



WEB COPY



W.P.No.789 of 2021.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

CORAM

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

W.P.No.789 of 2021

and W.M.P.Nos.850 & 852 of 2021

A.Raja

...Petitioner

Vs.

The Deputy Commissioner of Police,
Head Quarters, City Police Office,
Coimbatore City,
Coimbatore-18.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the entire records relating to the impugned order passed by the respondent in his proceedings No.CPO/1183/2020RC.No.A3/79359/2017, dated 03.12.2020 and consequent notice issued by the respondent in his proceedings No.Rc.No.A3/79359/2017 dated 03.12.2020 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.S.P.Karthik
Government Advocate



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ORDER

The petitioner herein, was appointed as Assistant in the office of the respondent through TNPSC and was asked to join work at the District Police Office, Nilgiris and accordingly, the petitioner joined the service as Assistant on 01.04.2013 and he was kept on probation. Thereafter, the Government issued G.O.Ms.No.21 Personal Administrative Reforms (B Department) dated 21.12.2014, amending the special Rules for the Tamil Nadu Ministerial Service and a notification was issued to that effect. In terms of the said Government Order, every person appointed as Assistant through recruitment shall be on probation for a total period of two years on duty within a continuous period of 3 years and are required to pass certain tests namely (1) Departmental Tests in Police Standing Orders Vol.I and IV, (2). Accounts Test for Subordinate officers Part I and (3). Tamil Nadu Government Office Manual Test within the period of probation. The amendment made through the above said order was given retrospective effect from 03.09.2012. By virtue of the above said amendment, the petitioner was required to pass 3 tests mentioned above during the period of his probation. However, without the petitioner passing the Account Test for



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Subordinate Officers part 1, the probation of the petitioner was declared through proceedings in R.C.No.A3/79359/2017 dated 22.12.2017. It is only thereafter, the respondent having realized that the petitioner has not passed the Account Test for Subordinate Officers Part 1, cancelled the proceedings dated 22.12.2017 by issuing the cancellation order bearing C.P.O.No.1183/2020 in R.C.No.A3/79359/2017 dated 03.12.2020. Simultaneously, the petitioner was also issued a notice dated 03.12.2020 to show cause as to why the petitioner should not be discharged from service for not passing the prescribed test within a maximum period of 5 years. Aggrieved by the said cancellation order and the notice dated 03.12.2020 the petitioner approached this Court by filing the present writ petition.

2. Mr.C.Prakasam, learned counsel appearing for the petitioner contended that the amendments that were made through G.O.Ms.No.21 dated 21.02.2020 ought not to have been given retrospective effect thereby adversely affecting the interest of the petitioner and also contended that there is no requirement of passing of the test as required through G.O.Ms.No.21 dated 21.02.2014 as on date of appointment of



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the petitioner. He also further contended that the probation of the petitioner was also declared through proceedings on 22.12.2017 and the said orders of declaration of probation is cancelled through impugned proceedings dated 03.12.2020 without following due process of law and without putting the petitioner on notice in violation of principles of natural justice. He further contended that the impugned cancellation order is liable to be set aside only on the ground of violaton of principles of natural justice. The learned counsel for the petitioner also further contended that subsequent to filing of the writ petition, the petitioner has appeared for the Accounts Test for Subordinate Officers Part 1 on 19.02.2021 and passed the said test on 01.08.2021. Thus, it is contended that in view of the passing of the said prescribed test relates back to the date of examination i.e., 19.02.2021 and as such as on date there is no such disqualification for the petitioner.

3.On the other hand, Mr.S.P.Karthik, learned Government Advocate appearing for the respondent contended that the petitioner who was appointed as Assistant by a direct recruitment is required to take the prescribed test as described in G.O.Ms.21 dated 21.02.2014 as the said Government Order given retrospective effect from 03.09.2010 and there



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is no challenge to the said Government order made by the petitioner. In the absence of any challenge to the said Government Order the petitioner is under obligation to pass the required tests in terms of the said amendment made through Government Order in G.O.Ms.No.21 dated 21.02.2014. He also further contended that in terms of G.O.Ms.No.1168 dated 20.11.1981 five years period is prescribed for completion of probation and passing the required test but the petitioner failed to pass the required test within the maximum 5 years as prescribed in the said Government Order and therefore, the respondents have every authority to discharge the petitioner from service and accordingly, the respondents have issued notice dated 03.12.2010 requiring the petitioner to show cause as to why the petitioner should not be discharged from service for want of passing the required test.

4.This Court carefully considered the submissions of the learned counsel on either side and perused the entire materials on record.

5.It is not in dispute that the probation of the petitioner was declared to have been satisfactorily completed through proceedings dated



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22.12.2017. Having declared the probation of the petitioner as satisfactorily completed on 22.12.2017 it is only through impugned cancellation order dated 03.12.2020 i.e., almost often a lapse of three years, the said proceedings dated 22.12.2017 is cancelled by the respondents, but without giving the petitioner notice, without affording an opportunity to the petitioner. The respondents having continued the petitioner in service for more than seven years and for a period of three years after declaring his satisfactorily completion of probation ought not to have cancelled such declaration of probation without putting the petitioner on notice. In all probabilities, the respondents, having issued a notice dated 03.12.2020 to the petitioner to show cause as to why he should not be discharged from service, should have followed the same procedure to issue a notice before cancelling the declaration of probation by issuing the impugned cancellation order. In view of the violation of the principles of natural justice, this Court is not inclined go into merits of the case and accordingly, the impugned cancellation order is set aside only on the ground of violation of principles of natural justice.

6. Insofar as the impugned notice dated 03.12.2020 is concerned the same only required the petitioner to show cause as to why



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the petitioner should not be discharged from service and to submit his explanation within seven days from the date of receipt of a copy of the said notice. In view of the setting aside the cancellation order dated 03.12.2020 this Court is of the considered view that the petitioner should be given an opportunity to submit his explanation to the said notice by intimating the respondents about the petitioner passing the test namely Accounts Test for Subordinate Officers Part I held on 19.02.2021 and the respondents should be allowed to consider the said explanation in accordance with law.

7. Accordingly, the impugned cancellation order dated 03.12.2020 is set aside and the petitioner is granted liberty to submit his explanation in response to the impugned notice dated 03.12.2020 within a period of four weeks from the date of receipt of a copy of this order and on submission of such explanation by the petitioner, the respondents shall consider the same and pass appropriate orders duly taking into consideration of the fact that the petitioner has already passed Accounts Test for Subordinate Officers Part I dated 19.02.2021 and pass appropriate orders in accordance with law. It is also open for the



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petitioner to contend and raise the objection on the retrospective effect given to the G.O.Ms.No.21 dated 21.02.2020 while submitting his explanation.

8.Till appropriate orders are passed by the respondents, on considering the explanation submitted by the petitioner, the status quo obtained as on today shall be continued with regard to the petitioner's service.

9.Accordingly, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

19.06.2024

vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order



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To
The Deputy Commissioner of Police,
Head Quarters, City Police Office,
Coimbatore City,
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