



W.P(MD)No.13683 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.10.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.13683 of 2021

and

W.M.P(MD)Nos.10624 & 10625 of 2021 and 1389 of 2022

B.Shanthi

... Petitioner

Vs.

1.The Principal Secretary,
Public (Ex-Service man Welfare) Department,
St.George Fort, Secretariat,
Chennai.

2.The Director,
Directorate of Ex-Servicemen's Welfare,
Chennai.

3.The Additional Director,
Directorate of Ex-Servicemen's Welfare,
No.22, Raja Muthiah Salai,
Chennai-600 003.

4.The Assistant Director,
Ex-Servicemen's Welfare Office,
Tirunelveli-627 002.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for records pertaining to the impugned Government order G.O.Ms.



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(2pa) No.67 Public (Ex-service men) department, dated 02.08.2018 and impugned recovery proceedings of the 4th respondent vide Se.Mu.Aa.No. 2597/2018-A1, dated 01.06.2020 and quash the same as illegal and devoid of merits and direct the 1st respondent to issue Government order by declaring the completion of probation on 04.03.2009 AN and sanction second and subsequent annual increments to petitioner in accordance with law.

For Petitioner : Mr.Rajakarthikeyan

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

The writ petitioner was appointed as Junior Assistant in the 3rd respondent department on 05.03.2007 on compassionate grounds. According to the petitioner, he had completed all the departmental examinations and his services were regularized from the date of his appointment, namely 05.03.2007. During the probation period, the petitioner has passed all departmental tests except the Foundational Training at Civil Service Training Institute, Bhavanisagar. He was sent to the Bhavanisagar training only on 28.06.2017. He did not successfully complete the same and during re-examination, he got qualified himself on 15.12.2017.



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2. By way of impugned order, the 1st respondent herein has declared the probation of the petitioner with effect from 15.12.2017. A consequential order has been passed by the 3rd respondent on 01.06.2020 seeking to recover the excess amount that were paid to him treating that his probation was declared in the year 2010 itself. These two orders are under challenge in this writ petition.

3. According to the learned counsel appearing for the writ petitioner, due to administrative reasons, he was offered training only between June 2017 and August 2017 at Bhavanisagar. There was no fault on his part for not undergoing the said training during the probation period. Hence, the said fact cannot be attributed to the writ petitioner and probation cannot be declared from 15.12.2017. On the other hand, the probation has to be declared with effect from 05.03.2010. The learned counsel for the petitioner relied upon the judgment of this Court made in *W.P.No.28642 of 2013, dated 26.04.2017* in *(R.Paul Gunasekaran Vs. The State of Tamil Nadu, Represented by the Secretary)* to the effect that where the candidate has undergone the training at Bhavanisagar belatedly and delay is not attributable to the employee, the said fact cannot be put against the candidate at the time of declaring probation.



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4. Per contra, the learned Additional Government Pleader appearing for the respondents had contended that the petitioner had been erroneously granted increment even before declaration of probation and therefore, the impugned order, dated 01.06.2020 came to be passed recovering the said excess amount to a tune of Rs.5,77,883/- (Rupees Five Lakh Seventy Seven Thousand Eight Hundred and Eighty Three only). Hence, he prayed for sustaining the order passed by the authorities.

5. I have carefully considered the submissions made on either side

6. A perusal of the order impugned in the writ petition dated, 02.08.2018 reveals that due to administrative reasons, belatedly the writ petitioner was referred to Bhavanisagar training only in June 2017. Therefore, it is clear that there was no fault on the part of the writ petitioner in not undergoing training within the probation period. In view of the above said facts, this Court is inclined to quash the order, dated 02.08.2018 with a direction to the authorities concerned to declare the probation of the writ petitioner with effect from 05.03.2010 instead of 15.12.2017.



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7. As far as the impugned order, dated 01.06.2020 is concerned, the said order is passed upon the fact that even before the declaration of probation, increments have been awarded to the writ petitioner. In view of quashing of order, dated 02.08.2018, the order dated 01.06.2020 is hereby set aside and the matter is remitted back to the file of the 4th respondent herein to reconsider the same in the light of the quashing of order, dated 02.08.2018.

8. In view of the above said deliberations, this writ petition is partly allowed setting aside the order, dated 02.08.2018 and with a direction to the 1st respondent to declare the probation of the writ petitioner with effect from 05.03.2010. As far as the second prayer for quashing the order, dated 01.06.2020 is concerned, the said order is set aside and the matter is remitted back to the file of the 4th respondent herein for reconsideration within a period of eight (8) weeks from the date of receipt of a copy of this order.



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9. With the above said observations, this writ petition stands partly allowed. Consequently, connected Miscellaneous Petitions are closed.

03.10.2023

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

1.The Registrar,
Tamil Nadu Teachers Education University,
Lady Willington College Campus,
Kamarajar Salai,
Chennai-600 005.

2.The Controller of Examinations,
Tamil Nadu Teachers Education University,
Lady Willington College Campus,
Kamarajar Salai,
Chennai-600 005.

3.The Principal,
Sri Vidya College of Education,
Sivakasi Main Road,
P.Kumaralingapuram, Virudhunagar.



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R.VIJAYAKUMAR ,J.

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Order made in
W.P(MD)No.13683 of 2021

Dated:
03.10.2023