



W.P.No.35544 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	19.12.2022
Pronounced on	08.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.35544 of 2016
and
W.M.P.No.30558 of 2016

G.Ravindran

... Petitioner

Vs.

1.The Secretary to Government,
School Education Department,
Fort St. George, Chennai-600 009.

2.The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records of the first respondent herein in Government Order in G.O. (1D) No.219, School Education (P.A.4(2)) Department, dated 29.06.2015 so far as the petitioner's probation is declared with effect from 17.12.2013 and consequently, direct the first respondent to declare the probation of the petitioner with effect from 30.03.2003 in consonance with G.O. (3D) No.159, School Education (S1) Department, dated 17.12.2012 and consequently grant the petitioner with increments.



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For Petitioner : Ms.Dakshayani Reddy
For Respondents : Mr.K.H.Ravikumar, GA

ORDER

Heard Ms. Dakshayani Reddy, learned counsel for the petitioner and Mr. K.H.Ravikumar, learned Government Advocate appearing on behalf of the respondents.

2. The petitioner herein was appointed on compassionate ground in the post of Junior Assistant with effect from 31.03.2001. His services came to be regularised through a Government Order in G.O. (3D) No.159, School Education (S1) Department, dated 17.12.2012, with effect from his date of initial appointment i.e., on 31.03.2001. Since he was not regularised in between 2001 to 2012, he was not sent for foundational training at Civil Service Training Institute at Bhavani Sagar, Tamil Nadu. After regularisation, he was sent for the training with effect from 29.06.2013 to 27.08.2013. The petitioner had passed the training in the second attempt on 17.12.2013. However, the petitioner's probation was declared through Government Order in G.O. (1D) No.219, School Education (P.A.4(2)) Department, dated 29.06.2015 with effect from 17.12.2013, which is the date on which he



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had passed the Bhavani Sagar training, which order is put under challenge in the present Writ Petition, as the petitioner now claims declaration of his probation with effect from 30.03.2003, which is on completion of two years from the date of his initial appointment.

3. The issue is as to whether the Government can declare the probation of its employees with effect from the date of completion of Bhavani Sagar training and not on completion of two years from the date of his/her initial appointment, has come up for consideration before this Court in a batch of Writ Petitions, wherein it was held that the mistake on the part of the Government in not sending such an employee for the training in time, cannot be put against him and accordingly, had held that such a Government employee would be entitled for declaration of probation after completion of two years of service from the date of his initial appointment. 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



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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



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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



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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



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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."

4. The aforesaid order is self explanatory. As such, the impugned order declaring the petitioner's probation with effect from 17.12.2013, cannot be sustained. Consequently, it requires to be held that the probation of the petitioner herein requires to be declared with effect from 30.03.2003, which is the date of completion of the two years period of probation.

5. Accordingly, the impugned order in G.O. (1D) No.219, School Education (P.A.4(2)) Department, dated 29.06.2015 passed by the first respondent, is hereby quashed. Consequently, there shall be a direction to the respondents herein to forthwith declare the probation of the petitioner herein, with effect from 30.03.2003, atleast within a period of four 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 30.03.2003.



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6. The Writ Petition stands allowed, accordingly. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

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Internet : Yes/No
Order : Speaking/Non Speaking
Neutral Citation : Yes / No

DP

To

- 1.The Secretary to Government,
School Education Department,
Fort St. George, Chennai-600 009.
- 2.The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.



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M.S.RAMESH,J.

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