IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.26474 of 2016

R. Selvam ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by Secretary to Government,
Revenue Employment 6(1) Department,
Fort St. George, Secretariat,
Chennai – 600 009.

2.The Additional Chief Secretary,
Commissioner of Revenue Administration,
Chepauk, Chennai – 600 005.

3.The District Collector,
Cuddalore District,
Cuddalore.

4.The District Revenue Officer,
Cuddalore. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order dated 11.02.2016 in G.O. 2D No.35, Revenue (Service 6(1)) Department of the first respondent and quash the same and consequently direct the first respondent herein to relax the rules and include the name of the petitioner in the approved list for promotion to the post of Assistants for the year 2012-13.

For Petitioner : Mrs.A.L. Ganthimathi

For Respondents : Mr.K.H. Ravi Kumar,
Government Advocate

O R D E R

The petitioner was initially appointed on 28.07.2003 as a Junior Assistant in the respondent/Department. He was thereafter recruited through Special Recruitment on 03.06.2009. On 02.06.2011, on completion of two years, his probation was declared and his services were regularized in the cadre of Junior Assistant with effect from 03.06.2009. The promotional panel for the post of Assistants for the year 2012-2013 was drawn with the crucial date of 15.03.2012.

2. The stand taken by the respondents now is that, since the petitioner had completed his Survey training only on 29.03.2012, his name was not included in the promotional panel for the year 2012-2013 for the post of Assistants.

3. The learned senior counsel appearing for the petitioner submitted that the belated deputation of training by the Department should not be put against the petitioner herein.

4. The learned Government Advocate appearing for the respondents submitted that as per the Tamil Nadu Ministerial Service Rules, the Junior Assistants whose services have been regularized, shall undergo the condensed foundational training and since the petitioner had not completed the training as on the crucial date, he is not entitled for inclusion of his name in the promotional panel.

5. Subsequently, the petitioner's name was included in the promotional panel for the year 2013-2014 for the post of Assistants and he was also awarded the promotion. The petitioner now seeks for notional promotion in the panel for the year 2012-2013.

6. The issue as to whether the Junior Assistant's name could be withheld in the promotion panel on the ground that he has not completed his foundational training, came up for consideration before this Court in various decisions, wherein, it was held that the belated deputation for training by the Department, should not be put against the concerned employee and therefore, he will be entitled for notional promotion from the date even prior to completion of the foundational training, by regularizing all conditions. In one such order passed in the case of ***T.Gunaseela Subramani and 2 others Vs. The Principal Secretary to Government, Commercial Taxes and Registration Department and others passed in W.P.(MD) No.15585 of 2018, dated 29.03.2021,*** this Court had held as follows:-

> **.......** *"2. The petitioners herein had undergone the foundational training at the Civil Service Training Institute at Bhavanisagar, Tamil Nadu, pursuant to which, their completion of probation was declared through G.O.(D) No.164 Commercial Taxes and Registration Department dated 30.04.2015. Subsequently, the first petitioner was promoted to the post of Assistant on 15.07.2015 and the second and third petitioners were promoted on 01.07.2015 and 13.11.2015 respectively.*
>
> *3. The petitioners' declaration of probation came to be cancelled through the impugned*

government order in G.O.(D) No.83 Commercial Taxes and Registration Department dated 26.04.2018, predominantly on the ground that, the petitioners herein had not completed their foundational training within their two years of probation period, as required under Rule 32(a)(1) of the Tamil Nadu Ministerial Service Rules and that their probation requires to be declared from the day following their completion of the foundational training.

3. 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."*

4. As per the aforesaid Rules, among other conditions, the probationer is required to complete the foundational training at Civil Service Training Institute, at Bhavanisagar, within the probationary period. As per Rule 26(A)(2) of the Tamil Nadu Ministerial Service Rules, the date of passing of the foundational training or departmental tests, is significant for declaration of probation. The said 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."*

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.*

*7. Since there are no Regulations governing the declaration of probation for belated deputation to training, owing to administrative delays, the reference to Rule 26(A)(2) that the petitioners' declaration of probation will commence on the day following the completion of training, is unjustifiable and illegal. Consequently, the impugned Government Order cancelling the declaration of probation of the petitioners cannot be sustained.***......”**

7. The aforesaid extract is self explanatory. As such, the impugned order rejecting the petitioner's representation to relax the rules and include his name in the approved list of promotional panel for the year 2012-2013 cannot be sustained. Consequently, it requires to be held that the notional promotion to the petitioner herein requires to be declared for the panel year 2012-2013 for the post of Assistants.

8. Accordingly, the impugned Government Order dated 11.02.2016 passed by the first respondent, is quashed. Consequently, there shall be a direction to the respondents herein, to forthwith grant the notional promotion to the petitioner herein to the post of Assistant for the panel year 2012-2013, atleast within a period of four (4) weeks from the date of receipt of a copy of this order. In view of the aforesaid direction, the petitioner shall also be entitled for all the service and monetary benefits to which he may be entitled to, with effect from 02.06.2011 i.e., from the date of completion of his probation.

9. The Writ Petition stands allowed, accordingly. No costs.

13.02.2023

Speaking/Non-speaking Order
Internet: Yes/No
Index: Yes/No
Neutral Citation: Yes/No

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M.S.RAMESH,J.

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To

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