectorate,
Madurai-625 020.

4. The Headmaster,

Government Kallar High Scholl,
Vagurani,
Usilampatti Taluk,
Madurai 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 relating to the order Na.Ka.No.37/2015 dated 15.07.2015 issued by the 4th respondent (in respect of non-payment of increment arrears from 01.07.1998 to 30.03.2015) and order Na.Ka.No.H.7/58952/2015 dated 23.03.2016 issued by the 3rd respondent (in respect of non-payment of selection grade arrears from 14.07.2007 to 30.03.2015) and the memorandum Na.Ka.No.7/111342/2003 dated 10.11.2016 issued by the 3rd respondent and quash the same and consequently direct the respondents to disburse the increment arrears from 01.07.1998 to 30.03.2015 and selection grade arrears from 14.07.2007 to 30.03.2015 and the benefits of encashment of balance of Earned Leave at credit (i.e., 210 days) to the petitioner within a time limit to be fixed by this Court.

For Petitioner : Mr.A.Thirumurthy
for M/S.Victory Associates

For Respondents : Mr.P.Thambidurai
Government Advocate (Civil side)

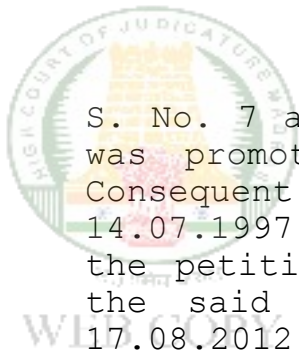


O R D E R

This Writ Petition is filed challenging the impugned order, dated 15.07.2015 issued by the fourth respondent in respect of non-payment of increment arrears from 01.07.1998 to 30.03.2015 and the impugned order dated 23.03.2016 issued by the third respondent (in respect of non-payment of selection grade arrears from 14.07.2007 to 30.03.2015) and the impugned order dated 10.11.2016 and consequently, direct the respondents to disburse the increment arrears, selection grade arrears and encashment of balance of Earned Leave at credit.

2. The brief facts of the case are that the petitioner's father died while he was in service as Watchman on 10.05.1988. The petitioner was appointed as Junior Assistant on compassionate ground. After creating supernumerary post by an order dated 10.07.1997, the petitioner was appointed on 14.07.1997. Thereafter, the petitioner was posted in the Government sanctioned post of Junior Assistant on 10.09.1998. The petitioner had passed the Account Test for Subordinate Officer (ATS) Part I held in December 2000 and the petitioner is eligible for the promotion to the post of Assistant. The second respondent sent a proposal to the Government to regularize the petitioner's service from the initial date of appointment dated 14.07.1997 duly relaxing the age limit. After the lapse of 16 years, the Government has issued G.O.(3D) No. 02 Backward Classes, Most Backward Classes and Minority Welfare (Pi.Na.3) Department, dated 22.04.2013 regularizing the petitioner's service from 14.07.1997. In the said order specifically it was issued to grant annual periodical increments and to pay arrears to the petitioner, but the arrears are not paid to the petitioner.

3. The contention of the petitioner is that though he was in continuous service from 14.09.1997, he was not deputed to undergo "Two Months Foundation Training" in Bhavanisagar. The petitioner's date of birth is 22.03.1957 and he had crossed 53 years of age in the year 2010 and the petitioner is entitled for exemption from passing any qualifying test because of his age. Thereafter, the petitioner attained the age of 56 years and 3 months, the third respondent deputed the petitioner to attend Two Months Foundation Training at Bhavanisagar from 29.06.2013 to 27.08.2013 and the petitioner has successfully completed the training and the certificate dated 27.08.2013 has been issued to that effect. The contention of the petitioner is that his service was regularized from 14.07.1997 and he became eligible for the completion of probation on 13.07.1999. Moreover, based on the chronology of names given in the initial appointment order dated 10.07.1997, the seniority of the petitioner and others appointed along with the petitioner was not followed. In the said appointment order the petitioner name was found in S. No. 4 and one B. Anitha was found at



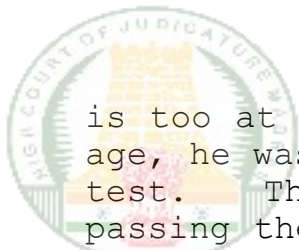
S. No. 7 and she was junior to the petitioner. But the said Anitha was promoted as Assistant on 17.08.2012 by the 3rd respondent. Consequent on the regularization of the petitioner service from 14.07.1997 the seniority over and above Anitha was retained and so the petitioner is eligible for promotion as Assistant on par with the said Anitha with effect from the date of promotion from 17.08.2012. Since the petitioner's representation was not considered the petitioner preferred writ petition in W.P.(MD) No. 6724 / 2014 and this Court vide order, dated 17.04.2014 directed the third respondent to consider and pass orders. The third respondent, vide order, dated 09.05.2014 stated that the petitioner did not pass one paper (i.e. Office Procedure) in the Foundation Training at Bhavanisagar and only after passing the Office Procedure paper, action will be taken to declare the probation. The third respondent has issued another order, dated 18.06.2014 and denied to declare the completion of probation till the petitioner pass in the failed paper. The petitioner was having only nine months to retire on 31.03.2015. Therefore, the petitioner has filed another writ petition in W.P.(MD)No.11741 of 2014 to quash the impugned order and direct the respondents to declare the probation.

4. In the meanwhile, G.O.(3D) No. 01 Backward Class, dated 30.03.2015 was issued and the petitioner was declared to have completed the probation period on 30.03.2015, duly granting exemption from passing the test and on the very next day i.e., on 31.03.2015, the petitioner attained superannuation and relieved from service. The fourth respondent has issued an order, dated 15.07.2015 and granted the annual periodical increments from 01.07.1998 to 01.07.2014 and the monetary benefits was given for only one day i.e., on 31.03.2015. Likewise, the fourth respondent denied the incremental arrears to the petitioner. Aggrieved over the same, the present writ petition is filed.

5. The third respondent has filed a counter affidavit stating that the petitioner is eligible to draw the monetary benefits only from the date 31.03.2015 and it has been accordingly sanctioned to the petitioner. The petitioner cannot get any benefit from G.O.Ms. (3D) No.2, dated 22.04.2013. Since the petitioner could not pass, he is not entitled to any periodical increments. Therefore, the respondents prayed to dismiss the writ petition.

6. Heard Mr.Thirumurthy, learned Counsel appearing for the petitioner and Mr.P.Thambidurai, learned Government Advocate appearing for the respondents.

7. It is seen from the records that the petitioner joined the service on 14.07.1997 and has completed his Account Test in the year 2000. The contention of the petitioner is that if the petitioner was sent to the Bhavanisagar Training prior to 15 years, he would have completed the training at that age. The respondents have delayed and



is too at the verge of his retirement. Because of the petitioner's age, he was not having concentration power and so could not pass the test. Therefore, the respondents have granted relaxation from passing the said paper prior to one day on the verge of retirement. If the respondents have granted the relaxation in the year 2000 itself, atleast in the year 2013 the petitioner would have received the benefits. Another contention of the petitioner is that if the petitioner was granted relaxation, it ought to be dated from the date on which the probation was completed.

8. The respondents submitted that there are several cases where the Bhavani Sagar Training was sent belatedly and this Court has stated that if it is only an Administrative lapse, the employees are entitled to the benefits. However, in the present case, the petitioner has failed in the Bhavani Sagar Training and the petitioner cannot be considered for the benefits.

9. The petitioner ought to have come to this Court during 1999 itself with the prayer to declare the probation or to send the petitioner for Bhavani Sagar Training. The petitioner has belatedly knocked the doors for the relief. Moreover, the petitioner has not passed in the Bhavani Sagar Training, but the petitioner is claiming concession. If the concession as claimed by the petitioner is granted, the meritorious candidates will be kept on par with the failed candidates, where there will be some imbalance. Therefore, in order to cure the imbalance, this Court is directing the petitioner to pay a sum of Rs.2000/- (Rupees Two Thousand only) to the respondents under the account of "Flag Day".

10. This Court after hearing the arguments and after perusing the documents is of the considered opinion that the respondents ought to have granted relaxation from passing the Bhavani Sagar Training from the date of completion of probation and thereafter consequential monetary benefits ought to be conferred on the petitioner. The respondents already granted exemption from passing the examination and based on the same the respondents are directed to declare probation from the date of completion of probation i.e. on 13.07.1999, thereafter grant monetary benefits applicable to the petitioner as if the petitioner has completed the training. Hence this Court is passing the following order:

- a. The respondents are directed to grant exemption from the date of completion of probation i.e. from 13.07.1999.
 - b. The respondents are directed to declare probation from the date of completion of probation i.e. from 13.07.1999
 - c. The respondents are directed to confer all monetary benefits from the date of completion of probation
 - d. The petitioner is directed to pay Rs.2000/- to the respondents under the head of "Flag Day"
 - e. The above said exercise shall be completed within four weeks
- https://hccorpus.courts.gov.in/toservices/ receipt of the copy of the order.



11. With the above direction, the writ petition is disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

WEB COPY

// True Copy //

/ /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.

To

1. The State of Tamil Nadu
represented by its Secretary to Government ,Most
Backward Classes and Minorities Welfare Department,
Secretariat, Chennai-600 009.
2. The Commissioner
Most Backward Classes and Minorities Welfare Department,
Chennai-600 005.
3. The Joint Director
Kallar Reclamation, Collectorate,
Madurai-625 020.
4. The Headmaster,
Government Kallar High Scholl,
Vagurani,
Usilampatti Taluk,
Madurai District.

+1 CC to M/s.A.THIRUMURTHY, Advocate (SR-14648[F] dated
25/03/2022)

+1 CC to M/s.SPL GP (SR-14919[F] dated 28/03/2022)

W.P. (MD)No.14018 of 2017

25.03.2022

RK(21/04/2022) 5P 7C