



WEB COPY



W.P.No.3567 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2024

CORAM:
THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.3567 of 2017
and WMP.No.3601 of 2017

L.Selvi

... Petitioner

Vs.

1.The Secretary to Government,
Revenue NA (4) Establishment Department,
Fort Saint George,
Chennai – 600 009.

2.The Assistant Director of Survey and Land Records,
Kancheepuram District,
Kancheepuram.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in connection with the impugned order passed by him in G.O.(1) (D) No.547 Revenue (Na.4(1) Department dated 07.12.2016 and the consequential order passed by the 2nd respondent in Na.Ka.No.A1/3788/202025 dated 07.02.2017 and quash the same and direct the respondents to grant one year time to pass the Departmental test with all service and monetary benefits.

For Petitioner : Mr.M.Muthappan

For Respondents : Mr.P.Ananda Kumar
Government Advocate

* * * * *

ORDER



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This writ petition is filed to call for the records of the 1st respondent in connection with the impugned order passed by him in G.O.(1) (D) No.547 Revenue (Na.4(1) Department dated 07.12.2016 and the consequential order passed by the 2nd respondent in Na.Ka.No.A1/3788/202025 dated 07.02.2017 and quash the same and direct the respondents to grant one year time to pass the Departmental test with all service and monetary benefits.

2.The petitioner was appointed as a Draughtsman in the Survey Department on compassionate grounds on the death of her husband, who died in harness, while serving as Field assistant in the Survey Department. The petitioner was appointed to the post of Draughtsman and she joined the service on 04.03.2011. The petitioner's services were regularized by the order of the Government vide G.O.(2D).No.769, Revenue (Est.) 9 (1) dated 13.12.2013. The petitioner in order to complete the probation had to pass Departmental Test. The petitioner's services as Draughtsman were regularized on 09.04.2014 w.e.f. 04.03.2011. For declaration of probation, the petitioner had to pass the Departmental Test within a period of 5 years as per Rule 26 (b) (ii) of the State and Subordinate Service Rules. The petitioner passed three papers and she could not pass the 4th paper within the



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prescribed period and so she made a representation for extension of time.

The Government refused to give further time on the ground that her probation was not extended as per Rule 28 of the General Rules for State and Subordinate Service and rejected the claim in G.O.(D).No.547 Revenue [Survey 4 (1)] dated 07.12.2016. As the Government did not extend the period, the second respondent vide the impugned order, terminated the services of the petitioner from the post of Draughtsman. Aggrieved by the aforesaid orders dated 17.12.2016 and 07.02.2017, the petitioner has filed the above writ petition.

3.The respondent filed a counter stating that as the petitioner did not clear the Departmental Test, even after completion of 5 years from the date of regularization, the impugned order was passed by noting the instruction under Rule 26(1) (ii) of the State and Subordinate Service Rules. The respondent submitted that as per Sub Section (4) of Section 31 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (T.N. Act 14 of 2016), the maximum period upto which the probation of a Government Servant could be extended to enable him to acquire the test qualification was 5 years. The said Rules further provide that if the Government servant failed to acquire the test qualification within the said period of 5 years,



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he/she shall be reverted and qualified and eligible persons shall be considered for promotion. If the appointment was by direct recruitment and the Government servant failed to acquire the test qualification within the maximum period of five years, his probation shall be terminated. The respondent therefore submitted that the impugned order was valid as it was passed strictly in accordance with the Tamil Nadu State and Subordinate Service Rules, particularly Rule 26(b) (ii) of General Rules.

4.The learned counsel for the petitioner submitted that the petitioner was appointed as Draughtsman on compassionate ground on the death of her husband, who died in harness on 15.07.2004. The learned counsel submitted that the petitioner was the only bread winner of the family and she had to take care of her aged parents and three children. The learned counsel therefore submitted that though no application was filed claiming appointment to lower post, the respondents may be directed to consider the petitioner's case sympathetically and give her the post of either the Field Assistant or Office Assistant.

5.The learned counsel for the petitioner in support of his submission relied on the Judgment of the Hon'ble Supreme Court in the case of **Brijesh**



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Vipin Chandra Shah Vs. State of Gujarat and Others reported in ***AIR Online 2013 SC 471***, the Division Bench Judgment of this Court in ***W.A.No.17 of 2016 dated 17.04.2017*** and the order of this Court in ***W.P.(MD).No.8681 of 2016 dated 19.12.2018***.

6.The learned counsel for the respondent on the other hand submitted that the petitioner's probation was terminated by following Rule 26(b) (ii) of General Rules of the Tamil nadu State and Subordinate Service Rules, which is incorporated in Rule 31 (4) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The learned counsel submitted that the petitioner was given a period of 5 years to clear the departmental test and as the petitioner failed to clear the same within the stipulated period of 5 years, her services were rightly terminated. The learned counsel relied on the Judgment of this Court in W.P.No.4502 of 2015 dated 08.07.2022 in support of his submission.

7.I have heard both the learned counsels and I have perused the materials on record.

8.Admittedly, the petitioner was appointed as Draughtsman on



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compassionate grounds on the death of her husband, who died in harness on 15.07.2004. The petitioner was appointed as Draughtsman on 04.03.2011 and her services were regularized on 13.12.2013. The petitioner could not clear the departmental test within the stipulated period of 5 years and therefore she made a representation to grant her one year time to pass the departmental test. The petitioner's representation was forwarded to the Government on 22.07.2016. On 07.12.2016, the Government declined to extend time on the ground that the probation was not extended as per Rule 28 of the General Rules for State and Subordinate Service and thus rejected the claim of the petitioner. As a consequence of the aforesaid letter of the Government, the second respondent vide impugned proceedings dated 07.02.2017 terminated the services of the petitioner. Hence, the above writ petition challenging the same.

9.The Hon'ble Supreme Court in the case of ***Brijesh Vipin Chandra Shah Vs. State of Gujarat and Others*** wherein it is held in paragraph No.8 held as follows:

“8.We are of the considered opinion that the stand taken by the respondents is unnecessarily harsh. It must be remembered that the appellant was initially appointed on compassionate grounds as his father had died while he



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was in service. Compassionate appointment is made by relaxation of the normal service rules for providing immediate financial assistance to the family of the deceased who dies in harness. It is unfortunate that the appellant was unable to pass the in-service examination so as to enable him to continue on a Class III post. But that ought not to result in depriving him of service altogether.”

10.The said Judgment of the Hon'ble Supreme Court was followed by a Division Bench of this Court in W.A.No.17 of 2016 dated 17.04.2017. Similarly in W.P.(MD).No.4127 of 2017 dated 02.11.2021 and W.P.(MD).No.8681 of 2016 dated 19.12.2018 the above judgments were followed.

11.The learned counsel for the respondents on the other hand relied on the Judgment in W.P.No.4502 of 2015 dated 08.07.2022, wherein the learned Single Judge, while dismissing the writ petition on similar facts held that the Judgment of the Hon'ble Supreme Court did not propose any principles of law and that contrarily, the observations of the Hon'ble Supreme Court were in reference to the facts of the particular case. That the factual discussions or otherwise made by the Hon'ble Supreme Court



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could not be taken as a precedent for the purpose of invalidating or diluting the statutory rules by the High Court while exercising the power of Judicial review under Article 226 of the Constitution of India. The learned Judge therefore held that on misplaced sympathy, the impugned orders could not be set aside as it would not only undermine the public administrative system but also deprive meritorious candidates of public employment.

12. On the facts of the present case, it is seen that the petitioner is a widow and the only bread winner of a family of five members. I am therefore of the view that the law laid down by the Hon'ble Supreme Court as followed by the Hon'ble Division Bench and the learned Single Judge's of this Court squarely apply to the facts of the case. The Hon'ble Supreme Court in the case of ***Brijesh Vipin Chandra Shah Vs. State of Gujarat and Others*** reported in ***AIR Online 2013 SC 471*** held that Compassionate appointment is made by relaxation of the normal service rules for providing immediate financial assistance to the family of the deceased who dies in harness. In the fact situation of the present case, if the petitioner is deprived of her job, her family will come to the street. The prayer of the petitioner to extend time by one year to enable her to clear the departmental exam cannot be countenanced in view of Rule 26(b)(ii) of Tamil Nadu State and



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Subordinate Service Rules. In any event, considering the fact that the petitioner is a widow and the only bread winner of her family the relief is moulded, by directing the respondent to revert the petitioner in the lower post of either Office Assistant or Field Assistant.

13.The impugned order is set aside and the respondents are directed to appoint the petitioner to the post of Office Assistant/Field Assistant reckoning the petitioner's seniority from the date of her initial appointment, within a period of 12 weeks from the date of receipt of a copy of this order.

14.Accordingly, this Writ Petition stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-speaking order
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To

1.The Secretary to Government,
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Fort Saint George,
Chennai – 600 009.



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2. The Assistant Director of Survey and Land Records,
Kancheepuram District,
Kancheepuram.

N.MALA,J.

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