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W.P.No.20700 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.20700 of 2024
and
W.M.P.Nos.22643 & 22644 of 2024

Sunitha Mary F

...Petitioner

-Vs-

1.The State of Tamil Nadu,
Represented by the Secretary to Govt.,
Health & Family Welfare Department,
Fort St. George,
Chennai 600009.

2.The Director of Public Health &
Preventive Medicine,
Teynampet, Chennai 600006.

3.The District Health Officer,
Tirupattur District 635 601.
Respondents

...

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records in respect of the Show Cause Notice in Na.Ka.No.6104/E4/2024-3 dated 23.04.2024 issued by the 3rd respondent and quash the same as arbitrary and consequently direct the respondents to grant one year time to pass the Second Language Test in Tamil



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conducted by TNPSC.

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For Petitioner : Mr.R.Maheswari
For Respondents : Ms.M.Sneha
Special Counsel for Health Department.

ORDER

This Writ Petition has been filed challenging the show cause notice dated 23.04.2024 issued by the third respondent so as to why the petitioner should not be terminated from service on the ground that the petitioner failed to complete the second language test.

2. The petitioner is qualified with Theory and Practical Training for Multipurpose Health Workers (Female) Training Court and eligible to be appointed as Nurses and Midwives. While being so, the Medical Recruitment Board, issued notification, thereby invited applications for women candidates for the post of Village Health Nurse/Auxiliary Nurse Midwife on 24.10.2019. The petitioner applied for the said post and the petitioner was short listed for certificate verification. The petitioner appeared for the certificate verification and she was successfully selected to the post of Village Health Nurse/Auxiliary Nurse Midwife by the proceedings dated 08.01.2020 on the file of the second respondent. She had joined the Department on 20.01.2020 during COVID-19 Pandemic circumstances. The petitioner



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was also deputed for COVID-19 duty, she was given additional charge for the nearby village Sub-centre. While being so, the petitioner was issued with a show cause notice dated 23.04.2024, calling for explanation as to why the petitioner should not be terminated from service for having not passed the second class language test in Tamil conducted by the Tamil Nadu Public Service Commission.

3. The learned counsel appearing for the petitioner would submit that passing the second language test is not mandatory, but directory in nature. Further Section 31(4) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, has clear that the minimum period upto which the probation of a Government servant shall be extended so as to enable him to acquire the test qualification, be fixed as five years. Further, the petitioner attended the second language test for the month of December 2023 and she had passed the examination. However, she failed in the Viva Voce. Her mother tongue is Telegu. Till December 2023, there was COVID-19 and as such, the petitioner could not attend the second language test conducted by the Tamil Nadu Public Service Commission. Once again, she attended the second language test in the month of May 2024 and she is awaiting result. Therefore,



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according to the learned counsel for the petitioner, the show cause notice cannot be sustained and it is liable to be set aside.

4. On instruction, the learned Special Counsel appearing for the respondents would submit that the Departmental Examination has been conducted twice in a year. Accordingly, the Departmental Examination for the month of May 2021 was conducted on 02.12.2021 and for the month of December, it was conducted on 12.04.2022. Likewise, the Departmental Examination for the month of May 2022 was conducted on 05.09.2022 and for the month of December, it was conducted on 13.04.2023. The petitioner did not even apply for the departmental examination for those period and she had attended the departmental examination for the month of May 2023 which was held on 30.03.2023. Though she passed the examination, in the Viva Voce she had not cleared and as such she failed in the departmental examination. Therefore, the petitioner was rightly issued show cause notice. In fact, the petitioner, on receipt of the show cause notice, also replied and as such, prayed for dismissal of the writ petition. One of the service condition is that the petitioner shall pass the departmental examination viz., the second language test in tamil, within a period of two years from



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the date of her appointment, viz., the probation period. If the petitioner had not passed the departmental examination, the period of probation shall not be declared as successful and would result in termination of service.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. Admittedly, the petitioner had joined the Department on 20.01.2020 during COVID-19 Pandemic circumstances. The petitioner was also deputed to COVID-19 duty and she was given additional charge for nearby village. The petitioner had passed the written second language test conducted by the Tamil Nadu Public Service Commission in the month of December 2023. However, the petitioner could not succeed in the Viva Voce. Now, the petitioner had written second language test in tamil for the month of May 2024. Rule 31 of Tamil Nadu Government Servants (Conditions of Service) Act, 2016, as per amendment, says as follows :

“31. Termination or extension of probation

:- (1) Where the special rules of any service



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prescribe a period of probation for appointment as a full member of the service, or where such period of probation has been extended under Section 33, the appointing authority may, at any time before the expiry of the prescribed period of probation or the extended period of probation, as the case may be -

(i) discharge a probationer from the service for want of a vacancy ; or

(ii) at its discretion, by order, either extend the period of probation of the probationer in case the probation has not been extended under Section 33 or terminate his probation and discharge him from service after giving him a reasonable opportunity of showing cause against the proposed termination of probation :

Provided that where a probationer has been given 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 proceedings a tentative conclusion is arrived as to terminate his probation, a further opportunity of showing cause specifically against termination of his probation need not be given to him.

(2) If within the period of probation, a



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probationer fails to acquire the special qualification or to pass the special test if any, prescribed in the special rules or to acquire such other qualification as may be declared by the Government or by the appointing authority with the approval of the Government to be equivalent to the said special qualification or special test, the appointing authority shall, by order, discharge him from the service unless the period of probation is extended under Section 33.

(3) 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 test or for any examination in connection with the acquisition of any such qualification and the result of the test or examination 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 result of the test or examination 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 test or examination for which he has so appeared, the appointing authority shall, by order, discharge him from the service.

(4) The maximum period upto which the probation of a Government servant shall be extended so as to enable him to acquire the test qualification, be fixed



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as five years. If he does not acquire the test qualification even within the maximum period of five years, he shall be reverted and the qualified and the eligible junior shall be considered for promotion. If such a person is appointed by direct recruitment and has not acquired the test qualification even within the maximum period of five years, his probation shall be terminated.

(5) Any delay in the issue of an order discharging a probationer under subsection (2) or subsection (3) shall not entitle him to be deemed to have satisfactorily completed his probation.”

7. Thus, it is clear that the maximum period upto which the probation of a Government servant shall be extended so as to enable him to acquire the test qualification, is fixed as five years. The learned counsel for the respondent also relied upon the Rule 21(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which reads as follows :

“21(2) :- Every such candidate as is referred to in the proviso to sub-section (1) shall, if selected and appointed on or after the 9th February 1996, pass the Second Class Language Test in Tamil conducted by the Commission, or pass the language Test in Tamil referred to in sub-section (1) of Section 22 conducted by the appointing authority or pass the oral test referred to in sub-section (2) of Section



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22 conducted by the appointing authority, as the case may be, within a period of two years from the date of his appointment. If he fails to pass the said Language Test within the said period of two years, he shall be discharged from service.”

8. Therefore, the petitioner shall have to pass the examination within a period of two years from the date of appointment. As stated supra, in Rule 31(4) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, is very clear that extended the period of probation so as to enable him to acquire the test qualification, is fixed as five years. As per Rule 31(4) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, says that the probation period has been extended to five years and as such, within a period of five years, the appointee shall be completed the departmental test/second language test so as to complete the period of probation. Otherwise, the appointee probation shall be terminated. In this regard, this Court dealt with the similar issue in W.P.No.34218 of 2022 and the order dated 09.02.2024 reads as follows :

“8. The only reason assigned by the respondents in reverting the petitioner from the post of Senior Inspector to Assistant is in view of Section 31(4) of the Act. Though Section 31(4) prescribes the maximum period of 5 years



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for a Government employee to pass the departmental tests, it has been held in various decisions of this Court that the prescribed period is only directory in nature, since the Government themselves, in various cases, had extended the probation period for such employees, who had completed the departmental tests after the probation. In the case of Smruti Ranjan Pradhan Vs. The State of Tamil Nadu, Department of Planning, Development and Special Initiatives, passed in W.P. No. 14007 of 2022, dated 12.07.2023, a reference was made to such relaxations granted by the Government to employees, who had completed the test after the probation period and had recognised the passing of the test after the probation period. The relevant portion of the order reads as follows:-

"7. In view of the Section 31(1)(ii), 31(4) and Section 32 of the Act, the requirement of passing the departmental tests and language test within the probation period of two years, is only directory in nature and not mandatory, since the statute empowers the Appointing Authority to extend the probation period to a maximum period of five years, to enable the Government Servant to successfully complete such tests. However, such a probationer may not be entitled to seek for further extension of probation after the maximum period of five years as prescribed under Section 31(4) of the Act.

8. The Government in G.O. No. 229 Issued by the Handloom, Handicrafts, Textiles and Khadi (G1) Department dated 01.11.2012; G.O. No. 276 Issued by the Handloom, Handicrafts, Textiles and Khadi (G1) Department dated 17.12.2013; G.O. No. 216 Issued by the Higher Education Department, dated 02.08.2017; and G.O. No. 41 Issued by the Human Resources



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management Department dated 09.05.2023, have in similar circumstances, extended the probation period of the Government servants by invoking Rule 12 (A) and 26 (b) of the Rules In pari materia to the relevant provision of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. When the Government Is empowered to extend the services for some of their employees and denying such extension to the petitioner herein, would be discriminatory.

9. The Hon'ble Supreme Court of India in the case of State of Uttar Pradesh Vs.Arvind Kumar Srivastava reported in MANU/SC/0948/2014: 2014:INSC:735: 2015 (1) SCC 347, has held that in service jurisprudence, when one set of employees are given a relief, the same requires to be extended to the others, who require such benefits and in the absence of the same, it would amount to discrimination. The relevant portion of the order reads as follows:-

"22.1. Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not



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approach the Court earller, they are not to be treated differently."

10. In view of the ratio laid down by the Hon'ble Supreme Court and by taking note of the fact that in the aforesaid four Government Orders in which a batch of Government employees have been extended the benefits of extension of probation over a period of four years to enable them to pass the required Second Class Language (Full) Test, denying the same benefits to the petitioner, would be discriminatory. Thus, when the petitioner had subsequently participated in the Second Class Language (Full) Test written examination on 11.06.2022 and completed the same, within a period of five years from 28.02.2018, this Court is of the view that the impugned order dated 26.05.2022 discharging him from services, is discriminatory."

9. A similar view was also taken in the case of C.N.Sreenivasamurthy Vs. The Government of Tamil Nadu, Rural Development Department & panchromatic Raj (E3), passed in W.P. No. 17689 of 2018, in the following manner:-

"6. This is not an isolated case where the Government had not exercised its powers of relaxation of the pre-qualification Rules for the purpose of declaration of probation to those employees who have belatedly passed the Tamil test or the departmental tests and have declared their probation, on completion of the departmental tests. One among these numerous cases is the case of M.V.Pushpakaran, which has been referred to in paragraph 14 of the



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aforesaid extract. In view of such relaxations granted by the Government, this Court is of the view that, the time stipulated for extension of the probation under Section 31(4) of the Tamil Nadu Government Servarits (Conditions of Service) Act, 2016, is not mandatory, but directory in nature."

10. In the light of the aforesaid decisions and by taking note of the fact that the petitioner had cleared the departmental tests on 14.12.2022, which is the first test conducted after his completion of probation period, I am of the view that the petitioner's probation period in the post of Senior Inspector could be declared with effect from 14.12.2022, the date on which he had cleared all his departmental tests, by invoking the powers under Article 226 of the Constitution of India."

9. The above Judgment is squarely applicable to the case on hand. It is also clear that the time stipulated for extension of probation under Section 31(4) of the of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, is not mandatory, but directory in nature. Therefore, the impugned show cause notice cannot be sustained and is liable to be quashed.

10. Accordingly, the impugned show case notice dated 23.04.2024 issued by the third respondent is hereby quashed. It is also made clear that the petitioner shall pass the second language test within a



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period of five years from the date of her appointment, failing which, her probation shall be terminated.

11. In the result, this writ petition stands allowed.

Consequently, connected miscellaneous petitions are closed. No costs.

24.07.2024
(1/3)

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
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Note : Issue order copy on 26.07.2024

To

- 1.The Secretary to Govt.,
State of Tamil Nadu,
Health & Family Welfare Department,
Fort St. George,
Chennai 600009.
- 2.The Director of Public Health &
Preventive Medicine,
Teynampet, Chennai 600006.
- 3.The District Health Officer,
Tirupattur District 635 601.



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