



W.P.No.35400 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

CORAM

THE HON'BLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.No.35400 of 2023

Mr.P.Pravinkumar

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary to Government,
Environment, Climate Change and Forest Department,
Secretariat,
Chennai – 600 009.
2. The Principal Chief Conservator of Forests (Head of Forest Force),
Forest Headquarters Building,
Near Kannigapuram Check Post,
Guindy – Velachery Main Road,
Guindy,
Chennai - 600 032.
3. The Principal Chief Conservator of Forests & Director,
Tamil Nadu Forest Academy,
Forest Campus, R.S.Puram,
Coimbatore – 641 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandaums to call for the records pertaining to the impugned order of the first respondent dated 09.10.2020 in



W.P.No.35400 of 2023

G.O.No.386 Environment and Forest (Forest 2-II) Department and quash the same as illegal and unlawful and consequently direct the respondents to declare the petitioner's probation with effect from 17.06.2000 and consequently grant all the service and monetary benefits accruing out of such declaration of probation to the petitioner.

For Petitioner : M/s.Vasavi Sridevi

For Respondents : Mr.S.Rajesh
Government Advocate

ORDER

The petitioner was appointed as a Junior Assistant on compassionate grounds on 18.06.1998. The petitioner was not immediately sent to the Bhavanisagar Foundational Training, since there is a delay in regularizing the services of the petitioner. After several years, the petitioner's services were regularized on 24.05.2018 with effect from the date of joining of the service i.e., on 18.06.1998. The petitioner was sent for Bhavanisagar Foundational Training on 20.07.2018 and only thereafter the petitioner was permitted to take the Departmental Examination and the petitioner cleared the same on 31.01.2019. However, the petitioner's probation was declared only from the date of passing of the examination with effect from 19.06.2000. Hence the writ petition.



W.P.No.35400 of 2023

WEB COPY 2. It is the contention of the petitioner that only on account of the administrative delay in regularizing the services of the petitioner, the petitioner was not immediately deputed to Bhavanisagar Foundational Training and only after completing the course in Bhavanisagar Foundational Training, the petitioner was permitted to take Departmental Examinations. Therefore, for no fault of the petitioner, the petitioner's probation was declared belatedly.

3. The writ petition is resisted by filing the counter affidavit. In the counter affidavit filed by the respondents, the relevant facts are contained in Paragraph 7 to 9, which reads as under:-

“7. respectfully submit that pursuant to the order dated 07.09.2011 passed by the Honourable Court, the Government passed an order in G.O.(2D) No.20, Environment and Forest Department dated 24.05.2018 regularising the service of the petitioner with retrospective effect from 18.06.1998. Thus, the petitioner's service was regularized from the date of his initial appointment and he is entitled for all consequential benefits attached to the post of Junior Assistant. Further, as per the Rules, the probation of the petitioner has to be declared within three years of regularization of his service. Accordingly, the



WEB COPY



W.P.No.35400 of 2023

petitioner was deemed to be under probation from 24.05.2018 to 23.05.2021 for three years. However, he has completed the necessary departmental examination and has got his probation declared even as on 31.01.2019.

8. I humbly submit that the grievance of the petitioner appears to be that if his service was regularized without any delay, his probation also would have been declared at the earliest and he would have been promoted to the further post of Assistant. It is also the grievance of the petitioner that due to the delay in regularizing his service and the consequential declaration of his probation, his juniors have marched him over in the matter of promotion and he is stagnated in the same post. The further grievance of the petitioner seems to be that he was sent to Bhavanisagar Training belatedly and therefore also he could not get promoted to the higher post. Further, only from the date of passing the Bhavani Sagar Training, his probation was declared after 20 years.

9. I humbly submit that as far as Bhavanisagar Training is concerned, the petitioner was sent to such training soon after his service was regularized. The petitioner was sent for the training from 07.08.2018 to 27.09.2018. The petitioner did not pass the Bhavanisagar Training in a single attempt, but he failed in certain subjects. In other words, the petitioner passed three exams in his first attempt and the remaining three examinations on 28.01.2019, 30.01.2019 and 31.01.2019 in his second attempt. The petitioner's service was regularized with retrospective effect from the date of regularization of his service. However, soon after the date on which the petitioner's service was regularized he was sent to Bhavanisagar



W.P.No.35400 of 2023

training without any delay. In effect, there was no delay on the part of the department in sending the petitioner to Bhavanisagar training and it is proper. The claim of the petitioner that he should have been deputed to the training much before cannot be considered. For the purpose of deputing a government servant to Bhavanisagar training, the fundamental requirement is that his service should have been regularized in the cadre of Junior Assistant. In the present case, admittedly, the service of the petitioner was regularized only on 18.06.2018 by virtue of an order passed by the Government in G.O.(2d) No.20, Environment and Forest Department dated 24.05.2018 with retrospective effect from 18.06.1998. Subsequently, by G.O.Ms.No.36, Environment and Forest Department dated 09.10.2020, the probation of the petitioner was declared from 01.02.2019, which is assailed by the petitioner on the ground of delay.”

4. The learned Government Advocate for the 1st to 3rd respondents would submit that the above facts as contended by the petitioner are admitted. However, Bhavanisagar Foundational Training is an essential qualification to declare the probation and since the petitioner had cleared the Bhavanisagar Foundational Training belatedly, the probation has rightly been declared.

5. By way of rejoinder, learned counsel for the petitioner taking this Court through the typed set of papers to demonstrate the above facts, would also rely upon the judgment of this Court rendered in WP.(MD).No.15585 of



W.P.No.35400 of 2023

2018 and W.P.No.19932 of 2023.

WEB COPY

6. On the other hand, the learned Government Advocate for the 1st to 3rd respondent would submit that when the petitioner has passed the examination even in the second attempt even after permission being granted, he would claim grant of probation from the earlier date.

7. I have considered the rival submissions on either sides and perused the materials available on records.

8. I myself had question to consider the identical circumstances in respect of the very same post of Junior Assistant appointed on compassionate grounds. Merely because there was no express provision in the rule to depute the compassionate appointees immediately for Bhavanisagar Foundational Training, these delays occur in the case of the compassionate appointees. It is relevant to extract **B.Ilamparithi vs. State of Tamil Nadu**, reported in W.P.No.13563 of 2022 dated 23.04.2024. Relevant portion of the said order reads as under:-

“11.In any event, since the compassionate appointment is under the scheme, it is only a formality



WEB COPY



W.P.No.35400 of 2023

that the Government considers the appointment in relaxation of the Rules, approves the appointment and accepts the same post facto. That cannot be a ground to keep the petitioner waiting without deputing him for the foundational training within the period of probation.

12. Therefore, it can be true that between the years 2016 and 2017, it is because of the petitioner's making. But, once the petitioner has completed either in the year 2016 or 2017, the same would not make any difference as far as the date of declaration of probation is concerned. Once the respondents have not deputed the petitioner for the foundational training within the period of probation, then, declaring the probation with effect from the subsequent date is uncalled for. As a matter of fact, upon query of this Court, learned Additional Government Pleader also placed the letter, dated 01.02.2004 of the Government, where under, the Government itself has considered that because of these delays, there has been delay in deputing the candidates to the foundational courses and has even directed that the persons appointed on compassionate bases should be deputed immediately. Therefore, merely because such clarification was not there at the relevant point of time, the same would not be the justification for deputing the petitioner belatedly. Therefore, when the fault lies with that of the respondents in not deputing the petitioner for foundational training within the period of probation, the petitioner's probation cannot be declared with effect from the year 2017. As a matter of fact, though not exactly in the fact situation, in the judgment referred to above by the learned Counsel for the petitioner, this Court had granted relief to the petitioners who have various services considering the similar rules, whereby, there is a delay in deputing the candidate for the foundational training.”



WEB COPY



W.P.No.35400 of 2023

9. Thus, it would be clear that the delay in indicating the Foundational Training Course as well as the passing of the examination cannot be attributed. In that view of the matter, the writ petition is allowed on the following terms:-

- i. Impugned Order dated 09.10.2020 is quashed in as much as it declares the probation of the petitioner with effect from 01.02.2019 and consequently direct the respondents to declare the probation of the petitioner with effect from 17.06.2000 and consequently, grant all the increments service benefits and promotion, if any withheld to the petitioner.
- ii. No costs.

07.06.2024

Index : Yes/No
Speaking Order: Yes/No
Neutral Citation :Yes/No



W.P.No.35400 of 2023

WEB COPY

To

1. The Secretary to Government,
The Government of Tamil Nadu,
Environment, Climate Change and Forest Department,
Secretariat,
Chennai – 600 009.
2. The Principal Chief Conservator of Forests (Head of Forest Force),
Forest Headquarters Building,
Near Kannigapuram Check Post,
Guindy – Velachery Main Road,
Guindy,
Chennai - 600 032.
3. The Principal Chief Conservator of Forests & Director,
Tamil Nadu Forest Academy,
Forest Campus, R.S.Puram,
Coimbatore – 641 002.



WEB COPY



W.P.No.35400 of 2023

D.BHARATHA CHAKRAVARTHY, J.

rgm

W.P.No.35400 of 2023

07.06.2024