



W.P.Nos.11326 and 11327 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.09.2023

Coram:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.Nos.11326 and 11327 of 2018

C.Palanichamy

... Petitioner in W.P.No.11326 of 2018

A.S.Alagesan

... Petitioner in W.P.No.11327 of 2018

Vs.

1. The State of Tamil Nadu
represented by its Secretary to Government
Revenue Department,
Secretariat, Chennai – 600 009.
2. The Principal Commissioner
and Commissioner of Revenue Administration,
Chepauk, Chennai – 600 005.
3. The District Collector,
Dindigul, Dindigul District.

.... Respondents in both W.Ps

Common Prayer: PETITIONs filed under Article 226 of the Constitution of India praying for the issuance of Writs of Certiorarified Mandamus calling for the records connected in G.O.(1D) No.475, Revenue (Ser-7(1)) Department, dated 27.10.2016 passed by the 1st respondent and quash the same insofar as it restrict the period of probation only from 30.12.2014 and 30.05.2014 instead



of 24.10.2007 and 20.10.2007 as far as the petitioners are concerned and direct the respondents to declare the probation period of the petitioners with effect from 24.10.2007 and 20.10.2007 with all benefits.

In both W.Ps

For Petitioner : Mr.G.Elanchezhiyan

For Respondents : Mr.T.K.Saravanan
Government Advocate

COMMON ORDER

Since the issues raised in both the Writ Petitions are common and the petitioners are also seeking the same relief, it is prudent that a common order is passed.

2. The petitioner in W.P.No.11326 of 2018, viz., C.Palanichamy had been originally appointed as Village Karnam in the year 1980. Thereafter, the said post was abolished by the Government. There was a concession given later that those who had passed SSLC could be appointed as regular Village Administrative Officer. The petitioner was so appointed as Village Administrative Officer on 24.10.2005.

3. The petitioner in W.P.No.11327 of 2018, viz., A.S.Alagesan had also been similarly appointed as Village Karnam in the year 1978 and on abolition of the said post, had moved out of employment and was subsequently appointed as Village Administrative Officer on 20.10.2005.

4. The services of both the petitioners had been regularised by the



Government vide G.O.Ms.No.440, Revenue Department dated 02.12.2013.

During the period of service, there was an obligation on the part of the petitioners to qualify for departmental special test within a period of three years and on such qualification, orders of probation would be issued by the respondents.

5. The two petitioners never wrote the said examination. I would straight away reject the contention of the petitioners that they were never put on notice to write the examination. Since they were in service, they should have been aware of the service conditions. As the particular condition was not complied with, the respondents should have exercised their option to discharge the petitioners.

6. Unfortunately, the respondents have slept over and had actually regularised the services of the petitioners vide G.O.Ms.No.440 dated 02.12.2013, with effect from 24.10.2005 and 20.10.2005 respectively. The petitioners therefore had been benefited by the said order. Even after the year 2013, upon regularisation of their services, they did not take any steps to write the examination.

7. The petitioners were due to retire on attaining the age of superannuation on 31.12.2014 and 31.05.2014 respectively. In respect of both the petitioners, one day prior to the date of retirement, namely, on



30.12.2014 and 30.05.2014 respectively, orders have been passed declaring their probation. In effect, they were declared to be in service, to the satisfaction of the respondents, for just one day of their entire service. Questioning that particular order passed by the respondents, the present Writ Petitions had been filed.

8. In the counter affidavits, in which common stand was taken, it was stated that the petitioners should have completed their period of probation within a period of 2 years from the date of regularisation or within a period of 3 years of service and one of the primary conditions was to qualify in the special test and to undergo Village Administrative Officer training for a period of 6 weeks.

9. Neither of the two petitioners even attempted the special tests. It was therefore stated that their probation was not declared. It was also stated that they were eligible for pension only under the Contributory Pension Scheme, since their services were regularised only on 24.10.2005 and 20.10.2005 respectively. It was stated that the Government had relaxed the Rules in favour of the petitioners and directed declaration of probation on the stated dates.

10. Heard the learned counsel for the petitioners and the learned Government Advocate for the respondents.

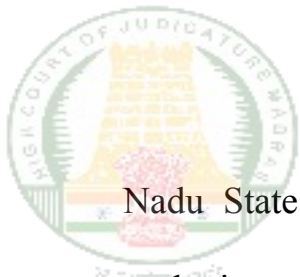


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11. The only issue is with respect to the date on which the services of the two petitioners had been declared to the satisfaction of the respondents, in effect, their probation, which was declared just one day prior to their date of retirement. There is no dispute in the fact that both the petitioners were originally appointed as Village Karnam and then on abolition of the said post, were also ousted from the said post and later re-appointed as Village Administrative Officer.

12. There is also no dispute that their services were regularised vide G.O.Ms.No.440 Revenue Department dated 02.12.2013, with effect from 24.10.2005 and 20.10.2005 respectively. There is also no denial or dispute of the fact that both the petitioners had not written the special test during their period of service from 2005 till the date of retirement. There is also no denial of the fact that the respondents have not exercised their option to discharge both the petitioners, since they have not written the special test. It leaves no doubt over the fact that the respondents have slept over the said issue.

13. In a more or less similar situation, in W.P.No.18365 and 18366 of 2010 (*K.Muthusamy and S.Sivasankaran V. The State of Tamil Nadu and others*) by a common order dated 12.08.2010, a learned single Judge (Hon'ble Mr.Justice V.Ramasubramanian, as His Lordship then was), of this Court had examined the original Rule, viz., Rule 27(b) of the General Rules of Tamil



Nadu State and Subordinate Services and was of the opinion that if the probation was not declared within a period of two years and within the extended period of one year, then it should be deemed that the probation was declared.

14. Even in that particular case, the petitioners had been appointed as part time Village Administrative Officer prior to abolition of the post and thereafter appointed to the full time post of Village Administrative Officers. They had also retired on attaining the age of superannuation. However, the terminal and pensionary benefits had not been paid, since they had not passed the special test during the period of their service and their probation was not declared to have been completed.

15. In the instant case, probation had actually been declared, which would necessarily mean that the petitioners are entitled to all the benefits under the Contributory Pension Scheme. This is so because, the services of the petitioners had been regularised on and from 24.10.2005 and 20.10.2005 respectively.

16. The reasoning of the learned single Judge in the aforesaid Writ Petition is as follows:

7. It is true that the petitioners have not passed the special tests prescribed for a declaration of satisfactory completion of probation. But, unfortunately, that, by itself, would not result in an automatic extension of the probation. An extension of probation



should be by specific orders passed in terms of the statutory rules. In the absence of any order extending the probation, the deeming fiction would come into operation.

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8. Under Rule 27 (b) of the General Rules for Tamil Nadu State and Subordinate Services, a person, who is placed on probation, will be deemed to have satisfactorily completed the period of probation, if no order extending the probation is passed within six months from the date of expiry or two years. In these cases, admittedly, no orders either terminating the probation or extending the period of probation were passed at any point of time before the petitioners reached the age of superannuation. Therefore, it is not now open to the respondents to put the failure of the petitioners to pass the departmental test against them. As a matter of fact, on the date on which the petitioners reached the age of superannuation, the competent authority has passed orders allowing the petitioners to retire. Therefore, even if by any stroke of imagination the petitioners are taken to have continued only on probation, such Probation cannot hereafter be terminated in the light of the fact that they have been permitted to retire.

9. In any case, a Division Bench of this Court had held in *Dr.N.Iyyanar v. Secretary to Government (2008) 3 MI 415*] that the condition relating to such departmental tests was only a directory provision. If a person does not pass the departmental test within the period of probation, it is open to the appointing authority to extend the period of probation from time to time and it may even be open to the competent authority to terminate the probation. But, if no order is passed either way, there is very little that the respondents can do in view of the express provisions of the statutory rules.

10. In view of the above, these writ petitions are allowed. The respondents are directed to treat the petitioners as having deemed to have completed the period of probation and settle all terminal and pensionary benefits within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

17. The reasons stated above would be directly applicable to the petitioners herein. Though in the aforesaid Writ Petition, it was an issue of deemed declaration of probation, in the instant case, the probation of the



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petitioners had been declared. This would entitle them to get the benefit of

Contributory Pension Scheme on and from the date on which their services were regularised, namely, 24.10.2005 and 20.10.2005 respectively.

18. Accordingly, the impugned orders are set aside and these Writ Petitions are allowed. The respondents are directed to settle all benefits under Contributory Pension Scheme from the date on which their services were regularised, namely, 24.10.2005 and 20.10.2005 respectively within a period of sixteen (16) weeks from the date of receipt of a copy of this order. No costs.

Sl

12.09.2023

Index: Yes/No

Speaking/Non-speaking order

Neutral citation: Yes/No

To

1. The State of Tamil Nadu
represented by its Secretary to Government
Revenue Department,
Secretariat, Chennai – 600 009.
2. The Principal Commissioner
and Commissioner of Revenue Administration,
Chepauk, Chennai – 600 005.
3. The District Collector,
Dindigul, Dindigul District.

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