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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.02.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.(MD)No.7598 of 2018
and
W.M.P.(MD)Nos.7230 and 7231 of 2018

K.Balamurugan ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Chief Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai-9.

2.The Director,
Rural Development and Panchayat Raj Department,
Panagal Maligai,
Chennai – 9.

3.The District Collector,
Ramanathapuram District,
Ramanathapuram. ... Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Government Order passed by the first respondent in G.O.(1ப).No. 470 Rural Welfare and Development (ப.அ-7) Department, dated 08.11.2016, insofar as it relates to the declaration of the probation of the petitioner w.e.f

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23.05.2016 and the consequential order passed by the third respondent in his proceedings Na.Ka.V3/32066/2017/dated 12.07.2017 and quash the same as illegal and consequently to direct the respondents to declare the petitioner's probation w.e.f.13.11.2009 with all other consequential benefits.

For Petitioner : Mr.S.Mohammed Subai for M/s.Ajmal Associates
For Respondents : Mr.G.V.Vairam Santhosh, Additional Government Pleader

O R D E R

This Writ Petition has been filed to quash the impugned Government Order passed by the first respondent in G.O.(1␣).No.470 Rural Welfare and Development (␣.அ-7) Department, dated 08.11.2016, insofar as it relates to the declaration of the probation of the petitioner w.e.f 23.05.2016 and the consequential order passed by the third respondent in his proceedings Na.Ka.V3/32066/2017, dated 12.07.2017 and consequently, to direct the respondents to declare the petitioner's probation w.e.f. 13.11.2009 with all other consequential benefits.

2. The case of the petitioner is that the petitioner was temporarily appointed as Junior Assistant on 04.05.2007 on compassionate ground. In the year 2015, the Government issued G.O.3D.No.73 Rural Development and Panchayat Raj(E3) Department, dated 30.09.2015, regularizing the services of

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the petitioner w.e.f 04.05.2007. As far as the Junior Assistants are concerned, the period of probation is two years and within the probation period, every Junior Assistant has to necessarily complete five tests so as to get his probation declared. That apart, Bhavani Sagar Training should also be imparted to the Junior Assistant. As far as the Departmental Tests are concerned, the petitioner has successfully completed within the prescribed time. However, Bhavani Sagar Training was not imparted to the petitioner for a quite long time. Subsequently, the petitioner was directed to undergo Bhavani Sagar Training only from 08.12.2015 to 30.01.2016. Accordingly, he underwent the training, but he was not selected. Thereafter, he successfully completed the training on 24.05.2016. The further case of the petitioner is that, though the petitioner was appointed as early as on 04.05.2007, the petitioner was sent for Training only on 08.12.2015 ie., nearly after eight years from the date of petitioner's appointment. The grievance of the petitioner is that the delay in sending the petitioner for Bhavani Sagar Training cannot be put against the petitioner. However, the petitioner's probation was declared on 23.05.2016 instead of 2007. Hence, the petitioner has mad a representation to the respondents on 07.07.2017. However, the third respondent vide the impugned order, dated 12.07.2017, rejected the request of the petitioner stating that in similar incident, the second respondent passed an order on 09.05.2017 stating that though there

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was a delay in imparting Bhavani Sagar Training, the candidate concerned has passed the examination only in the second attempt and therefore, the declaration with retrospective effect would not arise. Challenging the same, the petitioner has filed this writ petition with the aforesaid prayer.

3. The learned counsel appearing for the petitioner would submit that admittedly, the petitioner has completed the departmental test within the prescribed time of two years. However, he was sent for training only in the year 2015 and he has successfully completed the training only in the second attempt. The petitioner is entitled to be declared his probation from 2009 ie., immediately after completion of two years from the date of appointment and when similar issue came up for consideration before this Court in W.P(MD)No.6917 of 2017, dated 30.09.2021 and in W.P(MD)No.22211 of 2022, dated 18.11.2022, this Court allowed the writ petitions and accordingly, prayed for allowing of this writ petition.

4. The learned Additional Government Pleader appearing for the respondents would submit that as per Rule 28 of the Tamil Nadu Subordinate Service Rules, the probationers have to complete all the Departmental Tests and Basic Training conducted by Bhavanisagar Training Institute within five years.

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However, the petitioner has passed the Departmental tests within three years, but, he completed the Training after five years and also passed the examination in the second attempt on 23.05.2016. Even though the petitioner's service was regularized with retrospective effect vide G.O.Ms.(3D) No.73, Rural Development and Panchayat Raj (E3) Department, the said G.O., was issued only on 30.09.2015. Therefore, the petitioner was sent for Bhavani Sagar Training after receipt of the regularization order from the Government. Therefore, the petitioner should have passed the examination in the first attempt, but, he has passed the examination in the second attempt. Hence, the probation of the petitioner was declared only after clearing the examination and hence, there is no illegality or irregularity in the orders passed by the first and third respondents and hence, prays for dismissal of this writ petition.

5. Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents and perused the materials placed before this Court.

6. Admittedly, the petitioner entered into service in the year 2007 and he completed the departmental tests within two years. However, he was sent for Bhavani Sagar training only in the year 2015 and the petitioner completed the

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training in the second attempt. The issue arises for consideration is whether the petitioner is entitled to declare his probation on completion of two years from the date of appointment or on completion of training. When similar issue came up for consideration in W.P(MD)No.22211 of 2022, dated 18.11.2022, this Court allowed the writ petition and held that since the employer had belatedly sent the petitioner for training, the consequences cannot fall on the employee. The employer cannot take advantage of their own wrong. Relevant portion of the order reads as follows:

> *"7. I am however not persuaded by the said contention for the simple reason that the aforesaid rule contemplates a formal order to be issued by the competent authority. A member of the service cannot claim the said right unless all the statutory requirements or service conditions are fulfilled. One of the requirements is that the petitioner must have cleared all the tests. The aforesaid Clause can be invoked only if no order is passed within six months from the date on which he is eligible for such declaration. Admittedly, the petitioner has not cleared all the tests within the aforesaid period. Since the petitioner achieved eligibility only on 18.12.2005, she cannot fall back on the deeming Clause set out in Rule 27(b).*
>
> *8. However, the petitioner will succeed on the other ground urged by the learned counsel. The rule set out in annexture 5 of the Tamil Nadu Ministerial Services Rules contemplates sending the*

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employee for Bhavani Sagar Training within two years. In the present case, virtually on the expiry of the fifth year she was sent for such training. It is not necessary that the person undergoing the course must clear the test in the first attempt itself. In the case on hand, the petitioner cleared in the second attempt. Since the employer had belatedly sent the petitioner for training, the consequence cannot fall on the employee. The employer cannot take advantage of their own wrong. If the employer had sent the petitioner for training within six months or one year her probation would have been declared well in time and she would not have to face the prospect of recovery. The respondents contend that when similar cases were allowed, they were stayed by the Hon'ble Division Bench. From the interim order relied on by the Special Government Pleader, I am not able to discern it in those cases the employees were belatedly sent for training. In any event, I am not placing any reliance on the orders that are the subject matter of challenge in the writ appeals. I am granting relief based on independent reasoning.

9. In this view of the matter, the order impugned in this writ petition is set aside. This writ petition is allowed. The respondents are directed to declare that the petitioner has completed her successful probation on the expiry of two years from the date of her joining service. It is stated by the learned counsel appearing for the petitioner that recovery was made pursuant to the impugned order. If so, the same shall be refunded forthwith and without any delay. All the other consequential benefits such as seniority and

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promotion will also follow. No costs. Consequently, connected miscellaneous petition is closed."

7. Admittedly, the petitioner has passed the Departmental Tests within two years and it is for the respondents to send the petitioner for training within two years and therefore, not completing the training in the first attempt, cannot be put against the petitioner. Accordingly, the impugned order is liable to be set aside.

8. In the result, the impugned order passed by the first respondent in G.O. (1ப).No.470 Rural Welfare and Development (ப.அ-7) Department, dated 08.11.2016, insofar as it relates to the declaration of the probation of the petitioner w.e.f 23.05.2016 and the consequential order passed by the third respondent in his proceedings Na.Ka.V3/32066/2017/dated 12.07.2017, are set aside. The respondents are directed to declare the petitioner's probation w.e.f. 13.11.2009 with all other consequential benefits. Such exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petitions are closed.

22.02.2023

NCC:Yes/No
Index:Yes/No

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State of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai-9.

2.The Director,
Rural Development and Panchayat Raj Department,
Panagal Maligai,
Chennai – 9.

3.The District Collector,
Ramanathapuram District,
Ramanathapuram.

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M.DHANDAPANI,J.

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