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W.A.(MD)NO.789 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.01.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R. POORNIMA

W.A.(MD)No.789 of 2022

M.Muthumuniyandi

... Appellant / Petitioner

Vs.

1. The Director,
Directorate of Social Welfare Department,
Panagal Building,
Chennai – 600 015.

2. The Additional Director,
Social Welfare Department,
Panagal Building,
Chennai – 600 015.

3. The District Social Welfare Officer,
Virudhunagar District,
Virudhunagar.

... Respondents / Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent, to allow the writ appeal and set aside the order dated 11.03.2022 passed by the learned single Judge in W.P.(MD)No.24017 of 2019.

For Appellant : Mr.J.Lawrance

For Respondents : Mr.M.Siddarthan,
Additional Government Pleader.

* * *

**J U D G M E N T**

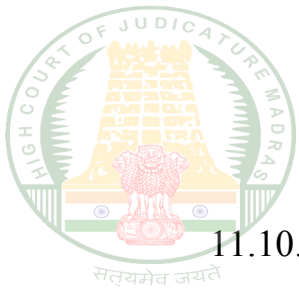
(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

This intra-court appeal is directed against the order dated 11.03.2022 made in W.P.(MD)No.24017 of 2019 filed by the appellant herein.

2. By the impugned order, the writ petition filed by the appellant was dismissed.

3. The appellant herein was appointed as surveyor in the Survey Department, originally. Later, he joined as Junior Assistant in Social Welfare Department in the year 1996. He was promoted to the post of Assistant in the year 2006. He was further promoted to the post of Industrial Co-operative Supervisor vide order dated 21.09.2016. The appellant retired from service in the year 2020 also.

4. Vide proceedings dated 13.02.2019, the Additional Director of Social Welfare Department, Chennai regularised the appellant's service in the post of Industrial Co-operative Supervisor and also declared his probation with effect from 23.09.2017. Vide order dated



11.10.2019, the Additional Director of Social Welfare Department cancelled the proceedings dated 13.02.2019 on the ground that the appellant / writ petitioner herein did not pass Accountancy Test. Challenging the said cancellation order dated 11.10.2019, the appellant filed W.P.(MD)No.24017 of 2019. The writ petition was dismissed on 11.03.2022 in the following directions:-

“4.The fact remains that the petitioner was initially appointed in the Survey Department and subsequently, absorbed in the department of Social Welfare. As far as promotion to the post of Industrial Co-operative Supervisor is concerned, the learned Special Government Pleader relying on his counter stated that the petitioner was given temporary promotion subject to the condition that he should pass Account Test for Subordinate Officers Part-II, before completion of probation. In view of the fact the promotion was temporarily granted to the petitioner and he has not passed the Account Test, the probation itself was cancelled. As per the Special Rules, the petitioner has to pass Account Test for Subordinate Officers Part-II, during the probation period.

5.In the present case, promotion to the post of Industrial Cooperative Supervisor was issued in proceedings dated 21.09.2016 subject to the condition that the petitioner should pass the requisite departmental



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test during the probation period. Admittedly, the petitioner has not passed the test and therefore, the probation declared was cancelled by the department and this Court do not find any infirmity in respect of the order passed, as the qualification is mandatory as per the rules.”

5. The question that calls for consideration in this writ appeal is whether the learned single Judge was justified in dismissing the writ petition.

6. It is true that G.O.Ms.No.253 Social Welfare and Nutritious Meal Programme Department dated 28.10.1996 mandates that every person appointed to the post of Industrial Co-operative Supervisor should pass Accountancy Test for subordinate officers Part-I and Part-II. The appellant had attempted to pass the said test on as many as five occasions. The stand of the petitioner / appellant is that since he crossed the age of 53 and he made five attempts to pass the test, he expected that he may be exempted from passing the test. The stand of the learned Additional Government Pleader is that a person who is working as subordinate servant is not entitled to such exemption.



7. Be that as it may, it is not in dispute that vide communication dated 27.11.2017, the Director of Social Welfare Department called upon the District Social Officer, Virudhunagar to send proposal for granting exemption in favour of the appellant from passing the Accountancy Test.

8. The learned counsel appearing for the appellant submits that on 26.06.2018, such a proposal was sent to the Directorate of Social Welfare Department. We do not want to go into the merits of the matter. It is beyond dispute that before passing the cancellation order dated 11.10.2019, the writ petitioner / appellant herein was not put on notice. Vide order dated 13.02.2019, the appellant's services had been regularised and probation also had been declared. Obviously, the cancellation order dated 11.10.2019 has adverse civil consequence on the appellant's services. The appellant was not put on notice before passing the same. The appellant in that event, could have called upon the authority to consider the proposal of the District Social Welfare Officer, Virudhunagar for exemption. On this sole ground we are inclined to interfere with the order impugned in this writ petition. Since this aspect of the matter was not taken note of by the learned single Judge, we are



constrained to set aside the same. This writ appeal stands allowed. The matter is remitted to the file of the second respondent for issuing notice to the appellant and passing order afresh. Before doing so, we direct the second respondent to consider the proposal of the District Social Welfare Officer, Virudhunagar submitted vide proceedings dated 26.06.2018 which is 4th reference cited in the proceedings sated 13.02.2019. This writ appeal is allowed accordingly. No costs.

(G.R.SWAMINATHAN, J.) & (R. POORNIMA, J.)
21st January 2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU

To:

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7

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