



W.P.(MD)No.12997 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 26.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD).No.12997 of 2016

and

W.M.P(MD).Nos.9813 & 14899 of 2016

S.Durai Pandi

... Petitioner

Vs.

1.The Personal Assistant to the District Collector,
(Development Section),
Collectorate, Madurai,
Madurai District.

2.The Block Development Officer (B.Pt),
Panchayat Union Office,
Kottampatti Panchayat,
Kottampatti,
Melur Taluk, Madurai District 625 103.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the impugned order in Na.Ka.No.46936/2014/Oo.Va.-3, dated 24.05.2016 on the file of the first respondent and quash the same.



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W.P.(MD)No.12997 of 2016

For Petitioner :Mr.G.Karthik for
M/s.Lajapathi Roy and Associates

For Respondents :Mr.S.R.A.Ramachandran
Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned order passed in Na.Ka.No.46936/2014/Oo.Va.-3, dated 24.05.2016 on the file of the first respondent.

2. The case of the petitioner is that originally on 12.01.2010, he was appointed as a Junior Assistant and he joined duty at the office of the Chellampatti Panchayat Union Office in Usilampatti Taluk, Madurai. In the year 2011, by way of administrative transfer, the petitioner was posted at Melur Panchayat Union Office and subsequently promoted as Assistant on 17.08.2013 and was posted at Madurai West Panchayat Union Office. From the year 2014 onwards, the petitioner is serving as Assistant at the Panchayat Union Office, Kottampatti.



W.P.(MD)No.12997 of 2016

WEB COPY

3. The petitioner has completed his probation with effect from 12.01.2012 i.e., two years from the date of appointment and the petitioner probation was declared vide order dated 12.12.2012. Hence, the petitioner submitted a representation dated 04.02.2016 to re-fix his seniority based on the TNPSC rank. Annoyed by such representation, the first respondent passed the impugned order dated 24.05.2016 cancelling the earlier order dated 12.12.2012 and declared the date of completion of probation is with effect from 03.10.2012 only and further the second incentive increment paid to the petitioner prior to 03.10.2012 would be recovered.

4. The further contention of the petitioner is that though the petitioner was appointed on 12.01.2010, he was not sent for Bhavanisagar training within two years. The petitioner was sent for training from 16.04.2012 to 30.05.2012 and the petitioner had passed the exam on 03.10.2012. Now the respondents are taking U-turn and refixing the date of probation on a later date. Aggrieved over the present writ petition is filed.

5. Heard Mr.G.Karthik for M/s.Lajapathi Roy and Associates the learned counsel appearing on petitioner and Mr.S.R.A.Ramachandran, the Learned



W.P.(MD)No.12997 of 2016

WEB COPY

Additional Government Pleader appearing for the respondents and perused the materials available on record.

6. The contention of the petitioner is that the respondent has passed the impugned order, wherein, a reason is stated that even though, he has completed the Bhavanisagar Training, passed the exam belatedly. It is the further contention of the petitioner that even though the petitioner has completed the training from 16.04.2012 to 30.05.2012, the examination was conducted belatedly on 03.10.2012 by the respondents. The respondents have stated the same in the counter and the same is extracted hereunder:

“4. With respect to the averment of the petitioner herein in paragraph 4 of the affidavit, it is respectfully submitted that his probation in the cadre of Junior Assistant was wrongly declared with effect from 12.01.2012 since he had not attended the in-service training at the Bhavanisagar Basic Training Center and infact he acquired the same by passing the examination conducted by Bhavanisagar Basic Training Center belatedly on 03.10.2012 even though the petitioner has completed the training from 16.04.2012 to 30.05.2012 and hence his period of probation was revised as to have satisfactorily completed the period of probation in the post of Junior Assistant with effect from 03.10.2012 in the order impugned in the present writ petition.”

Even though in the counter it is stated belatedly conducted the examination, but



W.P.(MD)No.12997 of 2016

the Learned Additional Government Pleader took a stand that the petitioner had failed in the examination, hence he participated in the examination conducted on 03.10.2012 and passed subsequently. This Court is of the considered opinion this oral submission without any evidence cannot be accepted. More so when the counter has been filed along with vacate stay petition. The respondent has not chosen to file any additional counter with such pleading. Therefore, this Court is rejecting the submission of the respondents.

7. In the counter it is stated that the examination was conducted belatedly. Conducting of examination is within the domain of the respondents and therefore, the same cannot be put against the petitioner. Moreover, sending for Bhavanisagar training is within the domain of the employer. It is a well settled proposition that Bhavanisagar training is only a service condition. Both sending for Bhavanisagar training and conducting examination are not within the purview of the petitioner but it is within the absolute domain of the respondents. Therefore, the reasons cited by the respondents that the petitioner has belatedly passed the examination is not sustainable.



W.P.(MD)No.12997 of 2016

WEB COPY

8. For the reasons stated supra this Court is inclined to set aside the impugned order and the impugned order is set aside. The respondents are directed to pay the increment attached to the declaration of probation. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

9. Accordingly, the present writ petition stands allowed. The impugned order in Na.Ka.No.46936/2014/Oo.Va.-3 dated 24.05.2016 on the file of the first respondent is set aside. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

26.04.2023

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

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W.P.(MD)No.12997 of 2016

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