



W.P.No.2204



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.22049 of 2010
and M.P.No.1 of 2010

L.Thirunandan
Junior Assistant (Discharged from service),
O/o.the Stamping Inspector,
Aathur, Salem District.

...Petitioner

vs.

1.The State of Tamil Nadu,
rep. by the Principal Secretary,
Labour and Employment Department,
Chennai – 600 009.

2.The Principal Secretary and Commissioner of Labour,
Teynampet, Chennai – 600 006.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in his proceedings No.Proc.G3/26358/2008 dated 11.08.2010 and quash the same and consequently direct the respondents to count the services rendered by the petitioner from 16.05.2012 upto 04.12.2012 as Assistant in office of TNPSC and as Assistant Commissioner of Labour in Labour Department from 05.12.2012 onwards as qualifying service for the purpose of pension and other terminal benefits.



*(Prayer amended as per order dated 17.10.2023 in
W.M.P.No.11471 of 2023 in W.P.No.22049 of 2010)*

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For Petitioner : Mr.V.Vijay Shankar

For Respondent : Mr.R.Neethi Perumal
Government Advocate

ORDER

The petitioner had challenged the order of his termination made by the second respondent dated 11.08.2010, and consequently to direct the respondents to reinstate the petitioner into service.

2.Heard Mr.V.Vijay Shankar, learned counsel appearing for the petitioner and Mr.R.Neethi Perumal, learned Government Advocate appearing for the respondents.

3.Learned counsel appearing for the petitioner would submit that he was originally appointed as a Junior Assistant cum Typist and an order of appointment was issued to the petitioner on 08.08.2000. As per the aforesaid order, the petitioner had to pass the Typewriting in English & Tamil within the period of two years i.e. the probation period and an higher exam in Typewriting English & Tamil for further promotion. Thereafter, the Government had taken a decision to bifurcate the post as Junior Assistant cum Typist into two separate



persons working to choose to become a Junior Assistant or a Typist. Based on the options given to the petitioner, the petitioner had opted to become a Junior Assistant.

4.In the interregnum, the service of the petitioner was regularized on 17.07.2002. An order was issued on 06.05.2003 by the second respondent re-designating the services of the petitioner as Junior Assistant. The petitioner had joined the duty as Junior Assistant on 01.07.2003. The petitioner had also passed the Departmental exam which the Junior Assistant should pass in December 2005. While that be so, the petitioner was served a memorandum by the second respondent on 08.06.2010 calling upon him to explain as to why his probation should not be terminated in view of the failure to acquire the requisite qualification of passing District Office Manual Test within the prescribed period and he was given only three days time.

5.He would further submit that the petitioner was appointed as Junior Assistant by the orders of the second respondent on 06.05.2003 and in that said order, the persons working in the Labour Department listed in Annexure -2 were re-regularized. That apart, he would submit that there were no conditions imposed on the petitioner to pass the said exam within a particular period. He would further submit that the petitioner had been posted only as Junior Assistant



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on 06.05.2003 pursuant to the G.O.Ms.No.1168, Personnel and Administrative Reforms (Per.P) Department, dated 20.11.1981, had five years time to pass the aforesaid exam as he had been appointed only in the year 2003 to the post of Junior Assistant, he had five years time i.e. till 2008 to clear the exam and that he had cleared the exam even in the year 2005. But, however, the second respondent had taken the period of five years from the date of initial appointment which is erroneous.

6.He would submit that it was not necessary for the petitioner to pass the exam as to the said post even in the order of appointment he had to acquire the qualification to pass in the Typewriting English & Tamil which also he had passed. He would further submit that after an order of termination, the petitioner had applied through TNPSC and had successful as being appointed as an Assistant in the year 2012 which he had also resigned and later he had appeared for Group – I exam through TNPSC and has been appointed as Labour Officer and on and from 05.12.2012, he has been working in the same Department for the past 11 years and presently, he is working as Assistant Commissioner of Labour and therefore, he had sought for an amendment which was also been entertained by this Court to modify the prayer to such an extent that the period of services that the petitioner had put in from the initial date of his appointment from 2000 to till 2010 should be counted for his terminal benefits including payment of pension.



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7. Countering his arguments, Mr. R. Neethi Perumal, learned Government Advocate appearing for the respondents had relied upon a counter filed by the respondents and would submit that it is mandatory under 34 of the Special Rules of the Tamil Nadu Ministerial Services that a Junior Assistant working in the Labour Department shall pass a Test in the District Office Manual within the prescribed period of probation or within two years from the date of probation or within five years from the date of appointment as the case may be. He would submit that in the present case, the petitioner was appointed as Junior Assistant in May 2003 and he had joined the said post in July 2003. But, however, he had not passed the exam within the prescribed period of two years. But, however, had passed the said exam only in December 2005 after the said period of two years. Therefore, he would submit that the services of the petitioner had been rightly terminated.

8. Further, he would submit that even if the case of the petitioner is accepted, the period of five years from the date of initial appointment had expired in August 2005 as he had initially joined the duty on 16.08.2000. He would submit that even then the petitioner had passed the exam in December 2005 beyond the period of five years and therefore, he could not be considered as there is no infirmity in the order passed by the second respondent.



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9.I have considered the rival submission made by the respective counsel appearing on either side and perused the materials available on record.

10.It is an admitted case that the petitioner had been appointed as Junior Assistant cum Typist in the year 2000 and pursuant to the decision of the Government to bifurcate the post of Junior Assistant / Typist, an option was given to the persons who were appointed earlier either to opt as Junior Assistant or Typist. The petitioner had opted for the post of a Junior Assistant. The second respondent by proceedings dated 06.05.2003 pursuant to the Government Order in G.O.No.174 Personnel & Administrative Reforms Department, dated 08.09.2000 had directed re-regularization of the services including the services of the petitioner.

11.A further perusal of the said Government Order does not indicate as to within which time, the petitioner should clear the Departmental exam. From the aforesaid Government order, it could be seen that the petitioner had been appointed as a Junior Assistant only on 06.05.2003 in which post he had joined on 01.07.2003. The provisions of the Tamil Nadu Ministerial Service Rules provides that a Junior Assistant in the Labour Department ought to have passed the District Office Manual Test within a period of two years.



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12.It is not disputed by the learned Government Advocate nor has been disputed in the counter that the said period had been relaxed and such Junior Assistants can pass the exam within a period of relaxation, i.e., an extension of further period of three years i.e. they should pass the said exam within the period of five years. In the present case, the petitioner had been appointed as Junior Assistant only on 06.05.2003 and therefore, he had five years to pass the said exam which would fall in May 2008. The petitioner had also passed the said exam in December 2005. But on the contrary, the second respondent had taken a view that the said period of five years would have to be counted from the date of his initial appointment in the post of Junior Assistant cum Typist, this in my view is wholly erroneous. The reason for me coming to such a conclusion even in the order of appointment, the petitioner was only called upon to clear the Typewriting in English & Tamil.

13.A reading of the order of appointment would also show that the appointment of the petitioner had been made only to the post of Typist. Even though it was in the unified category of Junior Assistant and Typist. Since the petitioner was appointed only in the year 2003 in the post of Junior Assistant by way of re-regularisation, the period to clear the test would only begin in 2003 and not in 2000 as held by the second respondent.



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14.In such view of the matter, I am inclined to interfere with the order impugned in this Writ Petition. However, considering the fact that the petitioner had already taken employment in the Group – I service in the examination conducted by the TNPSC, I am inclined to direct counting the period of services rendered by the petitioner in the Labour Department to be counted for his pensionary benefits alone. The petitioner would not be entitled for any other monetary benefits.

15.In fine, the Writ Petition is allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

30.11.2023

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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To

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- 1.The Principal Secretary,
State of Tamil Nadu,
Labour and Employment Department,
Chennai – 600 009.

- 2.The Principal Secretary and Commissioner of Labour,
Teynampet, Chennai – 600 006.



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K.KUMARESH BABU, J.

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