



W.P.(MD)No.9588 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:20.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.9588 of 2022

and

W.M.P(MD) Nos.6889, 6890 and 9480 of 2022

R.Nambirajan

... Petitioner

Vs.

1.The Principal Secretary,
Rural Development & Panchayat Raj (E7) Department,
Secretariat,
St.George Fort, Chennai-600009.

2.The Director,
Rural Development Department,
Pangal Building, Saidapet,
Chennnai-600015.

3.P.A to the District Collector,
Thoothukudi District,
Thoothukudi.

4.The Block Development Officer (Village Panchayat),
Srivaikuntam Panchayat Union,
Srivaikuntam,
Thoothukudi District.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of certiorarified mandamus, to call for the records on the file of the first respondent in connection with the impugned Government Letter No.5686/U.Aa7/2021 dated 17.09.2021 and consequential impugned proceedings passed by the second respondent in Na.Ka.No.36072/2020/B2, dated 06.10.2021 and by the third respondent in Se.Mu.Aa.No.Va6/29420/2021 dated 18.04.2022 and quash all as illegal and arbitrary and consequently direct the respondents to restore the order passed by the third respondent in Na.Ka.Va6/5370/2018 dated 24.09.2019 and to include the petitioner name in the panel for the promotion to the post of Assistant in the light of the Departmental Examination results published in the TNPSC's bulletin extraordinary dated 07.03.2016 within the time limit that may be stipulated by this Court.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.S.P.Maharajan
Special Government Pleader

ORDER

This Writ Petition is filed challenging the order of the first respondent in Government Letter No.5686/U.Aa7/2021 dated

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17.09.2021, the proceedings of the second respondent in Na.Ka.No.36072/2020/B2, dated 06.10.2021 and the proceedings of the third respondent in Se.Mu.Aa.No.Va6/29420/2021 dated 18.04.2022 with a consequential direction to the respondents to restore the order passed by the third respondent in Na.Ka.Va6/5370/2018 dated 24.09.2019 and to include the petitioner's name in the panel for promotion to the post of Assistant, in the light of the Departmental Examination results published in the TNPSC bulletin extraordinary dated 07.03.2016 within the time limit that may be stipulated by this Court.

2. The case of the petitioner is the the petitioner joined as Panchayat Secretary in the Karungulam Panchayat in the year 1996 and thereafter, he was promoted as junior Assistant in the year 2017 under 20% quota by obtaining concurrence from Tamil Nadu Public Service Commission and posted at Srivankundam Panchayat Union and now, he is working as Junior Assistant in the 4th respondent Office with full satisfaction of the superior. During his 25 years of service, the petitioner has not faced any single adverse remark or any punishment. While he



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was working as a Panchayat Secretary in the 4th respondent control, he applied for departmental examination conducted by the Tamil Nadu Public Service Commission and he successfully completed the departmental examination on 07.03.2016. Further, as the petitioner had already completed the departmental examination, he was sent for Bhavani Sagar Training and completed the same, which was entered in the Service Register as per the proceedings of the District Revenue Officer/ Principal of Bhavani Sahar Institute dated 02.07.2018. Under such circumstance, the third respondent, vide proceedings dated 24.09.2019 issued an order of confirmation of the petitioner's probation period. Since he completed the probation period successfully, his name has been included in the seniority panel dated 01.01.2021. While so, the third respondent passed the impugned order on 18.04.2022 withholding the declaration of probation and directing him to complete the departmental examination as per G.O.Ms.No.33, Personal and Administrative Reforms (M) Department, dated 02.03.2017. Challenging the same, the present Writ Petition is filed.



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3. The learned counsel for the petitioner would submit that the petitioner completed the departmental examination in the year 2016 and also completed the Bhavani Sagar training in the year 2018. However, the new syllabus was introduced in G.O.Ms.No.33, Personal and Administrative Reforms (M) Department, dated 02.03.2017 and claimed that the petitioner has not passed the departmental examination in new syllabus in terms of G.O.Ms.No.33, for which the probation was withheld and the impugned order is non-est in law and any G.O., will operate only prospective and it cannot give retrospective effect. Hence, the ground on which the cancellation of probation is made, is not sustainable in law and accordingly, he prayed for allowing this writ petition.

4. The learned Special Government Pleader appearing for the respondents submitted that admittedly, the new syllabus was introduced in the year 2017. However, the petitioner passed the departmental examination in the year 2016 itself and in any event the petitioner once again has to appear for the departmental examination. While so, the District Collector, Madurai, Vide letter dated 07.09.2020 sought for



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clarification from the first respondent with regard to passing of tests under revised pattern introduced in the notification issued in G.O.(MS) No.33, in respect of the petitioner, who was appointed as Junior Assistant. The first respondent vide letter dated 17.09.2021 had issued the clarification that as the new pattern of Government Examinations came into force prior to the appointment of the petitioner, they must pass the examination as per the new pattern. In turn, the second respondent vide letter dated 08.10.2021 had issued instructions to all the District Collectors insisting that after the issuance of G.O(MS) No.33, the person appointed as Junior Assistant should pass all the tests in the new syllabus introduced in the said Government order. The second respondent had also instructed to inform the said instructions to all the staff in Rural Development and Panchayat Raj Department. Based on the instructions of the first and second respondents, the order with regard to the completion of probation dated 24.09.2019 passed by the third respondent is erroneous. Hence, the 3rd respondent cancelled the said order vide impugned order dated 18.04.2022. therefore, he wants this Writ Petition to be dismissed.



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5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the records.

6. The fact in the present case is not in dispute. Admittedly, the petitioner entered in the service in the year 1996 and promoted as Junior Assistant in year 2017. Prior to the promotion, he completed the departmental examination on 07.03.2016 and Bhavani sagar training in the year 2018. The petitioner probation was declared on 24.09.2019 and his name was included in the seniority list on 01.01.2021. However, relying on G.O.Ms.No.33, dated 02.03.2017 and clarification letter dated 17.09.2021, his probation was cancelled on the ground that the petitioner has not completed the departmental examination as per the new syllabus, which was introduced in the year 2017. However, as rightly submitted by the learned counsel for the petitioner, any G.O., will operate only prospective and it cannot give retrospective effect. Prior to the issuance of G.O, the petitioner completed the departmental examination in the year 2016 itself. Hence, the said cancellation of the probation period, by



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relying upon the said Government Order, is not sustainable one. Hence, the orders impugned in this Writ Petition are liable to be set aside and accordingly, the same are set aside.

7. With the above observations, this Writ Petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petitions are closed.

20.02.2023

NCC:Yes/No
Index: Yes/No
Internet: Yes/No
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To

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St.George Fort, Chennai-600009.

2.The Director,
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4.The Block Development Officer (Village Panchayat),
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M.DHANDAPANI,J.

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