IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.32310 of 2022
and W.M.P.No.31706 of 2022

V.Aravind ... Petitioner

Vs

1. The Joint Commissioner (ST),
Commercial Taxes Complex,
Coimbatore – 641 018.

2. The Deputy Commercial (ST),
Commercial Taxes Complex,
Coimbatore – 641 018.

3. The State Tax Officer (ST),
Gandhipuram Circle,
Coimbatore – 641 018.

4. The Principal Commissioner of
Commercial Taxes,
Ezhilagam Chepauk,
Chennai – 600 012. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to quash the impugned proceedings of the second respondent in his Ref.No.5236/ 2019/A1 dated 17.09.2021 and the consequential impugned proceedings of the first respondent in his Reg.No.7818/2018/A2 dated 29.08.2022 and directing the respondents to restore the petitioner into service with uninterrupted seniority, service benefits and back wages.

For Petitioner	:	Mr.K.Venkataramani Senior Counsel For Mr.M.Muthappan
For Respondents	:	Mr.C.Harsharaj Additional Government Pleader (Taxes)

ORDER

This writ petition has been filed challenging the order passed by the second respondent dated 17.09.2021 and the order passed by the first respondent dated 29.08.2022, thereby terminated the petitioner from service.

2. The petitioner was appointed as Junior Assistant on compassionate grounds on temporary basis on 17.08.2009, due to sudden demise of his father, while he was in service as Junior Assistant. After the period of seven years, the petitioner's service was regularized on 22.12.2016, with effect from 21.08.2009. In the said proceeding, the first respondent had stipulated that the petitioner should complete District Office Manual (hereinafter referred to as "DOM") test and also should undergo training at Bhavanisagar Training Institution. Further the

petitioner had passed DOM test on 31.12.2014, even before the order of regularization dated 22.12.2016. Thereafter, the petitioner was served with charge under Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules dated 24.07.2020 alleging that the petitioner failed to pass the DOM test within the continuous period of five years from the date of joining.

3. The enquiry officer was appointed and the enquiry report revealed that charge has been proved against the petitioner. Based on the enquiry report, the petitioner was discharged from the government service by the second respondent by an order dated 17.09.2021 under Rule 26(b)(ii) of the Tamil Nadu State and Subordinates Service Rules. Aggrieved by the same, the petitioner preferred an appeal before the first respondent and the same was also dismissed on 29.08.2022. Hence, the petitioner filed the present writ petition.

4. The learned Senior Counsel appearing for the petitioner would submit that as per the Rule 34(b)(V) of the Tamil Nadu Ministerial Service Rules, failure to pass the DOM test within the prescribed period shall not be a bar to the declaration of probation period. But shall entail

the stoppage of the increment accruing after the expiry of the prescribed period without cumulative effect until he passes the test. The disciplinary proceedings were initiated as against the petitioner as per Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules. However, the petitioner did not commit any misconduct and as such this Rule is not applicable to the petitioner, since the petitioner was appointed under the Tamil Nadu State Subordinate Services Rules.

4.1. Further, the petitioner was not given opportunity under the Clause (ii) of Sub Section 1 Section 31 and as per Rule 26 (a)(ii) of the Tamil Nadu State Subordinate Services Rules to show cause against charge and the petitioner was discharged without following the mandatory provisions. It is clear violation of principles of natural justice. The Rule 26(b)(ii) of the Tamil Nadu State Subordinate Service Rules and Sections 31(2)(3) & (4), 32 and 34 (a) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 are applicable only to special qualifications and special test to be acquired by the members of the service as laid down in the Tamil Nadu Ministerial Service Rules. Therefore, DOM test is not prescribed as special test as it is specifically mentioned at Rule 34 (b)(v) of the Tamil Nadu Ministerial

Service Rules, that a member of the service in the category of Junior Assistant whose age did not exceed 45 years shall pass the DOM test within the prescribed period of probation. Failure to pass the said test within the period shall not be a bar to the declaration of probation but shall entail the stoppage of the increment accruing after expiry of the prescribed period without cumulative effect until he passes the test.

5. The respondents filed counter and the learned Additional Government Pleader appearing for the respondents submitted that the respondents are ready to reinstate the petitioner on condition that the period of discharge cannot be accounted for any purpose and the same would be treated as leave without salary.

6. Heard the learned counsel appearing on the either side and perused the materials placed before this Court.

7. Admittedly, it is not in dispute that the petitioner did not commit any misconduct or illegality while he was in service. As rightly pointed out by the learned Senior Counsel that the charge framed as

against the petitioner is only on the ground that the petitioner failed to pass DOM test within a period of five years. As per Rule 34(b)(v) of Ministerial Services Rules read with Section 32 (2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the petitioner is deemed to have satisfactory completed his probation on the expiry of initial period of probation, that is, even without the need of any extension of probation period. This date will be any date on or after 21.08.2009 and 21.08.2012 as stipulated in the proceeding dated 22.12.2016.

8. Further as per explanation (iii) to Rule 27(c) of the Tamil Nadu State Subordinate Service Rules, and as per the explanation (ii) to Section 32(3) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the charges are to be framed, they must be in addition to or distinct from general inefficiency or incapacity so as to proceed under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. However, failure to clear DOM test has been illegally made a charge. The charges are necessarily to be made for any misconduct of Tamil Nadu Government Servants Conduct Rules, 1973. Without imputing any misconduct or violation of conduct rules, charges are framed for failure of passing DOM test. Therefore, the charges framed

vide the notice dated 04.03.2020 is unsustainable. The enquiry conducted by the enquiry officer and the report dated 09.11.2020 are ultra vires to the Tamil Nadu Civil Service (Discipline and Appeal) Rules.

9. In view of the above discussions, the orders passed by the respondents 1 & 2 cannot be sustained and liable to be quashed. Accordingly, impugned order dated 17.09.2021 passed by the second respondent in his Ref.No.5236/ 2019/A1 and the consequential order dated 29.08.2022 passed by the first respondent in his Reg. No.7818/2018/A2, are hereby quashed. The respondents are directed to reinstate the petitioner into service without any back wages forthwith. It is made clear that the period of discharge i.e., from 17.09.2021 to till the date of reinstatement has to be treated as leave on loss of pay and it cannot be accounted for any purpose.

10. With the above directions, the Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

30.07.2024

Index : Yes/No

Speaking/Non Speaking order
Neutral Citation : Yes/No

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G.K.ILANTHIRAIYAN. J,

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