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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	13.12.2023
Pronounced on	09.02.2024

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH**W.P.No.34218 of 2022****and****W.M.P.Nos.33664 of 2022 & 6808 of 2023**

A.Murali Kannan

...Petitioner

Vs.

- 1.The Secretary,
Tamil Nadu Public Service Commission,
Chennai.
- 2.The Principal Secretary to Government,
Human Resource and Management Department,
Secretariat, Chennai – 600 009.
- 3.The Commissioner,
Milk Production and Dairy Development,
Madhavaram, Chennai – 600 051.
- 4.The Additional Milk Commissioner (FAC),
Office of Milk Production and
Dairy Development,
Madhavaram, Chennai – 600 051.
- 5.The Deputy Registrar (Dairying),



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O/o. Deputy Registrar (Dairy),
Theni Pasumai Nagar,
Aranmanaiputhur,
Theni – 625 531.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the entire records pertaining to the impugned proceedings passed by 4th respondent in Na.Ka.No.9186/E1/2021 dated 01.12.2022 and to quash the same and consequently direct the 3rd and 5th respondents not to implement the impugned proceedings in Na.Ka.No.9186/E1/2021 dated 01.12.2022 and declare the probation in the post of Senior Inspector with effect from 05.12.2017.

For Petitioner	: Mr.K.Venkataramani, Sr. Counsel for Ms.T.P.Savitha
For R1	: Mr.R.Bharanidharan, Standing Counsel
R2 to R5	: Mrs.V.Yamuna Devi, Special Government Pleader



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ORDER

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Heard Mr.K.Venkataramani, learned senior counsel for the petitioner, Mr.R.Bharanidharan, learned standing counsel for the 1st respondent and Mrs.V.Yamuna Devi, learned Special Government Pleader for the respondents 2 to 5.

2. Through the impugned order dated 01.12.2022, the petitioner herein has been reverted from the promoted post of Senior Inspector to Assistant, on the ground that he had not completed the departmental test in Auditing, within the prescribed period of 5 years, as required under Section 31(4) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (hereinafter referred to as 'the Act'). Challenging the same, the present writ petition has been filed.

3. The learned senior counsel for the petitioner submitted that within a period of 5 years, the petitioner had passed 7 out of 8 papers in the departmental tests. However, since the departmental tests were not conducted for about 1½ years during the Covid-19 pandemic situation, he could pass the last paper only on 14.12.2022.



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4. Per contra, the learned Special Government Pleader submitted that under Section 31(4) of the Act, the maximum period up to which the probation of a Government servant can be extended, so as to enable him to acquire the test qualification, is determined as 5 years. Since the petitioner herein has not complied that with the said provision, he was reverted back to the lower post and thus, there is no infirmity in the impugned order.

5. The petitioner was promoted from the post of Assistant to Senior Inspector on 31.08.2017. As such, the requirement to pass the departmental test within 5 years ends on 31.08.2022. During the period of his probation, he was required to pass 8 papers in the departmental tests, out of which, he had passed 7 papers. However, during his probation period, the Covid-19 pandemic situation had also set in and therefore, the departmental tests were not conducted for more than 1½ years. After the pandemic situation had subsided and the lock down periods announced were lifted, the next departmental test was announced on 14.12.2022, in which the petitioner had participated and successfully cleared the same.



6. This apart, during the period between 31.08.2017 and 31.08.2022, the department was required to conduct tests for 10 times over the period of 5 years. However, these tests were conducted only for 8 times, out of which, the petitioner had cleared 7 out of 8 papers and thus, he was deprived of participating in the tests for over 1½ years. This inability can definitely not be put against the petitioner.

7. From the fact that the petitioner had participated in the next departmental test within about 3½ months on 14.12.2022 and successfully cleared the same, it can be inferred that, had the Tamil Nadu Public Service Commission conducted the test on 2 more occasions during the 5 year probation period, the petitioner would have cleared them within the probation period itself.

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 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 (GI) Department dated 01.11.2012; G.O.No.276 issued by the Handloom, Handicrafts, Textiles and Khadi (GI) 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 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 **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 approach the Court earlier, 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**



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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 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 Servants (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



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cleared all his departmental tests, by invoking the powers under Article 226 of the Constitution of India.

11. In the result, the Writ Petition stands allowed and the impugned order dated 01.12.2022 is quashed, insofar as it relates to the petitioner herein. In view of quashing of the impugned order, the 3rd and 4th respondents herein shall pass appropriate orders, declaring the petitioner's probation in the post of Senior Inspector, with effect from 14.12.2022, within a period of four (4) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

09.02.2024

Index:Yes
Neutral Citation:Yes
Speaking order
hvk



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M.S.RAMESH,J.

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**PRE-DELIVERY ORDER MADE IN
W.P.No.34218 of 2022**

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