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W.A.(MD) No.610 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
15.03.2024	15.04.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.A.(MD) No.610 of 2022
and
C.M.P.(MD) No.5162 of 2022**

- 1.The State of Tamil Nadu
rep.by its Principal Secretary to Government
Rural Development and Panchayat Raj Department
Secretariat
Chennai-600 009
- 2.The Director
Rural Development and Panchayat Raj
Panagal Maligai
Saidapet
Chennai
- 3.The District Collector and Inspector of Panchayats
Thanjavur District
Thanjavur



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4. Personal Assistant to Collector (Development)
Thanjavur District Collectorate
Trichy Road
Thanjavur

5. The Block Development Officer
Thiruvidaimaruthur Panchayat Union Office
Thiruvidaimaruthur
Thanjavur District

... Appellants

-vs-

R.Gunasekaran

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 10.12.2021, passed in W.P.(MD) No.2610 of 2018, on the file of this Court.

For Appellants : Mr.N.Satheesh Kumar
Additional Government Pleader

For Respondent : Mr.B.Vinoth Kumar
for Mr.S.Raja



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J U D G M E N T

D.KRISHNAKUMAR, J.

This writ appeal is directed against the order of the learned Single Judge, dated 10.12.2021, allowing the writ petition filed by the respondent in W.P.(MD) No.2610 of 2018, on the ground that the appellants had not deputed him for the training programme in Civil Service Training Institute at Bhavanisagar during his two years probation period.

2. According to the appellants, the respondent / writ petitioner was initially appointed as Junior Assistant on 24.04.2006 on compassionate grounds, *vide* proceedings of the third appellant dated 17.04.2006 and he joined duty on 24.04.2006 in Sethubavachatram Panchayat Union. When an individual is appointed on compassionate grounds in the Ministerial Service, after regularization service alone, his probation will be declared. Whereas, when an individual is appointed in Ministerial Service through direct recruitment, his probation will be first declared and thereafter only, his service will be regularized. However, in the case on hand, since the respondent had not produced the relevant certificates in due time, his service was belatedly



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regularized *vide* G.O.(Pa) No.10, Rural Development and Panchayat Raj (E3) Department, dated 07.01.2016. Thereafter, he was deputed to undergo the foundation training programme in the Civil Service Training Institute, Bhavanisagar and he underwent the training programme from 05.02.2016 to 23.03.2016. However, he did not complete the training programme, as he failed in the Service Procedure Test. Subsequently, he passed in the said test on 23.05.2016. Hence, on completion of training programme at the Bhavanisagar Training Institute in the second attempt, the respondent's probation was declared with effect from the afternoon of 24.05.2016 *vide* G.O. (1D) No.105, Rural Development and Panchayat Raj (E7) Department, dated 07.03.2017.

3. As per FR 26(a)(2) of the Fundamental Rules of the Government of Tamil Nadu, in cases where the passing of an examination or test confers on a Government servant, the title to any right, benefit or concession, such title should be deemed to have accrued on the day following the last day of the examination or test which he passed. In cases where the examination or test can be passed in installments, the title to the right, benefit or concession will be deemed to have accrued on the day following the last day of the



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examination in the subject or subjects in which he has passed. Therefore, the probation of the respondent was declared on the date of passing the exams conducted in the foundation training in his second attempt. Hence, according to the appellants, the order passed by the learned Single Judge is totally misconceived and there is no delay on the part of the appellants in deputing the respondent for training programme. Hence, there is no error or illegality in the decision taken by the appellants.

4. Learned counsel appearing for the respondent made an attempt to justify his stand that the respondent is entitled for declaration of probation on completion of two years period from the date of initial appointment and he has completed the Departmental Tests on 27.12.2009 and hence, the respondent is entitled for declaration of probation with effect from 28.12.2009 (i.e.the date of completion of probation period of two years and passing the departmental tests). According to the respondent, he was deputed for the training programme only in the month of February, 2016 and the delay in deputing him for the training programme is only on the part of the appellants and not on the part of the respondent. Therefore, there is no error or illegality in the impugned order passed by the learned Single Judge.



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5. Heard the learned Additional Government Pleader for appellants and the learned counsel for the respondent and carefully perused the materials available on record.

6. It is an admitted fact that the respondent was appointed on 17.04.2006 on compassionate grounds and he joined duty on 24.04.2006 as Junior Assistant in Sethubavachatram Panchayat Union. The claim of the respondent is that as per Rule 32(a)(i) of the Tamil Nadu Ministerial Service Rules, every person appointed shall be on probation for a total period of two years on duty within a continuous period of three years. This was not done in his case. However, according to the learned Additional Government Pleader appearing for the appellants, when the candidate is appointed in the Ministerial Service by direct recruitment, their service will be regularized after his probation is declared. Whereas, when the candidate is appointed in the Ministerial Service on compassionate grounds, their service will be regularized first and thereafter, their probation will be declared. Therefore, Rule 32(a)(i) of the Tamil Nadu Ministerial Service Rules is applicable only to the direct recruitments and since the respondent was appointed on compassionate



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grounds, FR 26(a)(2) of the Fundamental Rules of the Government of Tamil Nadu alone will apply to the respondent's case.

7. At this juncture, it would be relevant to refer Rule 32(a)(i) of the Tamil Nadu Ministerial Service Rules, which reads as follows:

“32.Probation:-

(a)(i)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.” (Emphasis supplied)

8. FR 26(a)(2) of the Fundamental Rules of the Government of Tamil Nadu reads as follows:

“In cases where the passing of an examination or test confers on a Government servant, the title to any right, benefit or concession, such title should be deemed to have accrued on the day following the last day of the examination or test which he passed. In cases where the examination or test can be passed in installments, the title to the right, benefit or concession will be deemed to have accrued on the day following the last day of the examination in the subject or subjects in which he has passed”



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9. A careful perusal of the above fundamental rules shows that for the Government servants, who have passed the foundation training test in the second attempt, probation should be declared on the date of passing the test conducted in the foundation training in installments. In other words, the date of declaration of probation will be on the date of passing the tests conducted in the foundation training programme during the second or third attempt as the case may be. In the case on hand, the respondent passed the Service Procedure Test only on 23.05.2016 and therefore, his probation was declared from the said date. Furthermore, since the respondent was appointed on compassionate grounds, after regularization of service, he was deputed to Bhavanisagar Training Programme and after completion of the training programme, his probation was declared. Therefore, the claim of the respondent that as per Rule 32(a)(i) of the Tamil Nadu Ministerial Service Rules, his probation must be declared within two years from the date of his initial appointment is unacceptable. Therefore, we are of the view that the said rule will not apply to the case of the respondent, who has been appointed on compassionate grounds, which is only a concession and it cannot be treated as a direct recruitment. Furthermore, the respondent has not placed



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any other provision in support of his contention that his probation is to be declared within two years from the date of his initial appointment. Hence, for these reasons, we are not inclined to accept the reasons given by the learned Single Judge in the impugned order and the writ appeal is, therefore, liable to the set aside.

10. Accordingly, this writ appeal stands allowed and the order dated 10.12.2021, passed in W.P.(MD) No.2610 of 2018, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.]

[R.V., J.]

15.04.2024

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To:

- 1.The Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
State of Tamil Nadu,
Secretariat, Chennai-600 009.



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- 2.The Director,
Rural Development and Panchayat Raj Department,
Panagal Building, Saidapet,
Chennai-600 015.
- 3.The District Collector,
Sivagangai District,
Sivagangai.
- 4.The Block Development Officer,
Kallal Panchayat Union,
Kallal, Sivagangai District.



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and
R.VIJAYAKUMAR, J.

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JUDGMENT
IN
W.A.(MD) No.610 of 2022
and
C.M.P.(MD) No.5162 of 2022

15.04.2024

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