IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.15993 of 2021
and W.M.P.No.16903 of 2021

U.M.Murali Prasatha Rao ... Petitioner

/vs/

1. The Principal Secretary to Government,
   Commercial Taxes and Registration Department,
   Fort St. George, Chennai – 600 009.

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

3. The Assistant Commissioner (S.T.),
   Washermanpet Assessment Circle,
   Elephant Gate Bridge Road,
   Commercial Taxes Building,
   2nd Floor, Chennai – 600 003. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records relating to the order dated 25.07.2019 bearing RC No.68/2018/B1, order dated 20.10.2020 bearing No.Na.Ka.68/2018/A1 and order dated 19.07.2021 bearing No.Na.Ka.68/2018/A1 all passed by the third respondent and to quash the same and to direct the respondents to issue an order of declaration of completion of period of probation w.e.f.13.06.1993 in the post of Junior Assistant in favour of the petitioner and to re-fix the pay of the petitioner with arrears of pay and all other consequential benefits.

For Petitioner ... Ms.Dakshayani Reddy
Senior Counsel
for Ms.Y.Kavitha

For Respondents ... Mr.Haja Nazirudden
Additional Advocate General -I
assisted by Mrs.K.Vasanthamala
Government Advocate

COMMON ORDER

This Writ Petition has been filed to quash the order dated 25.07.2019 bearing RC No.68/2018/B1, order dated 20.10.2020 bearing No.Na.Ka.68/2018/A1 and order dated 19.07.2021 bearing No.Na.Ka.68/2018/A1, passed by the third respondent and to direct the respondents to issue an order of declaration of completion of period of probation w.e.f.13.06.1993 in the post of Junior Assistant in favour of the petitioner and to re-fix the pay of the petitioner with arrears of pay and all other consequential benefits.

2. The petitioner was appointed as a Record Clerk and his probation was declared with effect from 22.08.1988. Subsequently the petitioner was granted promotion to post of Junior Assistant on 07.06.1991 and his services in the cadre of Junior Assistant was also regularized with effect from 14.06.1991. However, probation was not declared in the cadre of Junior Assistant in view of the non-completion of training at the Civil Service Training Institute at Bhavanisagar. Originally the petitioner was sent for said training for the period from 30.05.2019 to 18.07.2019. Completion certificate was given on 04.03.2021. Despite the petitioner has completed the training, due to his attaining the age of 53 years during the year 2017 itself, he ought to have been exempted to undergo the said training by virtue of G.O.Ms.120 dated 05.12.2016. The petitioner has been given with annual increment from 01.04.1994 and proceedings in this regard have

been issued on 26.04.2018. However, through the impugned order, the said proceedings have been cancelled and the petitioner was asked to repay the increment paid to him so far. So the petitioner has filed this Writ Petition challenging the same.

3. Ms.R.Dakshayani Reddy, learned Senior Counsel for the petitioner, submitted that the delay in sending the petitioner to training at the Civil Service Training Institute at Bhavanisagar is not due to any default on the part of the petitioner; even if the petitioner was not sent for training, by virtue of his attaining the age of 53 he is entitled to get the benefit of G.O.Ms.120 dated 05.12.2016, which exempts those persons who have crossed the age of 53 from undergoing the above training.

4. Mr.Haja Nazirudden, the learned Additional Advocate General, submitted that as per the Rule 32 of the Tamil Nadu Ministerial Service Rules, every person appointed to the post of 'Junior Assistant' should be sent to training at the Civil Service Training Institute at Bhavanisagar,

within three years of continuous period of service and he should have been completed the same; G.O.Ms.No.120 dated 05.12.2016, G.O.Ms.No.184 dated 15.10.1999 and G.O.Ms.No.4 dated 18.01.2019, is not applicable for those persons who have not crossed the age of 53 years; at the time of promotion, the petitioner has not crossed the age of 53 years and hence the exemption under G.O.Ms.120 dated 05.12.2016 is not applicable to the petitioner; at the time of promotion the petitioner was only 27 years and hence he will come within the ambit of G.O.Ms.120 dated 05.12.2016, G.O.Ms.No.184 dated 15.10.1999 and G.O.Ms.No.4 dated 18.01.2019; the petitioner has got the payment in collusion with his superior and hence the Government has issued the order to withdraw the sanction of increment and recover the increment benefits availed by him so far.

5. There is no disagreement on the point that the petitioner was promoted to the post of Junior Assistant on 07.06.1991. Admittedly the petitioner was not sent to training at the Civil Service Training Institute at Bhavanisagar within the period of three continuous years of service

after he joined in the promoted post of Junior Assistant. The petitioner has been sent for training only on 30.05.2019. He has also passed one of the subject on 04.03.2021. Thus the petitioner has finished the training and increment has been sanctioned to him only subsequent to his completion of training.

6. It is claimed by the learned Additional Advocate General that since the petitioner has got qualified only on 04.03.2021 and hence his eligibility to get increment would relate back from 04.03.2021 and not from 07.06.1993. It is further submitted that whenever the rule is clear the advantage of interpreting the rule as such should be given to the Government and not the individual.

7. According to the rules it is made clear that the person has to be sent for training within a period of three years of continuous service. It is not the fault of the petitioner that he could not report to training within the above said period. To get an order to go for training is not within the hand of an individual. The legal position on this has been well settled that the delay on part of the Department to issue

proceedings to send an employee for training should not affect his entitlement of getting increment within a period of completion of his probation.

8. It is claimed by the learned Senior Counsel for the petitioner that as per G.O.Ms.120 dated 05.12.2016 the petitioner has not been sent for training until he attained the age of 53 years and hence he need not be sent for training and so his increment cannot be withheld for want of training. But according to the learned Additional Advocate General the rule is applicable only for those person who were 53 years even at the time of getting the promotion itself. According to G.O.No.120 dated 05.12.2016, it is stated that if any person is recruited through Tamil Nadu Public Service Commission (TNPSC), and he was promoted to the cadre of Junior Assistant after he attained the age of 53 years, the mandate of completion of training is not necessary.

9. So far as this petitioner is concerned he was not recruited

through TNPSC for the post of Junior Assistant and further at the time when he was appointed as Junior Assistant, he did not complete the age of 53. So the petitioner will not come under the ambit of G.O.Ms.120 dated 05.12.2016. However the petitioner had completed the training as per the requirement as on 04.03.2021. Now the only question is whether the petitioner is entitled to get his increment from 04.03.2021 or from 01.06.1993 on which date he would complete two years of probation in the cadre of Junior Assistant.

10. As stated already the delay in reporting to undergo training was not under the control of the petitioner and it is neither the submission of the respondents that despite the order was issued to the petitioner to undergo training, he did not obey and omit to go for training. So the petitioner cannot be blamed for the delayed arrangement which had enabled him to undergo the training. Hence it cannot be said that the petitioner's entitlement to get the increment would relate back only from 04.03.2021 and not from 01.06.1993.

11. The learned counsel for the petitioner has also brought the

attention of the Court that the respondents have given the charges to the petitioner that the petitioner had influenced his superior and managed to get the proceedings entitling him to get increment from June, 1993. The petitioner has challenged the above said charges by way of filing W.P.No.5601 of 2022 and the same was allowed.

12. However the learned Additional Advocate General submitted that the writ petition is only with regard to recovery but the lapse of misconduct on the part of the petitioner would still stare at him and hence the recovery proceedings issued by the Government cannot be quashed. In support of the above contention, the learned Additional Advocate General relied on the judgment of the Hon'ble Supreme Court in ***Registrar, Cooperative Societies Haryana and others Vs. Israil Khan and others*** reported in ***(2010) 1 SCC 440.***

13. Even as per the submission of the learned Additional Advocate General once the recovery proceedings has been quashed on the finding that the individual cannot be blamed, that will go without saying that there is no misconduct on the part of the petitioner to get his

entitlement for increment.

14. Since the petitioner has rightfully completed the training at the Civil Service Training Institute at Bhavanisagar and the delay in completion of training was not under his control, the respondents ought not to have cancelled the proceedings granting increment to the petitioner with effect from June, 1993.

15. In view of the same this Writ Petition is allowed and order dated 25.07.2019 bearing RC No.68/2018/B1, order dated 20.10.2020 bearing No.Na.Ka.68/2018/A1 and order dated 19.07.2021 bearing No.Na.Ka.68/2018/A1 all passed by the third respondent are hereby quashed and the respondents are directed to issue an order of declaration of completion of period of probation w.e.f.13.06.1993 in the post of Junior Assistant in favour of the petitioner and to re-fix the pay of the petitioner with arrears of pay and all other consequential benefits within a period of eight weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

13.12.2023

Index: Yes / No
Speaking order / Non-speaking order
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To:

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2. The Commissioner of Commercial Taxes,
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R.N.MANJULA ,J.

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