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W.P.No.14998 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13..09..2023

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.14998 of 2022

&

W.M.P.No.14224 of 2022

K.Neelakanta

..... Petitioner

-Versus-

1.State of Tamil Nadu,
Rep. by Secretary,
School Education,
Fort St. George,
Chennai 600 009.

2.The Commissioner,
School Education,
DPI Campus,
Chennai 600005.

3.The Chief Educational Officer,
Hosur,
Krishnagiri District.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in G.O.Ms.(1T) No.163, School Education (Tho.Ka.3 (1), Thurai, dated 27.05.2019 and to quash the same insofar as it declares the probation of the petitioner with effect from 15.12.2017 and consequently direct the



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respondents to declare the probation of the petitioner with effect from 06.12.2022 and further direct the respondents to grant pay revision to the petitioner along with annual increments and all other services benefits.

*For Petitioner : Mrs.Dakshayani Reddy
Senior Counsel for
Ms.Suneetha*

*For Respondent (s) : Mr.P.Baladhandayutham,
Special Government Pleader
for RR1 to 3*

ORDER

This petition challenges the order of the 1st respondent under Government Order in G.O.Ms.(1T) No.163, School Education [EE3(1)] Department dated 27.05.2019 granting probation w.e.f. 15.12.2017 instead of 06.12.2022 and seeks other consequential reliefs.

2. The petitioner was appointed as Junior Assistant in the respondent department on 06.12.2000 on compassionate ground as the father of the petitioner – Kenchappa had died in harness on 01.01.1992. But, due to administrative reasons his services were regularised only on 06.07.2017, however, w.e.f. the date of his appointment i.e., on 06.12.2000 through G.O.Ms.No.39 dated 06.07.2017.

3. It is relevant to note that after the issuance of the Government Order in



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G.O.Ms.No.39 dated 06.07.2017 regularising the services of the petitioner

w.e.f. 06.12.2000, he was deputed to Bhavani Sagar on 24.08.2017 to have his foundational training completed. It appears that the petitioner did not pass in one of the subjects. However, he subsequently, sat for the test which he had failed to clear and had qualified in that test held on 05.12.2017. Thereafter, the impugned order came to be passed declaring the probation of the petitioner w.e.f. 06.12.2017.

4. The 3rd respondent filed counter affidavit denying the allegations made in the writ petition and inter alia contending that as per Rule 34 of the Tamil Nadu Ministerial Service Rules, the petitioner should have passed the test or undergone training within the period of probation or the extended period of probation. Since the petitioner had passed the tests only in December, 2017, his probation was declared w.e.f. 06.12.2017. Therefore, the order impugned in the writ petition was passed in accordance with rules and it calls for no interference.

5. Heard both sides.

6. It is not in dispute that the petitioner was appointed on 06.12.2000 as Junior Assistant in the respondent department on compassionate ground. His services were regularized on 06.07.2017, however, with effect from 06.12.2000,



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the date of appointment. Due to administrative reasons, there was a delay of about 17 years in deputing the petitioner for foundational training and the petitioner cannot be blamed for such delay. After the regularisation of his service, the petitioner was sent for training in December, 2017. He had undergone training between 24.08.2017 and 16.10.2017. Thereafter, he passed the tests on 15.12.2017. This being the factual position, this court is of the view that when the process of regularization was delayed due to administrative reasons and the delay was not attributable to the petitioner, such delay could not be put against the petitioner citing the relevant service rules. If the services of the petitioner had been regularized within the period and he was deputed to Bhavani Sagar Institute within the period of probation, he would have cleared the tests within the stipulated period. In such circumstances, this court is of the view that rule 34 cannot be put against the petitioner.

7. In this regard, it is relevant to note that, a single Judge of Madurai Bench of this Court in the case of **T.Aathi Shiva v. The Additional Chief Secretary to Government, Department of Commercial Taxes and Registration** [W.P.(MD) No.6917 of 2017 by order dated 30.09.2021], in an identical situation, had directed the probation of the petitioner therein to be declared as completed within the period.



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8. Before that, in **M.Balamurugan v. State of Tamil Nadu and others**

WEB [W.P.(MD) No.25006 of 2019 dated 16.02.2021], another single judge of

Madurai Bench of this Court has 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



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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 ie., 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.”

9. Similarly, in the case of **T.Gunaseela Subramani v. Principal Secretary to Government** [W.P.(MD) No.15585 of 2018 dated 19.03.2021] it has been held as follows:-



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“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.



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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.”

10. In the light of the precedents referred to supra and considering the factual matrix of the case, this court is of the view that the impugned order is not sustainable on facts and in law as the petitioner's probation cannot be declared with effect from the date of completion of departmental tests, when the deputation was delayed due to administrative reasons.

11. In the result, the writ petition is allowed. The impugned order declaring the probation of the petitioner w.e.f. 16.12.2017 stands quashed. The respondents are directed to declare the probation of the petitioner with effect from the date of completion of two years (i.e., 06.12.2002). The respondents are further directed to give effect to pay revision and pass on the benefits of annual increments and all other services benefits entitled to be received by the petitioner. The said exercise shall be completed within a period of eight weeks



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from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected WMP is closed.

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Index : yes / no
Neutral Citation : yes / no
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To

- 1.The Secretary, School Education, Government of Tamil Nadu,
Fort St. George, Chennai 600 009.
- 2.The Commissioner, School Education, DPI Campus, Chennai 600005.
- 3.The Chief Educational Officer, Hosur, Krishnagiri District.



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N.SATHISH KUMAR.J.,

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