



W.P(MD)No.111 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD)No.111 of 2022

and

W.M.P(MD)No.15616 of 2023

G.Selvntran

... Petitioner

Vs.

The District Collector,
Sivagangai District,
Sivagangai.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent pursuant to his impugned proceedings in ந.க.ப.பி3/16620/2021, dated 13.10.2021 and quash the same as illegal and unlawful consequently direct the respondent to declare the petitioner's probation in the cadre of Junior Assistant completed successful with effect from 01.06.2021 with all service and monetary benefits more particularly within a time frame as may be stipulated by this Court.

For Petitioner : Mr.J.Pooventhera Rajan

For Respondents : Mr.J.John Rajadurai
Government Advocate



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ORDER

The present writ petition has been filed to call for the records of the respondent pursuant to his impugned proceedings in ந.க.ப.பி3/16620/2021, dated 13.10.2021 and quash the same as illegal and unlawful consequently direct the respondent to declare the petitioner's probation in the cadre of Junior Assistant completed successful with effect from 01.06.2021 with all service and monetary benefits more particularly within a time frame as may be stipulated by this Court.

2. The petitioner was initially appointed as Makkal Nala Paniyalar in the Rural Development Department in the year 1990. Thereafter, in pursuance to G.O(Ms)No.179, Rural Development and Panchayat Raj Department, dated 27.11.2008, he was appointed as Night Watchman in Rural Development and Panchayat Unit vide proceedings, dated 18.01.2010. He joined in the post of Night Watchman with effect from 21.01.2010. Later, he was appointed as Office Assistant by transfer of service with effect from 02.02.2011 by the proceedings of the respondent, dated 01.02.2011. Further, he was promoted as Junior Assistant with effect from 01.06.2019 by the proceedings of the respondent, dated 31.05.2019, following which his service was regularized in



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the cadre of Junior Assistant with effect from 01.06.2019 by the proceedings of the respondent, dated 05.10.2019. Though the petitioner's service was regularized, his probation period was not declared in time as prescribed under the Tamil Nadu Ministerial Service Rules. The service category Junior Assistant falls under the constitution of Tamil Nadu Ministerial Service Rules. As per the Tamil Nadu Ministerial Service Rules, a person directly appointed to the category, should undergo probation period of 2 years on duty within a continuous period of 3 years. The usual course on completion of 2 years of service by an individual, the respondent department should declare the completion of probation and regularize the service of the employee from the date of initial appointment. Only after the declaration of probation, an employee is entitled for increment and only after regularization, he would become fit for promotion to the next higher post. An individual in the cadre of Junior Assistant is eligible for promotion to the post of Assistant, on his probation declared successful and his service being regularized in the cadre of Junior Assistant. That apart, one should complete the foundational training at Civil Service Training Institute at Bhavanisagar to be eligible for promotion to the post of Assistant. The Junior Assistant should also successfully complete the departmental examination conducted by the Tamil Nadu Public Service



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Commission. The petitioner had passed all the departmental examinations conducted by the Tamil Nadu Public Service Commission in the following order:

S. No.	Subject	Date of Passing
1.	Manual of Village Level Workers, Community Manual Part – I & a Guide to Community Development	16.08.2010
2.	Constitution of India & Miscellaneous Acts	16.08.2010
3.	Panchayat Development Account Test	16.08.2010
4.	Panchayat Act & Rules	16.08.2010
5.	Village Swaraj	07.03.2011

3. The petitioner was also deputed to the foundational training for 37 days from 09.12.2019 to 28.01.2020 conducted by the Civil Service Training Institute at Bhavanisagar at Special Training Centre at Madurai. He had successfully completed 37 days training and also cleared all the 5 examinations in one attempt and his result came to be declared on 19.02.2020. Following which, a proposal was sent to the respondent to declare the petitioner's probation as completed. However, the respondent passed the impugned order, dated 13.10.2021, refusing to declare the petitioner's probation as completed,



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further directing him to pass all the departmental examinations which is conducted by the Tamil Nadu Public Service Commission under the new pattern. Challenging the same, this writ petition came to be filed.

4. The learned counsel appearing for the petitioner submitted that the respondent has passed the impugned order in a mechanical manner without application of independent mind. He further insisted that the impugned order of the respondent is illegal, since the same has introduced a new pattern of examination, which cannot be done until the Tamil Nadu Ministerial Service Rules are amended to that effect. Insisting upon the point that the Government Order will have no retrospective effect and since the petitioner had passed all the examinations as early as in the year 2010 itself, the insistence of passing the departmental examination under the new pattern is *per se* illegal. He further contended that G.O.Ms.No.33, Personnel and Administrative Reforms Department, dated 13.10.2021 introduced a new pattern of exam and other than that, there is no directive in the said Government Order as to the factum of giving effect to the same contending that the impugned order of the respondent is against a rule Rule 32 (a) (1) of the Tamil Nadu Ministerial Service Rules. He further submitted that the mandates of Tamil Nadu Ministerial Service



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Rules cannot be substituted by an order of the officer subordinate to the Government and on that basis, pressed for allowing the writ petition.

5. The respondent has filed a counter and the learned Special Government Pleader submitted that a proposal to declare the petitioner's probation in the cadre of Junior Assistant was received from the Commissioner of Kalayarkovil Panchayat Union vide letter, dated 24.09.2021. After carefully examining the proposal received, in terms of the relevant rules in force and by taking into account that the petitioner has been promoted to the post of Junior Assistant and that he has joined in this said post only on 01.06.2019 i.e., after the date of issuance of G.O.Ms.No.33, Personnel and Administrative Reforms Department, dated 02.03.2017 and in view of the fact that he has not passed all the departmental examinations conducted by the Tamil Nadu Public Service Commission under the new pattern, the Personal Assistant (development) to the Collector, Sivagangai has addressed the petitioner informing that the probation of the petitioner could be declared only after he gets through all the departmental tests prescribed under the new pattern vide letter, dated 13.10.2021. Assailing the said letter, the petitioner has filed this writ petition claiming to direct the respondent to declare his probation in the cadre of Junior



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Assistant with effect from 01.06.2021 with all service and monetary benefits considering the fact that he has already passed all the departmental examinations as early as during the year 2010 and 2011 under the old pattern. Reiterating that the petitioner has joined in the post of Junior Assistant only on 01.06.2019 i.e., after the date of issuance of G.O.Ms.No.33, Personnel and Administrative Reforms Department, dated 02.03.2017, the learned Special Government Pleader submitted that supplanting the departmental tests prescribed under the new pattern and claiming to declare his probation as completed is not at all maintainable in law and pressed for dismissal of the writ petition.

6. Heard the learned counsels on either side and anxiously and carefully perused the materials available on record.

7. The short question which has to be decided in the case in hand is that as to whether the petitioner who was promoted to the post of Junior Assistant vide proceedings, dated 05.10.2019 who has joined in the post on 01.06.2019 should pass all the departmental tests under the new pattern introduced vide G.O.Ms.No.33, dated 02.03.2017 despite passing all the departmental



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examinations under the old pattern as early as during the years 2010 and 2011?.

After getting approval of the Tamil Nadu Public Service Commission, the Government of Tamil Nadu in G.O.Ms.No.33, Personal and Administrative Reforms Department, dated 02.03.2017, directed that the departmental tests under revised syllabus/scheme/pattern of examinations shall be conducted as per the notification appended in the said Government Order. Following which, the Director of Rural Development and Panchayat Raj has given clarification in letter, dated 29.10.2017, that the new pattern of departmental examinations has to be implemented with effect from December 2017, based on the revision of revised syllabus/scheme/pattern of examinations. The petitioner had passed all the departmental examinations under the old pattern during the years 2010 and 2011 completed the civil service training at Bhavanisagar during the period 09.12.2019 to 28.01.2020, completed 37 days of Bhavanisagar training. He also cleared all the 5 examinations and his results were declared on 19.02.2020. Service in the cadre of Junior Assistant was regularized vide proceedings, dated 05.10.2019 with effect from 01.06.2019. The contention of the respondent is that though he had passed the departmental examinations under the old pattern as early as during 2010 and 2011, his service in the cadre of Junior Assistant could be regularized only with effect from 01.06.2016 i.e., very much after the



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date of issuance of G.O.Ms.No.33, dated 02.03.2017. Rule 32 of the Tamil Nadu Ministerial Service Rules deals with probation and the same reads as follows:

“Rule 32 (a) (1) 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.”

8. Annexure 5 referred to in Rule 34 of the Tamil Nadu Ministerial Service Rules prescribes the tests to be passed, training to be undergone or other qualifications to be acquired by persons appointed to the ministerial services. The Government of Tamil Nadu in G.O.Ms.No.33, dated 02.03.2017 has introduced revised syllabus/scheme/pattern of examinations for the departmental tests. Though revised syllabus for departmental tests has been introduced as per the notification appended in G.O.Ms.No.33, dated 02.03.2017, nothing as to the implementation of department tests under the new pattern and the date of implementation of the same has been indicated therein. Unless and until suitable amendments are carried out in the Tamil Nadu Ministerial Services Rules to give effect to the revised syllabus for the departmental tests in G.O.Ms.No.33, dated 02.03.2017, the revised



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syllabus/scheme/pattern of examinations for the departmental tests cannot be given effect to. Time and again several Courts have repeatedly held that only law could be made applicable retrospectively, but at the same time, administrative/executive order in absence of any legislative competence cannot be made applicable with retrospective effect. The Hon'ble Supreme Court in ***Bhart Sanchar Nigam Ltd. & others vs. Tata Communications Ltd***, reported in **2022 SCC online 1280** has relevantly observed as follows:

“30. The power to make retrospective legations enables the Legislature to obliterate an amending Act completely and restore the law as it existed before the amending Act, but at the same time, administrative/executive orders or circulars, as the case may be, in the absence of any legislative competence cannot be made applicable with retrospective effect. Only law could be made retrospectively if it was expressly provided by the Legislature in the Statute. Keeping in mind the aforestated principles of law on the subject, we are of the view that applicability of the circular dated 12th June, 2012 to be effective retrospectively from 1st April 2009, in revising the infrastructure charges, is not legally sustainable and to this extent, we are in agreement with the view expressed by the Tribunal under the impugned judgment.”



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9. The petitioner has passed all the departmental examinations as early as during the years 2010 and 2011. However, citing the fact that the petitioner was regularized in the cadre of Junior Assistant with effect from 01.06.2019, i.e., after the date of issuance of G.O.Ms.No.33, dated 02.03.2017, the respondent cannot negate that the petitioner had passed all the departmental examinations as early as during the years 2010 and 2011, the respondent cannot insist on qualifying the departmental examinations afresh under the new pattern relying upon G.O.Ms.No.33, dated 02.03.2017, thereby giving retrospective effect to the same. Only law could be made applicable retrospectively. But administrative/executive orders cannot be made applicable with retrospective effect. In the case in hand, unless and until the Tamil Nadu Ministerial Services Rules is amended suitably in Annexure V referred to in Rule 34 of the Tamil Nadu Ministerial Services Rules, the impugned communication made by the respondent cannot stand the scrutiny of law. Accordingly, the impugned proceedings dated, 13.10.2021 is hereby quashed and the respondent is consequently directed to declare the petitioner's probation in the cadre of Junior Assistant as completed successfully with effect from 01.06.2021 with all service and monetary benefits within a period of eight (8) weeks from the date of receipt of copy of this order.



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10. With the above said observations, this Writ Petition stands allowed.

No costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To

The District Collector,
Sivagangai District,
Sivagangai.



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L.VICTORIA GOWRI, J.

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