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W.P. No.23444 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2024

CORAM :

**THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER
KUMAR**

W.P.No.23444 of 2015

and

M.P.No.1 of 2015

K.Sasikumar

... Petitioner

Vs.

1.The Additional Director,
Survey and Land Records Department,
Chepauk, Chennai – 600005.

2.The Regional Deputy Director,
Survey and Land Records,
Chepauk, Chennai-5.

3.The Assistant Director of Survey and
Land Records,
Cuddalore, Cuddalore District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the third respondent in Na.Ka.A1/7864/2012 dated 20.05.2012 and quash the same and direct the respondents to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Mr.T.P.Prabakaran

For R1 to R3 : Mr.P.Ganesan



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Additional Government Pleader.

ORDER

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The petitioner herein was initially appointed as Field Surveyor on 10.08.2008 through direct recruitment, on being selected in the Group-IV services examinations conducted by the Tamil Nadu Public Service Commission and posted at District Survey Unit at Perambalur District through proceedings dated 30.09.2009. Accordingly, the petitioner joined duty on 21.10.2009, and he was deputed for training in Field Surveyor at Orathanadu from 21.10.2009 to 19.12.2009 and on completion of the said training, the services of the petitioner were regularized through proceedings dated 23.08.2010 in the post of Field Surveyor duly commencing the probation of the petitioner from 21.10.2009.

2. The petitioner, having been appointed as Filed Surveyor, is required to pass Filed Surveyor test as a condition precedent for declaration of his probation besides several other tests stipulated. All other tests are concerned, the petitioner could able to complete within a period of probation, but he failed to complete the Filed Surveyor test within a period of five years from the date of commencement of probation. Under those circumstances,



the respondents issued notice dated 06.04.2015 proposing to discharge the probation of the petitioner on the ground of his failure to pass Field Surveyor test within a maximum period of five years in terms of Rule 26 (b) (ii) of the Tamil Nadu State and Subordinate Service Rules.

3. In response to the said notice, the petitioner submitted his explanation seeking extension of time for passing the said test. However, the respondents issued the impugned order dated 20.05.2015 discharging the petitioner from service in exercise of power under Rule 26 (b) (ii) of the Tamil Nadu State and Subordinate Service Rules. It is aggrieved by the said proceedings dated 20.05.2015, the petitioner approached this Court by filing the present writ petition contending that he has put in unblemished service of five years and his services were regularized, by an order dated 23.08.2010 and therefore, discharging him from service for want of passing of Field Surveyor test is illegal or arbitrary. It is also further contended that the other similarly situated persons are being continued in service, and the petitioner alone is being discharged from service.

4. It is further submitted by the learned counsel for the petitioner



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that the petitioner has submitted a representation dated 16.04.2015, and in response to the same, the respondents have also issued proceedings dated 28.12.2021 agreeing to consider the case of the petitioner subject to depending upon the result of the present writ petition.

5. On the other hand, Mr.P.Ganesan, learned Additional Government Pleader appearing for the respondents strenuously contended that the respondents have strictly acted in accordance with Rule 26 (b) (ii) of the Tamil Nadu State and Subordinate Service Rules and it is only for want of passing of requisite test, the petitioner was discharged from service. It is also further contended that the respondents have no other option except to act in accordance with law, as the petitioner has to pass the requisite test within a maximum period of five years as contemplated under Rule 26 (b) (ii) of the Tamil Nadu State and Subordinate Service Rules. He also placed reliance on decision of the coordinate bench of this Court in W.P.No.4501 of 2015 dated 08.07.2022 in support of his contentions.

6. This Court has carefully considered the submissions made on



either side and also perused the entire materials on record.

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7. It is an admitted fact that the petitioner has failed to pass Field Surveyor test which he is expected to pass during the period of probation or at the most within a period of five years from the date of commencement of probation in terms of Rule 26 (b) (ii) of the Tamil Nadu State and Subordinate Service Rules. The relevant Rule reads as under:

“26.Termination or extension of probation - (b) (ii)
If within the period of probation prescribed in the Special Rules for the service or within the extended period of probation as the case may be, a probationer has appeared for any such tests or for any examinations in connection with the acquisition of any such qualifications and the results of the tests or examinations for which he has so appeared are not known before the expiry of such period, he shall continue to be on probation until the publication of the results of the tests or examinations for which he has appeared or the first of them in which he fails to pass, as the case may be.

In case the probationer fails to pass any of the tests or examinations for which he has appeared, the appointing authority shall, by order, discharged him from the service.”

8. From a perusal of the above Rule, it is evident that in case, if any



probationer has failed to pass requisite test, which he is expected to pass during the period of probation, is liable to be discharged and the respondents have no other option except to act strictly in accordance with the above Rule. The respondents have also acted only in accordance with Rule 26 (b) (ii) of the Tamil Nadu State and Subordinate Service Rules, and there is nothing placed before this Court to show that the action of the respondents is illegal and arbitrary.

9. Though it is contended by the learned counsel for the petitioner that the other similarly situated persons like the petitioner are continuing in service while the petitioner alone discharged from service, no such particulars are furnished, therefore, such contention cannot be considered. Even, if similarly situated persons are being continued in service, inspite of failure of passing requisite test within a maximum period of five years, such an illegality cannot be extended to the petitioner and the action of the respondents in passing the impugned order cannot be find fault on such ground, as equality can be claimed in the illegality, and no writ can be issued by this Court for perpetuating an illegality.



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10. Further, this Court has carefully perused the order dated 08.07.2022 passed in W.P.No.4501 of 2015, wherein a coordinate bench of this court has elaborately considered the very same issue and came to the conclusion that, the power under Article 226 of the Constitution of India cannot be exercised, when the respondents have acted strictly in accordance with the Rules.

11. In the circumstances, this Court does not find any merit in the writ petition and the same is accordingly dismissed. The connected miscellaneous petitions, if any, shall stand closed. No costs.

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Index : Yes/No
Speaking Order : Yes/No
dpa

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