IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
28.07.2023	08.08.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.5601 of 2022 and
W.M.P.Nos.5693 of 2022 & 1547 of 2023

U.M. Murali Prasatha Rao ... Petitioner

versus

1. The Principal Secretary to Government,
   Commercial Taxes and Registration Department,
   Fort St. George, Chennai 600009.

2. The Commissioner of Commercial Taxes,
   Exhilagam, Chepauk,
   Chennai.

3. Joint Commissioner,
   Office of the Joint Commissioner (State Taxes)
   Chennai North Division,
   Chennai 600003.

4. The Assistant Commissioner (S.T.)
   Washermenpet Assessment Circle,
   Elephant Gate Bridge Road,
   Commercial Taxes Building,
   2nd Floor, Chennai 600003.

5. The Commercial Tax Officer

Washermenpet Assessment Circle,
Elephant Gate Bridge Road,
Commercial Taxes Building,
2nd Floor, Chennai 600003. ... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to Charge Memo in Rc.9777A/2021/A2-II dated 15.12.2021 passed by the 3rd Respondent and quash the same.

For Petitioners : Mrs. Y. Kavitha for
M/s. Giridhar and Sai

For Respondents : Mrs.K. Vasanthamala
Government Advocate (Tax)
[For RR1 – RR5]

ORDER

This Writ Petition is filed to quash the Charge Memo issued by the 3rd Respondent dated 15.12.2021. The charges are as follows:

> Charge No.1 is that without probation has been declared, sent a representation to sanction his increment.
>
> Charge No.2 is that having sent such representation he has also drawn a sum of Rs.16,00,652/- towards the increment.

Charge No.3 is that the above is violation of Conduct Rules.

2.(a) The petitioner was appointed as a record clerk. His service was regularised in the post of Record Clerk with effect from 18.09.1984 vide order dated 20.10.1984. He was promoted to the post of Junior Assistant by order dated 07.06.1991. By order dated 21.03.2001 his service was regularised in the post of Junior Assistant from 14.06.1991. He is due to retire from service on superannuation on 30.04.2024. The petitioner has not been issued with orders for completion of probation period in the post of Junior Assistant in view of the administrative lapse on the part of the Respondents, since they failed to send him for the Foundational Course Training. The Petitioner had passed the District Office Manual Test (DOM) during May 1993 i.e., within a period two years service in the post of Junior Assistant. He has put in a continuous period of service for two years without any break in the post of Junior Assistant and he has not faced any disciplinary proceedings during the said period. However, he was not sanctioned increment even after the regularsing his service in the post of Junior Assistant. 2.(b) Therefore, he has submitted representation dated

26.04.2018 to the 5th Respondent stating that he had not been sanctioned with increments since 1993 onwards and requested for sanctioning increment. Pursuant to his representation dated 26.04.2018, by order dated 26.04.2018, the 5th Respondent upon perusal of the service book and the record of the office, sanctioned arrears of increment of Rs.14 lakhs and the pay of the Petitioner was re-fixed pursuant to the above order and started drawing higher pay. It was also communicated in the said order that he is entitled to draw arrears of pay and allowances w.e.f. 01.04.1993 onwards, that the delay was due to administrative reasons and not on the part of the individual. At the time of sanction of arrears, the petitioner had completed 54 years of age.

2.(c) Pursuant to the revision of pay under the Tamil Nadu Revised Pay Rules 2017, his pay was re-fixed in the post of Junior Assistant at Rs.37,400/- in the new Pay Matrix at Level 8(23) in the pay band of Rs.19500 -62000/-. The Petitioner was drawing pay in the higher pay band vide order dated 04.05.2018. The Petitioner also submitted representation dated 08.11.2018 seeking to exempt him from the Foundational Course

Training since he had crossed 53 years of age by relying upon G.O.No.120 P & AR Departement dated 05.12.2016. As per the above G.O., the incumbents who have been promoted to the post of Junior Assistants after the age of 53 years from the post of Record Clerk shall be exempted from attending the Foundational Course Training to be held at Government Official Training Institute, Bhavanisagar. Similarly, G.O.No.120 dated 05.12.2016 and G.O.No.4 dated 18.01.2019 have been issued.

2(d) On the basis of the above GOs, the Petitioner had submitted representation dated 08.11.2018 seeking from exemption from participation of the Foundational Course Training. However, the Petitioner was issued notice dated 12.03.2019 and the petitioner submitted his detailed explanation dated 10.4.2019. Further, by order dated 27.05.2019, he was directed to pay the entire arrears of Rs.14,34,868/-. Subsequently, by order dated 29.05.2019, the petitioner was relieved on 29.05.2019 to undergo Foundational Course Training for Junior Assistants/Assistants to be held at Government Officials Training Institute, Bhavanisagar from 31.05.2019 to 18.07.2019. The Petitioner was directed to report for training before the

District Revenue Oficer/Principal, Government Officials Training Institute, Bhavanisagar on 30.05.2019 at 9.00 a.m. without fail. He was issued with the course certificate dated 04.03.2021. Therefore, he is entitled for declaration of his period of probation w.e.f. 01.04.1983. Despite the completion of Foundational Course Training, recovery has been ordered which has been challenged in W.P.No.15993 of 2021 and this Court has granted interim stay. The above Writ Petition is pending. Thereafter, charge Memo was issued by the 3rd Respondent on 15.12.2021. Hence, the same has been challenged in this writ petition.

3.(a) Counter has been filed. It is the case of Respondents that the Petitioner was initially appointed as Record Clerk and later he was appointed as Junior Assistant by recruitment by transfer from the basic service on 07.06.1991. His services were regularised with effect from 14.06.1991 in the cadre of Junior Assistant on 21.3.2001. The Petitioner is aware of the requisite conditions for declaration of probation in the cadre of Junior Assistant. However he did not make any attempts to undergo Bhavanisagar training at that time. He ought to have brought to the notice of the administration that his name may be considered for training.

3.(b) The 5th Respondent sanctioning authority did not consider in getting the sanctions from the Government and also did not consider the requisite conditions for issuance of second and subsequent increments. Without going through any records, he sanctioned the increments on the same day of the petition received from the petitioner.

3.(c) G.O.No.184, Personal and Administrative Reforms Department dated 15.10.1999 though states about the claim of exemption from Bhavanisagar Training, it is applicable only to the persons who have been promoted as Junior Assistant from the post of Record Clerk after the age of 53 years. Whereas the petitioner has been promoted on 14.06.1991 itself at the age of 27 years. Hence exemption is not applicable to the petitioner. It is further contention that the charge memo was issued to the 5th Respondent, Enquiry is also pending. Therefore, the writ petition is not maintainable.

4. The learned counsel appearing for the Petitioner would submit that

though the petitioner service as regularised in the post of Record Clerk in the year 1984 and the Petitioner had completed the two years probation period in the year 1988 and he was promoted to the post of Junior Assistant on 07.06.1991 and w.e.f.14.06.1991 his service was regularised in the post of Junior Assistant. He has also completed the District Office Manual Test and the entries have been made in the Service Register. Though Rule 32(A)(1) of the Tamil Nadu Ministerial Service Rules stipulate that the individual in the cadre of Junior Assistant is eligible for promotion to the post of Assistant satisfying the condition that, his probation is declared successful, his service should be regularised in the cadre of Junior Assistant; he should complete the foundational training at Civil Service Training Institute at Bavanisagar, Tamil Nadu and he should complete the departmental examination conducted by the Tamil Nadu Public Service Commission. Hence it is his contention that though such rule stipulates for completion of the training within the probation period admittedly the petitioner has not sent for the training. No order has been passed in this regard. However, his services were regularised and promotion also given. Therefore, mere because the Petitioner given a representation to sanction the increment and seeks exemption since he has crossed 53 years of age, as per the Government Order No.184, charges cannot be framed against the the Petitioner at the fag end of his service. Hence it is his contention that the entire fault is on the part of the respondent in not sending the petitioner to the mandatory training. The Petitioner, in fact, also completed the training belatedly. Therefore, merely because the increment has been sanctioned in the meantime, it would not amount to misconduct. Hence the entire charges are liable to be set aside.

5. The learned counsel for the Respondents submitted that the petitioner is aware of the fact that he has not completed the mandatory training, however, he has sent a representation for claiming the increment and the arrears have been sanctioned by the 5th Respondent. The Petitioner is also posted many of the times in the Estatblishment Section and he has also aware of the names who have already gone to the training. Further it is his contention that the enquiry officer is also appointed and the enquiry is also proceeded in this matter. However, this Court has passed an order of interim stay. The same may be vacated and the Writ Petition is liable to be

dismissed.

6. It is not in dispute that the Petitioner was originally appointed as Record Clerk on 03.09.1982 and later appointed as Junior Assistant by recruitment by transfer from the basic service on 07.06.1991 and his service also regularised with effect from 14.6.1991 in the cadre of Junior Assistant on 21.03.2001. These facts are not in dispute.

7. The Charge against the Petitioner are as follows:

Charge No.1: That the Petitioner submitted representation dated 26.04.2018 seeking increments to State Tax Officer, without completion of the probation period in the post of Junior Assistant.

Charge No.2: On basis of the representation dated 26.04.2018 submitted by the petitioner, without completing a period of probation, petitioner was sanctioned Rs.16,00,652/- and thus there is a loss of Rs.16,00,652/- to the Government. And

Charge No.3: The Petitioner had acted in contravention of

Rule 20(1)(i) of Tamil Nadu Disciplinary and Appeal Rules.

8. Rule 32(A)(1) of the Tamil Nadu Ministerial Service Rules reads as follows:-

> *"32 (A) (1) Every person appointed to a category by direct recruitment shall be on probation for a total period of two years on duty within a continuous period of three years.*
>
> *The individual in the cadre of Junior Assistant is eligible for promotion to the post of Assistant on satisfying the following conditions:-*
>
> *1. His probation declared successful.*
>
> *2. His service should be regularized in the cadre of Junior Assistant.*
>
> *3. He should complete the foundational training at Civil Service Training Institute at Bhavanisagar, Tamil Nadu.*
>
> *4. He should successfully complete the*

> *departmental examination conducted by the Tamil Nadu Public Service Commission."*

9. Rule 26(A)(2) of the Tamil Nadu Ministerial Service Rules reads as follows:-

> *"26 (A) (2) in cases where the passing of an examination or test confers on a Government Servant the title to any right, benefit or concession, such title should be deemed to have accrued on the day following the last day of the examination or test which the passed. In cases where the examination or test can be passed in installments, the title to the right, benefit or concession will be deemed to have accrued on the day following the last day of the examination in the subject or subjects in which he had passed."*

10. The belated training held is also ratified in the G.O.(D) No.164, Commercial Taxes and Administration Department dated 30.04.2015. To apply Rule 32(A), it must be shown that despite the petitioner was deputed for such training he has not completed, then it can be said that the Petitioner

is not entitled for declaration of probation. Admittedly in this case, the petitioner has been continuously working and no orders have been passed for deputing him for training for many years and in fact service also regularised in the cadre of Junior Assistant on 14.06.1991. However, officials have not taken any steps to send the Petitioner for training in time. Though it is stated that the Petitioner was working in the establishment in that period he ought to have prepared list. It is to be noted that it is for the officials who are in charge of the department to see that the person who have promoted to the post of Junior Assistant and deputed for the training as mandated in Rule 32(A) of the Tamil Nadu Ministerial Service Rules, which has not been done in this case. Whereas they are simply allowed the petitioner to work without passing any order deputing him to undergo the training as required under the Rule. Therefore, when the administrative lapse is at large and the they have not deputed the petitioner to undergo the training within the stipulated period, merely because the petitioner sent a representation seeking increment and the increment was also sanctioned by the officials, now, it cannot be said that such action amount to misconduct warranting disciplinary proceedings, particularly, at the fag end of his service. Before passing the increment they also verified all the service records as could be seen from the communication from 1.9.2006, 20.06.2008 and 31.07.2009. Similarly, on 19.7.2017 also particulars have been sought. Only after the seeing the service records, sanction order also passed by the higher officials. It is relevant to refer the letter No.14735/S/10-1 dated 08.04.2010 from the Secretary to Government to all Secretaries to Government, the same makes it clear as follows:

> *"As per Rule 27 of General Rules for Tamil Nadu State and Subordinate Services, at the end of the period of probation the appointing authority shall assess the suitability of the probationer for full membership and if the probationer is found suitable for such membership, he 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 period of probation. However, a formal order declaring the completion of probation has to be issued by the appointing authority.*

2. The Administrative Reforms Committee in its first report has recommended that Departmental action shall be effected against Supervisory Officers who do not issue orders on satisfactory completion of probation of any staff working under him. In the Government Order cited Government have accepted the above said recommendation.

3. If orders of satisfactory completion of probation are not issued in time by the competent authorities, the Secretaries to Government of the Departments and the Heads of Departments may take appropriate disciplinary action against the supervisory officers for the lapses."

11. Above communication from the Secretary to Government makes responsibility to the supervisory officer, who ought to have to seen the person has undergone any foundation training. However,the department has not taken any action to send the petitioner for training in time. It is also relevant to note that Rule 32 (A) of the Tamil Nadu Ministerial Service Rules makes it very clear that every person appointed to a category by direct recruitment shall be on probation for a total period of two years on duty

within a continuous period of three years. The individual in the cadre of Junior Assistant is eligible for promotion to the post of Assistant only on satisfying the following conditions:-

1. His probation declared successful.

2. His service should be regularized in the cadre of Junior Assistant.

3. He should complete the foundational training at Civil Service Training Institute at Bhavanisagar, Tamil Nadu.

4. He should successfully complete the departmental examination conducted by the Tamil Nadu Public Service Commission.

12. Therefore, this Court is of the view that only the foundation Course training is necessary only in the event the individual claim for the next promotion to the post of Assistant from Junior Assistant. Be that as it may. In G.O.Ms.No.120 exemption has been granted to the persons who have promoted to the post of Assistant from Junior Assistant who have

crossed the age of 53 from undergoing the training to Bhavani sagar. Based on the G.O., communication also sent by the Commercial Tax Officer dated 4.3.2019 to send the list of persons who have been appointed directly or other mode are exempted from attending the Foundational Course Training. Therefore, this Court is of the view that when the person is already working as Junior Assistant only for the next promotion to Assistant, Foundation Course Training is required. Now the Respondent cannot contend that the Foundation Course is necessary for the Junior Assistant. Be that as it may. When the huge administrative lapse committed by the Respondent and delay on their part, merely because increment has sanctioned in the Junior Assistant cadre it cannot be said that it is a misconduct.

13. A learned single Judge of this Court in ***W.P.(MD) No.6917 of 2017, dated 30.09.2021 in T. Aathi Shiva vs. The Additional Chief Secretary to Government and others*** held as follows:

> "9.In this case, it is submitted that the petitioner was deputed for undergoing foundational training only between 21.11.2015 and 02.01.2016. It is also admitted that the petitioner did not pass in one out of five subjects and he passed in

Mathematics subject only on 21.05.2016 in his second attempt. The question therefore, is whether the petitioner's probation can be declared only after the completion of a written test conducted during foundational training. This Court has already held that the petitioner's probation cannot be denied with effect from the date of completion of department tests, when the deputation was delayed due to administrative reasons.

10.The learned Government Advocate has not pointed out any other judgments contrary to the view expressed by this Court in similar circumstances. The first respondent declared the probation belatedly and placed the petitioner below his juniors, who are appointed subsequent to the petitioner. Merely because, there was delay in deputing the petitioner to undergo foundational training due to administrative reasons, the petitioner cannot be discriminated and the impugned order is, therefore, discriminatory and in violation of Article 14 of Constitution of India."

14. In another judgment of this Court in ***W.P.No.25006 of 2019 dated 16.02.2021*** in the case of ***M.Balamurugan vs State of Tamil Nadu and others***, the learned Single Judge considered similar issue with identical facts and held as follows:

"4.Admittedly, the respondents herein had not conducted any training programme during the two years probation period of the

petitioner. The third respondent, in his counter affidavit also ratified that due to large number of persons being deputed for training at the Civil Service Training Institute, Bhavanisagar, they had belatedly deputed him for the training in the month of December 2015 only. As such, the stand taken by the petitioner that the delay in deputing the petitioner for the training is not on the part of the petitioner and therefore it cannot be put against him seems acceptable. It is also not stated in the counter affidavit as to which regulation is an impediment for declaration of probation to the probationers, who had not cleared the training in the first attempt. Apart from the bald statement that the failure in the first attempt is an slackness on the probationer, no reliance has been placed on any rule or regulation in this regard. When the petitioner herein had raised a ground with regard to discrimination, to the effect that, when similarly placed probationers have been declared to have cleared probation from the date of completion of the two years, the respondents have not countered the same with any justifiable or legal stand. The only attempted justification is that the petitioner cannot claim parity with the other employees, because he had failed in his first attempt. As observed earlier, failure in the first attempt is not an embargo or an impediment for consideration for the purpose of declaring the probation. In these circumstances, the impugned order declaring the petitioner's probation with effect from 22.05.2016 i.e., the date of completion of the Bhavanisagar Training, is not only illegal but is also discriminatory and arbitrary. As such, the order itself cannot be sustained and *consequently, the petitioner would be entitled to have the probation declared with effect from 05.01.2011, which is the date on which he had completed his two years probation period from his initial appointment."*

15. Further in ***W.P.(MD)No.15585 of 2018, dated 19.03.2021,*** in the case of ***T.Gunaseela Subramani and two others vs Principal Secretary to the Government and others***, this Court has held as follows:-

"5. Admittedly, the mandatory foundational training at the Civil Service Training Institute at Bhavani Sagar was belatedly held and the petitioners were not deputed for the training, during their period of probation. Such a statement is ratified in the G.O.(D)No.164, Commercial Taxes and Administration Department dated 30.04.2015, as well as in the counter affidavit filed before this Court. The provisions of Rule 32 would apply to such probationers, who have been nominated to undergo their training during their period of probation, which is for a total period of two years on duty, within a continuous period of three years. When the petitioners were nominated for the training after more than four years, they cannot be expected to complete such training, as required under Rule 32(A) and therefore, the provision itself may not be applicable to these petitioners, particularly, when the lapse was on the part of the respondents. 6. Furthermore, there is no Rule to the effect that the training should not be completed in the second or subsequent attempts during the probation period. In other words, there is no bar for the probationers to undertake the tests in any number of attempts, within the probation period. This observation is made in the light of the counter averments of the respondents that these petitioners had completed the training in their second attempt only. Even otherwise, since the petitioners were deprived of an opportunity to participate in the training programme within their probation period, there may not be any justification on the part of the respondents to refer to the failure in completing the training at the first attempt."

16. In the present case on hand also the petitioner completed the Foundation Course Training later, which has not been disputed. In such a view of the matter, applying the above ratio and as per the government letter referred above, the probation deemed to have declared and the petitioner drawn only the increment the same will not amount to misconduct and merely because enquiry officer appointed, this Court is of the view that the same will not serve any purpose in view of the discussion above.

17. Accordingly, the Writ Petition is allowed. No costs. The entire charge memo in Rc.9777A/2021/A2-II dated 15.12.2021 passed by the 3rd Respondent and consequent proceedings are quashed. Enquiry Report if

any will not serve any purpose. Consequently connected Writ Miscellaneous Petitions are closed.

08.08.2023

Index : yes
Internet : yes
Neutral Citation : yes/no
ggs

copy to:

1. The Principal Secretary to Government, Commercial Taxes and Registration Department, Fort St. George, Chennai 600009.
2. The Commissioner of Commercial Taxes, Ezhilagam, Chepauk,Chennai.
3. Joint Commissioner, Office of the Joint Commissioner (State Taxes) Chennai North Division, Chennai 600003.
4. The Assistatant Commissioner (S.T.) Washermenpet Assessment Circle, Elephant Gate Bridge Road, Commercial Taxes Building,2nd Floor, Chennai 600003.
5. The Commrercial Tax Officer, Washermenpet Assessment Circle, Elephant Gate Bridge Road, Commercial Taxes Building, 2nd Floor, Chennai 600003.

N.SATHISH KUMAR, J.,
ggs

Order in:
W.P.No.5601 of 2022 and W.M.P.Nos.5693 of 2022 & 1547 of 2023

08.08.2023