IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2024

Coram:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
and
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.No.3723 of 2024
and C.M.P.No.29394 of 2024

1.The Principal Secretary to Government,
Commercial Taxes and Registration Department,
Fort St.George, Chennai – 600 009.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai.

3.The Joint Commissioner,
Office of the Joint Commissioner (State Taxes),
Chennai North Division, Chennai – 600 003.

4.The Assistant Commissioner (ST),
Washermenpet Assessment Circle,
Elephant Gate Bridge Road,
Commercial Taxes Building,
2nd Floor, Chennai – 600 003.

5.The Commercial Tax Officer,
Washermenpet Assessment Circle,
Elephant Gate Bridge Road,
Commercial Taxes Building,
2nd Floor, Chennai – 600 003.

...Appellants

Versus

U.M.Murali Prasatha Rao

...Respondent

Prayer:

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 08.08.2023 in W.P.No.5601 of 2022.

For Appellants	:	Mr.G.Nanmaran, Special Government Pleader
For Respondent	:	Ms.Y.Kavitha for P.V.S.Giridhar Associates

JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.)**

Heard the learned Special Government Pleader appearing for the appellants and the learned counsel appearing for the respondent/writ petitioner.

2. In this intra Court Appeal, the appellants have challenged the impugned order dated 08.08.2023 passed by the Writ Court in W.P.No.5601 of 2022. By the impugned order, the Writ Court has allowed W.P.No.5601 of 2022 filed by the respondent/writ petitioner.

3. The facts of the case are that the respondent/writ petitioner was appointed as Record Clerk and his service was regularized in the post of Record Clerk w.e.f 18.09.1994. Thereafter, he was promoted to the post of Junior Assistant vide order dated 07.06.1991. His services were regularized in the post of Junior Assistant w.e.f. 14.06.1991 vide order dated 21.03.2001. Later, the respondent/writ petitioner attained the age of superannuation on 30.04.2024.

4. The respondent/writ petitioner had however not been issued with orders for completion of probation period in the post of Junior Assistant in view of the administrative lapse on the part of the appellants since the appellants failed to send the respondent/writ petitioner for Foundational Course Training immediately after he was promoted to the post of Junior Assistant.

5. It is to be noted that the respondent/writ petitioner had passed the District Office Manual Test during May 1993, within two years period of

service in the post of Junior Assistant. He had put in a continuous period of service for two years in the post of Junior Assistant without any break and he had not faced any disciplinary proceedings during the said period.

6. The records also reveal that the respondent/writ petitioner was not sanctioned increment even after his services were regularized in the post of Junior Assistant w.e.f. 14.06.1991 vide order dated 21.03.2001. Hence, the respondent/writ petitioner gave a representation dated 26.04.2018 to the 5th appellant herein stating that he had not been sanctioned with increments since 1993. Pursuant to his representation, the 5th appellant vide order dated 26.04.2018, sanctioned a sum of Rs.14,00,000/- towards the arrears of increment and re-fixed the pay of respondent/writ petitioner and thus, the respondent/writ petitioner started drawing higher pay with retrospective effect from 01.04.1993.

7. In the said order dated 26.04.2018 of 5th appellant, it is stated that the respondent/writ petitioner is entitled to draw arrears of pay and allowances w.e.f. 01.04.1993 and that the delay was due to administrative

reasons. At the time of sanction of arrears, the respondent/writ petitioner was already aged about 54 years. Thus, the respondent/writ petitioner started drawing higher pay band vide order dated 04.05.2018.

8. According to the respondent/writ petitioner, as per G.O.No.184 dated 15.10.1999, incumbents who have been promoted to the post of Junior Assistants after attaining the age of 53 years from the post of Record Clerk were to be exempted from attending the Foundational Course Training to be held at Government Officials Training Institute, Bhavanisagar. Similarly, G.O.No.120 dated 05.12.2016 & G.O.No.4 dated 18.01.2019 were also issued.

9. In this background, the respondent/writ petitioner made a representation dated 08.11.2018 to the appellants seeking to exempt him from undergoing the Foundational Course Training since he had crossed 53 years of age by placing reliance on G.O.No.120 Department dated 05.12.2016. However, the appellants vide order dated 27.05.2019, called upon the respondent/writ petitioner to pay back the arrears of

Rs.14,34,868/-. The respondent/writ petitioner was thereafter relieved from service on 29.05.2019 to undergo Foundational Course Training for Junior Assistants to be held at Government Officials Training Institute, Bhavanisagar from 31.05.2019 to 18.07.2019.

10. The respondent/writ petitioner thus completed the Foundational Course Training for Junior Assistants and he was also issued with the course completion certificate. Despite the same, the 3rd appellant vide order dated 20.10.2020, directed the respondent/writ petitioner to repay a sum of Rs.16,00,652/- which was the payment made towards arrears of increment for the period from 01.04.1993 to 31.05.2019 on the ground that the respondent/writ petitioner had not completed Foundational Course Training. Thereafter, the 3rd appellant had passed an order of recovery dated 19.07.2021 for recovering a sum of Rs.10,000/- per month from July 2021 to April 2024 for a period of 34 months towards a sum of Rs.3,40,000/- and stated that the balance sum of Rs.12,60,000/- will be recovered from the pensionary benefits of respondent/writ petitioner.

11. Aggrieved over the aforesaid orders of 3rd appellant, respondent/writ petitioner had filed a writ petition in W.P.No.15993 of 2021 praying for issuance of a writ of certiorarified mandamus calling for the records relating to order dated 25.07.2019 bearing RC.No.68/2018/B1, order dated 20.10.2020 bearing No.Na.Ka.68/2018/A1 and order dated 19.07.2021 bearing No.Na.Ka.68/2018/A1 all passed by the 3rd appellant and to quash the same and to direct the appellants herein to issue an order of declaration of completion of period of probation w.e.f. 13.06.1993 in the post of Junior Assistant in his favour and to re-fix his pay with arrears of pay and all other consequential benefits.

12. On 13.07.2021, this Court had granted an order of interim stay in the impugned order in W.P.No.15993 of 2021. However, the writ petition is pending. While so, the 3rd appellant issued Charge Memo in Rc.9777A/2021/A2-II dated 15.12.2021 to the respondent/writ petitioner. The charges framed against the respondent/writ petitioner are as follows:

> *"**Charge 1:** The respondent/writ petitioner had submitted a representation dated 26.04.2018 seeking increments to the State Tax Office, Washermenpet without completion of the probation period in the post of Junior Assistant.*

> ***Charge 2:*** *On the basis of the representation dated 26.04.2018 submitted by respondent, without completing a period of probation, he was sanctioned Rs.16,00,652/- and thus, there is a loss of Rs.16,00,652/- to the Government.*
>
> ***Charge 3:*** *The respondent/writ petitioner had acted in contravention of Rule 20(1) of Tamil Nadu Government Servants Conduct Rules."*

13. Challenging the Charge Memo issued by the 3rd appellant, respondent/writ petitioner had filed W.P.No.5601 of 2022 which has been allowed by the Writ Court vide impugned order dated 08.08.2023. Operative portion of the impugned order passed by the Writ Court reads as under:

> *"16. In the present case on hand also the petitioner completed the Foundation Course Training later, which has not been disputed. In such a view of the matter, applying the above ratio and as per the government letter referred above, the probation deemed to have declared and the petitioner drawn only the increment the same will not amount to misconduct and merely because enquiry officer appointed, this Court is of the view that the same will not serve any purpose in view of the discussion above.*
>
> *17. Accordingly, the Writ Petition is allowed. No costs. The entire Charge Memo in Rc.9777A/2021/A2-II dated 15.12.2021 passed by the 3rd respondent and consequent proceedings are quashed. Enquiry Report if any will not serve any purpose. Consequently, connected Writ Miscellaneous Petitions are closed."*

14. As far as this case is concerned, the respondent/writ petitioner was working as a Junior Assistant from 07.06.1991 and his services were regularized in the said post w.e.f. 14.06.1991. Although the respondent/writ petitioner had not undergone the mandatory Foundational Course Training, he had discharged his duties as Junior Assistant.

15. In Paragraph Nos.10 & 11 of the impugned order, the learned Single Judge has noted the lapses on the part of the appellants and has observed as under:

> *"10. The belated training held is also ratified in the G.O.(D) No.164, Commercial Taxes and Administration Department dated 30.04.2015. To apply Rule 32(A), it must be shown that despite the petitioner was deputed for such training he has not completed, then it can be said that the Petitioner is not entitled for declaration of probation. Admittedly in this case, the petitioner has been continuously working and no orders have been passed for deputing him for training for many years and in fact service also regularised in the cadre of Junior Assistant on 14.06.1991. However, officials have not taken any steps to send the Petitioner for training in time. Though it is stated that the Petitioner was working in the establishment in that period he ought to have prepared list. It is to be noted that it is for the officials who are in charge of the department to see that the person who have promoted to the post of Junior Assistant and deputed for the training as mandated in Rule 32(A) of the Tamil Nadu Ministerial Service Rules, which has not been done in this case. Whereas they are simply allowed the petitioner to work without passing any order deputing him to undergo the training as required under the Rule. Therefore, when the administrative lapse is at large and the they*

have not deputed the petitioner to undergo the training within the stipulated period, merely because the petitioner sent a representation seeking increment and the increment was also sanctioned by the officials, now, it cannot be said that such action amount to misconduct warranting disciplinary proceedings, particularly, at the fag end of his service. Before passing the increment they also verified all the service records as could be seen from the communication from 1.9.2006, 20.06.2008 and 31.07.2009. Similarly, on 19.7.2017 also particulars have been sought. Only after the seeing the service records, sanction order also passed by the higher officials. It is relevant to refer the letter No.14735/S/10-1 dated 08.04.2010 from the Secretary to Government to all Secretaries to Government, the same makes it clear as follows:

> *"As per Rule 27 of General Rules for Tamil Nadu State and Subordinate Services, at the end of the period of probation the appointing authority shall assess the suitability of the probationer for full membership and if the probationer is found suitable for such membership, he shall as soon as possible issue an order declaring the probationer to have satisfactorily completed his probation. If no such order is issued within six months from the date on which he is eligible for such declaration, the probationer shall be deemed to have satisfactorily completed his probation on the date of expiry of period of probation. However, a formal order declaring the completion of probation has to be issued by the appointing authority.*
>
> *2. The Administrative Reforms Committee in its first report has recommended that Departmental action shall be effected against Supervisory Officers who do not issue orders on satisfactory completion of probation of any staff working under him. In the Government Order cited Government have accepted the above said recommendation.*
>
> *3. If orders of satisfactory completion of probation are not issued in time by the competent authorities, the Secretaries to Government of the Departments and the Heads of Departments may take appropriate disciplinary action against the supervisory officers for the lapses."*

11. Above communication from the Secretary to Government makes responsibility to the supervisory officer, who ought to have to seen the person has undergone any foundation training. However, the *department has not taken any action to send the petitioner for training in time. It is also relevant to note that Rule 32 (A) of the Tamil Nadu Ministerial Service Rules makes it very clear that every person appointed to a category by direct recruitment shall be on probation for a total period of two years on duty within a continuous period of three years. The individual in the cadre of Junior Assistant is eligible for promotion to the post of Assistant only on satisfying the following conditions:-*

1. His probation declared successful.

2. His service should be regularized in the cadre of Junior Assistant.

3. He should complete the foundational training at Civil Service Training Institute at Bhavanisagar, Tamil Nadu.

4. He should successfully complete the departmental examination conducted by the Tamil Nadu Public Service Commission."

16. We concur with the above observation in Paragraph Nos.10 & 11 of the impugned order. It was incumbent on the part of the appellants to have sent the respondent/writ petitioner for Foundational Course Training soon after he was promoted to the post of Junior Assistant. However, without doing so, the appellants had retained the respondent/writ petitioner in the post of Junior Assistant and allowed him to discharge his duties in the said post for all these years.

17. Since the respondent/writ petitioner has undergone the Foundational Course Training for the post of Junior Assistants between 31.05.2019 to 18.07.2019 *post facto* and was also issued with course completion certificate on 04.03.2021 also impels us to conclude that the impugned order does not merit any interference. We are also of the opinion that the Charge Memo issued to the respondent/writ petitioner which was impugned in W.P.No.5601 of 2022 was unjustified and was rightly interfered and quashed by the Writ Court. Thus, there is no merit in the present Writ Appeal. Hence, this Writ Appeal is liable to be dismissed. It is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) **(C.S.N., J.)**
21.12.2024

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Index : Yes/No

Neutral Citation: Yes/No

Speaking Order (or) Non-Speaking Order

To

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R.SURESH KUMAR, J.
and
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