



W.P.No.13563 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.13563 of 2022
and W.M.P.No.12765 of 2022

B.Ilamparithi

.. Petitioner

Versus

1. State of Tamil Nadu
Rep. by its Secretary,
Rural Development and Panchayat Raj Department,
Fort St. George, Chennai.
2. The Director,
Rural Development and Panchayat Raj Department,
Panagal Maligai, Saidapet,
Chennai.
3. The District Collector,
Vellore District.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
pleased to issue a Writ of Certiorarified Mandamus calling for the records of



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the 1st respondent in G.O.(1P).No.269, dated 16.09.2019 and quash the same and consequently, direct the respondents to declare the petitioner probation on 30.05.2010 instead of 17.08.2017 and accordingly, direct the respondents to include the name of the petitioner to the post of Assistant in the year 2014 and grant promotion on par with his juniors to the post of Deputy Block Development Officer in the light of of the orders passed by this Court of Division Bench in W.A.No.391 of 2012 order, dated 28.10.2014 and W.P.Nos.7813, 7814, 7815 of 2018 order, dated 10.01.2022.

For Petitioner : Ms.A.Pramila
for Mr.P.Nethaji

For Respondents : Mr.Stalin Abhimanyu,
Additional Government Pleader

ORDER

This Writ Petition is filed challenging the impugned order in G.O.(1P).No.269, dated 16.09.2019, in and by which, the petitioner's probation is declared with effect from 17.08.2017 and all the other service



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benefits were made subject to the result of the declaration of probation from that date.

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2. The petitioner was appointed on a compassionate basis to the post of Junior Assistant with effect from 15.02.2007. Thereafter, G.O.(2D).No.90, dated 26.11.2015 was passed, whereby, the Government concurred with the appointment of compassionate basis and the services of the petitioner was regularised in the post of Junior Assistant with effect from 15.02.2007. After the appointment in the year 2007, the petitioner has passed other departmental tests within three years. As per Rule 34 of the *Tamil Nadu Ministerial Service Rules*, the candidates should also pass the tests and acquire all such qualifications prescribed in Annexure - V to the said Rules. Under Annexure - V to the said Rules, the Junior Assistant, appointed by direct recruitment on or after 03.07.1974, has to undergo foundational training for two months within the period prescribed for probation. The entire Rule 8 is extracted hereunder :-



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"ANNEXURE V

(Referred to in rule 34).

**TESTS TO BE PASSED, TRAINING TO BE
UNDERGONE ON OTHER QUALIFICATIONS TO BE
ACQUIRED BY PERSONS APPOINTED TO THE
SERVICE:**

ALL DEPARTMENTS

Member of the Service (1)	Test training or qualification (2)	Period (3)
8. Junior Assistant appointed by direct recruitment on or after the 3rd July 1974.	Foundational Training for a period of two months.	Within the prescribed period of probation.

Provided that the Junior Assistants who came out successful in the Special Qualifying Test conducted by the Tamil Nadu Public Service Commission in December 1977, and in 1981 shall undergo a Refresher Course for a period of 28 working days instead of the regular two months Foundational Training.

Provided further that the Junior Assistants whose services have been regularised as per G.O.Ms.No.996, Personnel and Administrative Reforms Department, dated the 22nd September 1984 shall undergo the condensed Foundational Training, (similar to the training imparted by the Civil Service Training Institute, Bhavanisagar) at various Centres in the State for a duration of twenty working days instead of two months Foundational Training and pass the examinations conducted at the end of the said training. Those Junior Assistants who have undergone the condensed training course and passed the



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test at the end of the training subsequent to their regularisation of services as per the above Government Order, appointed as Junior Assistant/Assistant by direct recruitment, consequent on their appearance and election through the Tamil Nadu Public Service Commission need not undergo the Foundational Training Course for two months at the Civil Service Training Institute, Bhavanisagar."

3. The respondents did not depute the petitioner for foundational training, pending acceptance and regularisation of his services by the Government vide G.O.(2D).No.90, dated 26.11.2015. It is further stated by the respondents that only because certain certificates were not produced by the petitioner in time, the acceptance by the Government by way of G.O.(2D).No.90 got delayed up to the year 2015.

4. It is the case of the respondents that within one year from the date of regularisation of the service on 26.11.2015, the petitioner was deputed to undergo foundational training. The petitioner was deputed to undergo the training from 05.02.2016 to 20.06.2016. However, the petitioner applied for leave and did not attend the training. He was on Medical Leave from



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21.02.2016 up to 12.03.2016. Thereafter the petitioner was again deputed for the said training between 14.07.2017 to 16.08.2017 and the petitioner underwent and completed the foundational training only with effect from 16.08.2017. Therefore, taking the said date, by the impugned order, the petitioner's probation is declared with effect from 17.08.2017.

5. *Ms A. Pramila*, learned Counsel for the petitioner would submit that the petitioner has passed all the other tests. The delay is on the part of the respondents in passing the regularisation order. Within the probation period of two years, the petitioner was never deputed for the training. Therefore, when the respondents themselves were at fault for not deputing the petitioner for the foundational training, the petitioner's declaration of probation cannot be deferred. According to her, when the respondents deputed the petitioner in the year 2016, the petitioner was unwell and if the delay is occurred on account of such reason, the same cannot be a reason for declaring the probation in the year 2017. All the other persons who joined the services in



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the year 2007, their probation has been declared as of the year 2009 and they have been granted further promotion. The petitioner alone is now discriminated and his probation is declared only in the year 2017 and accordingly, the petitioner has lost promotion also. The actions of the respondents are erroneous in law.

6. The learned Counsel would submit that under similar circumstances, this Court had allowed the Writ Petition. Firstly, she would rely upon the judgment of a Division Bench of this Court in W.A.No.391 of 2012, dated 28.10.2024. The order of the learned Single Judge of this Court in W.P.No.7813 of 2018 etc., dated 10.01.2022 is also relied upon. She would also further rely upon yet another judgment of a Division Bench of this Court in W.A.(MD).Nos.597 to 599 of 2022, dated 02.02.2024. Further reliance is also placed on the order of this Court in W.P.(MD).No.7598 of 2018, dated 22.02.2023. For all the above reasons, she would pray that the Writ Petition should be allowed as prayed for.



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7. Opposing the said submissions, *Mr.Stalin Abhimanyu*, learned Additional Government Pleader for the respondents, placing strong reliance on the counter-affidavit, would submit that when the petitioner is appointed on a compassionate basis, like any other direct recruit, she cannot be directly recruited to the foundational course. Only after the Government approves the appointment and regularises the services, she can be deputed. The regularisation took place in the year 2015. The delay was only because the petitioner did not submit the certificates in time. Immediately after the regularisation on 26.11.2015, within one year, the petitioner was deputed to undergo the foundational course. Had the petitioner undergone the foundational course between February, 2016 to March, 2016 and completed the same, the petitioner's probation would have been declared in time. Only because the petitioner did not undergo the foundational course, the mandatory period lapsed. Therefore, when the petitioner underwent a foundational course only in the year 2017, accordingly, the probation was



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declared. There is no error whatsoever in the impugned order. The impugned order is passed considering the facts and circumstances of the instant case and the judgments relied upon by the orders/judgments by the learned Counsel for the petitioner, which arise under different rules and different fact situations, cannot be applied to the present fact situation.

8. I have considered the rival submissions made on either side and perused the material records of the case.

9. It can be seen that the petitioner is recruited and is working as a Junior Assistant. The same comes under the Tamil Nadu Ministerial Service and the relevant rules applicable are *Tamil Nadu Ministerial Service Rules*. Rule 32 of the said *Rules* mandates that any person recruited to the post shall be placed on probation for two years. Rule 34 of the said *Rules* mandates that persons appointed to the services shall clear the examinations or should undergo the courses as mentioned in Annexure - V. Under Annexure - V,



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under Entry No.8, Junior Assistants, appointed by way of direct recruitment on or after 03.07.1974 are required to undergo the foundational training for two months within the period prescribed for probation. The *Rules* further provide special provisos for the candidates who came out successful in special qualifying posts as well as the candidates who are regularised in services under G.O.Ms.No.996, dated 22.09.1984. There is no special provision as regards the candidates who are appointed on a compassionate basis. As such, the candidates appointed on a compassionate basis have to be considered as appointed under direct recruitment only.

10. When the petitioner has been appointed on a compassionate basis, there is no requirement that he should be deputed to the foundational training only after the acceptance order or regularisation order is passed by the Government. When the petitioner was permitted to undergo all the other tests within two years, including the departmental tests, in the absence of any rule to the contrary, there was no justification on the part of the



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respondents to wait for the regularisation order from the Government to depute the petitioner for foundational training. Therefore, when the respondents failed to sponsor the foundational training within the period of probation i.e., within two years, then, a mistake lies on their part in deputing the petitioner only in the year 2016 and therefore, the petitioner cannot be faulted for the same. The further reason which is mentioned in the counter-affidavit is that the petitioner did not submit the certificate in time. The relevant portion of the counter-affidavit in page No.2 is extracted hereunder:-

" It is submitted that the petitioner was failed to submit the death certificates of his mother and brother towards the issuing of his Regularization Orders. That kind of delay on turn caused delay for regulating his services in the cadre of the Junior Assistant by the Government in G.O(2D)No.90, Rural Development and Panchayat Raj (E3) Department, dated 26.11.2015."

11. It can be seen that absolutely, no particulars whatsoever are mentioned as to when the petitioner was required to produce the certificate etc. This apart, when the petitioner was appointed on a compassionate basis



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that could be only verifying the death certificate etc., and there cannot be any justification in requiring the petitioner to produce those certificates after his appointment. Therefore, the reason mentioned for the belated regularisation of the petitioner cannot be accepted by this Court. In any event, since the compassionate appointment is under the scheme, it is only a formality that the Government considers the appointment in relaxation of the *Rules*, approves the appointment and accepts the same *post facto*. That cannot be a ground to keep the petitioner waiting without deputing him for the foundational training within the period of probation.

12. Therefore, it can be true that between the years 2016 and 2017, it is because of the petitioner's making. But, once the petitioner has completed either in the year 2016 or 2017, the same would not make any difference as far as the date of declaration of probation is concerned. Once the respondents have not deputed the petitioner for the foundational training within the period of probation, then, declaring the probation with effect from



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the subsequent date is uncalled for. As a matter of fact, upon query of this Court, learned Additional Government Pleader also placed the letter, dated 01.02.2004 of the Government, whereunder, the Government itself has considered that because of these delays, there has been delay in deputing the candidates to the foundational courses and has even directed that the persons appointed on compassionate bases should be deputed immediately. Therefore, merely because such clarification was not there at the relevant point of time, the same would not be the justification for deputing the petitioner belatedly. Therefore, when the fault lies with that of the respondents in not deputing the petitioner for foundational training within the period of probation, the petitioner's probation cannot be declared with effect from the year 2017. As a matter of fact, though not exactly in the fact situation, in the judgment referred to above by the learned Counsel for the petitioner, this Court had granted relief to the petitioners who have various services considering the similar rules, whereby, there is a delay in deputing the candidate for the foundational training.



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13. In view thereof, this Writ Petition is allowed on the following terms :-

- (i) The impugned order, dated 16.09.2019 shall stand quashed;
- (ii) The respondents are directed to pass orders declaring the petitioner's probation with effect from 30.05.2010 and consequently, to grant all service and monetary benefits including fixation of pay etc.;
- (iii) If the petitioner has been superseded for non-declaration of probation, the petitioner's case for promotion to the next higher post of Assistant and thereafter to the Deputy Block Development Officer shall be reconsidered and fresh orders may be passed by granting promotion to the petitioner from the date of promotion of the immediate junior of the petitioner;
- (iv) The above exercise shall be notionally carried out and the actual arrears will be granted to the petitioner from the date of filing of the Writ Petition;



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(v) There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

23.04.2024

Index : yes

Speaking order

Neutral Citation : yes
grs

To

1. The Secretary,
Rural Development and Panchayat Raj Department,
Fort St. George, Chennai.
2. The Director,
Rural Development and Panchayat Raj Department,
Panagal Maligai, Saidapet,
Chennai.
3. The District Collector,
Vellore District.



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