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W.P.No.30107 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.30107 of 2011

and

M.P.No.1 of 2011 & 21143 of 2016

P.G.Natarajan

Junior Administration Officer (Retired),
Rajiv Gandhi General Hospital, Chennai.

...Petitioner

Vs

1.The Principal Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai – 600 009.

2.The Director of Medical and Rural Health Services,
Chennai – 600 006.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records connected with Government letter issued in No.23113/AA/2010-2 Health and Family Welfare Department dated 14.10.2011 passed by the 1st respondent and quash the same and consequently direct the respondents to permit the petitioner to continue to draw the retirement benefits already allowed to the petitioner to the post of Junior Administrative Officer on 31.08.2007.

For Petitioner : Mr.S.Ilamvaludhi

For Respondents : Mr.Tippu Sultan, Government Advocate



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ORDER

The Writ Petition is filed calling for the records connected with Government letter issued in No.23113/AA/2010-2 Health and Family Welfare Department dated 14.10.2011 passed by the 1st respondent and quash the same and consequently direct the respondents to permit the petitioner to continue to draw the retirement benefits already allowed to the petitioner to the post of Junior Administrative Officer on 31.08.2007.

2.The case of the petitioner in brief is that, petitioner was appointed as Junior Assistant in August 1970, promoted as Assistant in the year 1980 and promoted as Superintendent in 1998 in Tamil Nadu Ministerial Service. While so, he was appointed as Junior Administrative Officer in Tamil Nadu General Service in 2005 and posted to Government Medical College, Chengalpattu on 01.04.2005.

2.1.In suppression of the Notification issued in G.O.No.93, Health dated 21.01.1991, Government issued amendment to the Special Rules of General Service in G.O.(Ms).No.90, Health and Family Welfare Department dated 17.05.2006. In paragraph 2 of the Notification, it was stated that the Special Rules for the position of Junior Administrative Officer came to force from 7th September, 1993 and in para 8, it is stated that, persons appointed as Junior



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Administrative Officer shall pass Accounts test for the Executive Officer or Accounts test for Subordinate Officer part I and part II within the period of probation failing which he shall be reverted. Petitioner was appointed as Junior Administrative Officer on 01.04.2005, but the test was prescribed only in G.O.Ms.No.90, Health and Family Welfare Department dated 17.05.2006. Based on this, the Director of Medical and Rural Health Services issued a show cause notice to the petitioner in Memo.No.61230/E2/3/2007 dated 24.08.2007 as to why petitioner should not be reverted to the post of office Superintendent as petitioner did not pass the prescribed test. Petitioner sent a reply dated 29.08.2007, stating that he was appointed as Junior Administrative Officer on 01.04.2005 before the issuance of the G.O.(Ms)No.90, Health and Family Welfare Department dated 17.05.2006 and therefore, the terms of the Government order cannot be given retrospective effect. Without considering petitioner's reply, Director of Medical Health Services issued orders reverting the petitioner as Office Superintendent in his No.61230/E2/3/2007 dated 29.08.2007 and posted him in Office Superintendent in the Government Hospital, Chennai in order No.61012/E2/2/2007 dated 30.08.2007 and permitted him to retire from service with effect from 31.08.2007. He was forced to give an undertaking letter to pay the excessive amount. Therefore, he filed this Writ Petition. Due to grant of stay, recovery was not made. But he retired as



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Superintendent instead of Junior Administrative Officer.

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3.In response, learned counsel for the respondents submitted that the Government Order is very specific that unless the person promoted as Junior Administrative Officer pass the Accounts test for Executive Officer or Accounts test for Subordinate officers parts-I and II, within the period of his probation, he is liable to be reversed. Even in the order of promotion, it was made specific that “petitioner is eligible to draw 2nd increment in the post of Junior Administrative Officer, only if he is qualified by passing the Accounts test for Executive Officers or the Accounts test for Subordinate Officer Part I and II within the probation period of one year within a continuous period of two years from the date of joining in that post. Thus, he submits that, petitioner was rightly reverted and recovery was issued. In support of his submissions, he relied on the judgment in **W.A.No.1082 of 2008** in the case of ***M.Panneerselvam Vs. The Director of Medical and Rural Health Services.***

4.In reply, learned counsel for the petitioner submitted that G.O.Ms.No.1120, Department of Personal and Administrative, dated 30.10.1984, was issued giving exemption for certain category employees from appearing for the accounts test. Not only that, one C.S.Visalakshi, Junior



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Administrative Officer similarly placed like the petitioner had sought exemption from appearing Accounts examination. Her case was considered favourably and she was permitted to retire without clearing the Accounts test. Government Order was issued in G.O.(D).No.909, Health and Family Welfare Department, dated 31.07.2007.

5.Considered the rival submissions and perused the records.

6.It is not in dispute that petitioner was promoted as Junior Administrative Officer. The promotion order reads as follows,

“ORDER: Pursuant to the Temporary Panel published in this office Proceedings cited for Temporary appointment to the post of Junior Administrative Officers by transfer for the year 2004-2005, under Rule 39 (a) (i) of the General Rules for Tamil Nadu State and Subordinate Services, the Office Superintendents mentioned in the Annexure are temporarily appointed as Junior Administrative Officers in the Tamil Nadu General Service in the Scale of Pay of Rs. 6500-200-10500 from their date of taking charge as Junior Administrative Officers.

2. Certified that the promottees are fully qualified to hold the post of Junior Administrative Officers and they are eligible



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for fixation of pay in the Promotional Post according to the Rules in force.

3. They are eligible to draw their second increment in the post of Junior Administrative Officer only if they are qualified by passing the Account Test for Executive Officers or the Account Test for Subordinate Officers Part II within the Probation period of one year within a continuous period of two years from their date of joining in that post.

6.1. In the judgment referred by the learned counsel for the respondents, in an identical issue, this court held as follows,

7. The Appellant was promoted to the post of Junior Administrative Officer in accordance with Rule 39 (a) (i) of the General Rules for Tamil Nadu State and Subordinate Services. It is true that the proceedings dated 19 March 2005 contain only one condition that in case the Appellant failed to pass the account test for Subordinate Officers Part II, within the probation period of one year within a continuous period of two years from the date of his joining the promoted post, he would be denied the second increment. However, the said condition was not the only condition inasmuch as the very promotion was issued under Rule 39 (a) (i) of the General Rules for Tamil Nadu State and Subordinate Services. The Service Rules, then in force, also contain a clear provision that in case a person appointed to the post of Lay Secretary fail to pass the account



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test for Executive Officers or the Account Test for Subordinate Officers Parts I and II, within the period of probation, he would be reverted to the original post. Subsequently, the Government issued orders in G.O.Ms.No.90 dated 17 May 2006 re- designating the post of Lay Secretary and Treasurer Grade II and I as Junior Administrative officer and Administrative Officer respectively. Therefore, the Rule as applicable to the Lay Secretary equally applies to the Junior Administrative Officer. The Government Order dated 17 May 2006 only reiterates the earlier Rule which was found necessary on account of the re-designation of the post of Lay Secretary as Junior Administrative Officer. Therefore, the promotion given to the petitioner was only on the basis of the then existing Rule which clearly contains a stipulation that the promotee has to pass departmental test within the period of probation. The condition incorporated in the Order of probation regarding the ineligibility to claim second increment was an additional condition.

8. The stipulation with respect to passing the account test cannot be treated as an empty formality. When a person is promoted to the administrative cadre, he has to perform executive functions, which necessitates knowledge in accounts. The very requirement that newly promoted officer should pass the mandatory departmental test within the period of probation was an indication that the probation would not be declared without passing the test. The statutory rules clearly provide



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that in the event of failure to pass the account test within the period of probation, the promottee would be reverted. When the order of promotion was given subject to the Service Rules, there was no requirement to incorporate the mandatory conditions in the order. The Service Rules have to be read and treated as part of the order granting promotion. When an employee accepts a conditional promotion, he was bound by the conditions. There was no compulsion to accept the promotion. It was the choice of the concerned employee. Therefore, there was no other alternative than to fulfill the condition for the purpose of claiming the benefits of promotion.

9. There is no dispute that the Appellant was not in a position to pass the departmental test during the period of probation. The Appellant was conscious of the fact that his promotion was conditional on passing the departmental test. Being a superior officer, he was expected to know the rules and he cannot plead ignorance that no such condition was incorporated in the Order giving him promotion. The Order of promotion was issued only in accordance with the service rules which contain clear provision that he would be reverted in case of his failure to pass the departmental test. Therefore, the respondents were justified in issuing the order impugned in the Writ Petition.

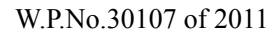
6.2.As per this judgment under Rule 39 (a) (i) of the General Rules for



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Tamil Nadu State and Subordinate Services, it is stated that, in case a person appointed to the post of Lay Secretary fail to pass the account test for Executive Officers or the Accounts Test for Subordinate Officers Parts I and II, within the period of probation, he would be reverted to the original post. Subsequently, the Government issued orders in G.O.Ms.No.90 dated 17.05.2006 re-designating the post of Lay Secretary and Treasurer Grade II and I as Junior Administrative officer and Administrative Officer respectively. Therefore, it was held that the Rule as applicable to the Lay Secretary equally applies to the Junior Administrative Officer. The aforesaid Government Order dated 17.05.2006 only reiterates the earlier Rule. This judgment squarely applicable to this case. Therefore, on merits, petitioner is not entitled to challenge the order of reversion.

6.3.However, this Court finds that one C.S.Visalakshi, Junior Administrative Officer had not passed the accounts test for Executive Officers or the Accounts Test for Subordinate Officers Parts I and II, within the period of probation. Taking into consideration her long service and her retirement due, Government had permitted her to hold the post of Junior Administrative Officer in relaxation of Rule 6 of Special Rules in G.O.(D).No.90, Health and Family Welfare (AA1) Department dated 17.05.2006. Government favourably



7. In the case before hand, petitioner was promoted as Junior Administrative Officer on 01.04.2005. He held this post till his reversion on 29.08.2007 to the post of Office Superintendent. Thereafter, he retired from service on 31.08.2007. Considering the fact that he functioned as Junior Administrative Officer for more than 2 years and that he retired from service on 31.08.2007, his case may also be sympathetically considered by the respondents and similar relaxation of Rule 6 of Special Rules to the post of Junior Administrative Officer requiring a pass in accounts test for Executive Officers or the Accounts Test for Subordinate Officers Parts I and II, within the period of probation, be given to him, by addressing the Government in this regard.

8. Therefore, this Court is of the view in the specific circumstances of this case that, reverting the petitioner to the post of Superintendent, on the basis of this G.O.Ms.90, Health and Family Welfare Department, dated 17.05.2006 and



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ordering recovery, especially, when a similarly placed person namely

C.S.Visalakshi was given exemption from appearing for Accounts test, is not just and appropriate. Therefore, Government letter issued in No.23113/AA/2010-2 Health and Family Welfare Department dated 14.10.2011 passed by the 1st respondent is quashed. The respondents are directed to permit the petitioner to retire from post of Junior Administrative Officer and pay him all the service and monetary benefits including pensionary benefit, by getting necessary orders for relaxation of Rule 6 of Special Rules, in favour of the petitioner.

9.With the above direction, this Writ Petition is disposed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

22.03.2024

Index:Yes/No
Speaking order/Non-speaking order
gd

G.CHANDRASEKHARAN, J.

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To
1.The Principal Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai – 600 009.



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2.The Director of Medical and Rural Health Services,
Chennai – 600 006.

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