



W.P.No.16031 of 2021.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2024

CORAM

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.16031 of 2021

and W.M.P.No.16939 of 2021

K.Renukadevi

...Petitioner

Vs.

1.The District Collector,
Ranipet District,
Ranipet.

2.The Block Development Officer (VP)
Wallajah Panchayat Union,
Wallajah & Post,
Ranipet District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the first respondent to pass necessary orders declaring the probation of the petitioner in the cadre of Junior Assistant and consequently promote the petitioner as Assistant from the



W.P.No.16031 of 2021.

date on which her immediate junior came to be promoted with all consequential monetary benefits.

For Petitioner : Mr.S.Kamadevan
For Respondents : Mrs.V.Yamunadevi,
Senior Government Pleader

ORDER

This writ petition has been filed seeking writ of mandamus directing the 1st respondent to pass necessary orders declaring the probation of the petitioner in the cadre of Junior Assistant and consequently promote the petitioner as Assistant from the date on which her immediate junior came to be promoted with all consequential monetary benefits.

2.The brief facts of the case that are relevant for disposal of this writ petition are as under:

The petitioner herein, who was initially appointed as Panchayat Clerk, was redesignated as Panchayat Secretary on 01.11.1996 in the Wallajah Panchayat Unnion and thereafter, the case of the petitioner was considered for appointment by transfer to the post of Junior Assistant and



W.P.No.16031 of 2021.

accordingly, she was appointed as such on 15.02.2018 and she was placed on probation for a period of two years within a continuous period of three years.

The petitioner has completed the said period of probation and has been continuing as such as on date. However, the probation of the petitioner was not declared by the 1st respondent and his case also has not been considered for promotion to the post of Assistant and therefore, the petitioner approached this court by filing the present writ petition seeking the relief as noted.

3.The respondents filed a counter affidavit admitting the appointment of the petitioner as Panchayatar as well as the Junior Assistant and also stated that the petitioner has completed three years of continuous service from 15.02.2018 in the post of Junior Assistant and she has also passed the departmental test on 16.08.2019 and completed a foundation training from 07.02.2020 to 20.03.2020. However, it is contended that in view of the case reported against the petitioner by the Director, vigilance and Anti Corruption, often having conducted investigation, permission was sought for to prosecute the petitioner and accordingly, sanction for prosecution was granted by the Competent Authority through letter in



W.P.No.16031 of 2021.

WEB COPY

R.C.No.16929/2019/VC1-1 dated 21.09.2021 and accordingly, a case was registered against the petitioner by the Inspector of Police, Vigilance and Anti Corruption, Tirupathur in R.C.No.340/2019/RDP/VL, dated 11.02.2022 and charge sheet has also been filed in the said case against the petitioner and two others on 07.01.2022. According to the counter affidavit, it is because of the pendency of the said proceedings and also because of the pendency of the disciplinary proceedings that were initiated against the petitioner, through proceedings in R.C.No.PA3/4158/2019 dated 11.04.2022, the case of the petitioner was not considered for declaration of probation and for promotion to the post of Assistant.

4.The claim of the petitioner in this writ petition is for declaration of probation in the post of Junior Assisant and for consequential consideration of her case for promotion on par with her junior for the post of Assistant.

5.The issue relating to declaration of probation is governed by Section 32 of Tamilnadu Government Servants and Conditions of Service Act, 2016 which reads as under:

"32. (1) At the end of the prescribed or extended period of probation, as the case may be, the



W.P.No.16031 of 2021.

appointing authority shall consider the probationer's suitability for full membership of the service, class or category for which he was selected.

(2) If the appointing authority decides that a probationer is suitable for such membership, it shall, as soon as possible, issue an order declaring the probationer to have satisfactorily completed his probation. If no such order is issued within six months from the date on which he is eligible for such declaration, the probationer shall be deemed to have satisfactorily completed his probation on the date of expiry of the prescribed or extended period of probation. A formal order declaring the completion of probation shall, however, be issued by the competent authority. In all cases in which serious charges are pending, and therefore, probation cannot be declared, an order to the effect that the question of declaration of probation cannot be considered till the charges are disposed of shall be issued by the competent authority within six months from the due date for completion of probation and the final order on probation shall be passed as early as possible and in any case within one month after the disposal of the charges or six months after the due date for completion of probation,



W.P.No.16031 of 2021.

WEB COPY

whichever is later.

(3) If the appointing authority decides that the probationer is not suitable for such membership, it shall, unless the period of probation is extended under section 33, by order, discharge him from the service after giving him a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that where a probationer has been given a reasonable opportunity of showing cause against the imposition on him of any of the penalties specified in clauses (iv), (vi), (vii) and (viii) of rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and at the conclusion of the disciplinary proceeding, a tentative conclusion is arrived as to discharge him from the service, a further opportunity of showing cause specifically against such discharge need not be given to him."

6.In the instant case, admittedly, there is no order extending the period of probation of the petitioner. The petitioner was placed on probation for a period of two years in a continuous period of three years with effect from 15.02.2018. The said period was completed on 14.02.2021. The



W.P.No.16031 of 2021.

petitioner also claims that she completed her period of probation on 14.02.2021 itself. In the absence of any order extending the probation of the petitioner under Section 33 of Act of 2016, the period of probation of the petitioner in the post of Junior Assistant is deemed to have been declared by operation of law, in terms of the mandate contained under Sub Section 2 of Section 32 of Tamilnadu Government Servants and Conditions of Service Act, 2016. In case, if there are any serious charges pending against the probationer and probation of any probationer cannot be declared, an order to that effect is required to be passed by the Competant Authority within six months from the date of completion of probation and final order on probation shall be passed as expeditiously as possible at any rate within one month after the disposal of the charges or six months from completion of probation whichever is later. But, in the instant case, no such order is passed by the Competant Authority postponing the declaration of probation of the petitioner on whatsoever ground. As a consequence, the probation of the petitioner is deemed to have been declared by operation of law. Though, a formal order declaring the completion of probation shall be issued by the Competent Authority, in the instant case, no such order was issued. Once the period of probation is deemed



W.P.No.16031 of 2021.

to have been declared by operation of law, there is no option available to the Competent Authority except the issue a formal order declaring the probation of the petitioner. But, in the instant case, the Competant Authority namely 1st respondent has not issued any such order.

7.In view of the language used in Sub Section 2 of Section 32 of Tamilnadu Government Servants and Continues of Services Act, 2016, it is obligatory on the part of the 1st respondent to pass an order declaring the probation of the petitioner on completion of the period of probation. There is a failure on the part of the 1st respondent in discharging his obligation as contemplated under Sub Section 2 of Section 32 of Tamilnadu Government Servants and Contidion of Service Act, 2016. Though the probation of the petitioner is stated to have not been declared because of pendency of certain proceedings, at the instance of Vigilance and Anti Corruption, an order is required to be passed by the 1st respondent under Sub Section 2 of Section 32 of Tamilnadu Government Servants and Continues of Services Act, 2016. In the absence of any such order, by operation of law, the probation of the petitioner stands declared. The failure of competant authority will not have



W.P.No.16031 of 2021.

any effect on the automatic operation of the said provision i.e., Section 32 of Tamilnadu Government Servants and Continues of Services Act, 2016.

8.In the light of the above, this Court is of the considered view that the 1st respondent has an obligation to pass a formal order of declaration of probation of the petitioner, in terms of Sub Section 2 of Section 32 of Tamilnadu Government Servants and Continues of Services Act, 2016. Insofar as the claim of the petitioner for promotion to the post of Assistant on par with his junior is concerned, the same has to be considered by the respondents on passing a formal order of declaration of the probation.

9. In the light of the above, the writ petition is allowed directing the 1st respondent to pass a formal order declaring probation period of the petitioner in the post of Junior Assistant in terms of Sub Section 2 of Section 32 of Tamilnadu Government Servants and Conditions of Service Act, 2016 as expeditiously as possible at any rate within a period of six weeks from the date of receipt of a copy of this order and thereafter, consider the case of the petitioner for promotion to the post of Assistant on par with, his Junior in the



WEB COPY



W.P.No.16031 of 2021.

vsn

W.P.No.16031 of 2021
and W.M.P.No.16939 of 2021

13.06.2024