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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.06.2023
Pronounced on	12.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.14007 of 2022
and
W.M.P.No.13258 of 2022

Smruti Ranjan Pradhan

...Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Additional Chief Secretary
to Government,
Department of Planning, Development
& Special Initiatives,
Secretariat,
Fort St. George,
Chennai - 600 009.

2.The Commissioner,
Department of Economics and Statistics,
DMS Complex,
Teynampet,
Chennai-600 006.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records in connection with the impugned G.O.Ms No.67 dated 24.05.2022 issued by the first respondent and the consequential proceedings bearing



Ref.No.11188/B1/2018 dated 26.05.2022 issued by the second respondent, quash the same and reinstate him in service and direct the first and second respondents to extend the period of probation as available under Section 33 and 31(4) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

For Petitioner : Mr.V.Prakash, Sr. Counsel
for Mr.K.Krishnamoorthy

For Respondents : Mr.S.Prabhakaran, GA

ORDER

The petitioner herein, was successfully selected to the post of Assistant Director in the competitive examinations conducted by the Tamil Nadu Public Service Commission (TNPSC) for the vacancies during the year 2000-2014, pursuant to the notification issued on 10.01.2013. He was appointed and initially posted in the Department of Economics and Statistics, Chennai on 28.02.2018 and subsequently transferred to other departments. The petitioner was placed under probation.

1.1. While on deputation in the Commercial Taxes Department, Chennai the impugned order dated 26.05.2022 was issued, discharging him from his services for the reason that the petitioner did not pass the



Second Class Language (Full) Test, within a period of two years. As per the order dated 24.05.2022, the first respondent herein had claimed that there is no provision for extension of probation to cases where the Government servants have failed to acquire linguistic qualification. Challenging the orders of the first and second respondent dated 24.05.2022 & 26.05.2022 respectively, the present Writ Petition has been filed.

2. Heard Mr.V.Prakash, learned Senior counsel for the petitioner and Mr.S.Prabhakaran, learned Government Advocate appearing for the respondents.

3. Pending this Writ Petition, the petitioner was permitted to attend the Tamil Test through interim orders dated 03.06.2022. In compliance of the order, the petitioner had also participated in the Second Class Language (Full) Test on 11.06.2022 and had successfully passed the same.

4. Under Section 33(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 [hereinafter referred to as "Act"], the Appointing Authority may extend the probation period of a probationer



falling under Section 31 or 32, in order to enable him to acquire the special qualifications or pass the prescribed tests to enable him to decide whether the probationer is suitable for full membership or not. Section 31(1)(ii) of the Act empowers the Appointing Authority at its discretion, to extend the period of probation of the probationer or terminate his probation or discharge him from his service, after giving him reasonable opportunities by showing cause for his discharge. Sub section 31(4) prescribes a maximum period of five years upto which the Government servants' probation shall be extended and in cases of those who do not acquire the said qualification within a maximum period of five years, his probation shall be terminated.

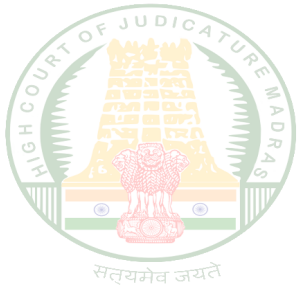
5. In the present case, the petitioner was kept in probation on 28.02.2018 for a period of two years. His probation was not extended further through the impugned order dated 24.05.2022, on the ground that the had failed to acquire the linguistic qualification and by stating that no extension of probation is specified to acquire linguistic qualification and therefore was discharged from service as per Section 21(2) of the Act. Though Section 31(4) provides for extension of probation of a Government Servant to a maximum period of five years, the petitioner was discharged from service within a period of five years.



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6. The learned Senior counsel for the petitioner had produced the copies of various Government Orders, wherein the Government had invoked Rule 12(A) and 26(b) of the Tamil Nadu State and Sub ordinate Service Rules [hereinafter referred to as "Rules"] and had extended the period of probation over and above four years and therefore submitted that discharging the petitioner within a maximum period of five years, is discriminatory. The learned Government Advocate, however would place reliance on the averments in the counter affidavit and submit that, since the petitioner had completed three years of service on 28.02.2021 and had not passed the Account Test and Second Class Language (Full) Test within the stipulated period, there is no infirmity in the impugned order.

7. In view of the Section 31(1)(ii), 31(4) and Section 32 of the Act, the requirement of passing the departmental tests and language test within the probation period of two years, is only directory in nature and not mandatory, since the statute empowers the Appointing Authority to extend the probation period to a maximum period of five years, to enable the Government Servant to successfully complete such tests. However, such a probationer may not be entitled to seek for further extension of probation after the maximum period of five years as prescribed under Section 31(4) of the Act.



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8. The Government in G.O.No.229 issued by the Handloom, Handicrafts, Textiles and Khadi (G1) Department dated 01.11.2012; G.O.No.276 issued by the Handloom, Handicrafts, Textiles and Khadi (G1) Department dated 17.12.2013; G.O.No.216 issued by the Higher Education Department, dated 02.08.2017; and G.O.No.41 issued by the Human Resources management Department dated 09.05.2023, have in similar circumstances, extended the probation period of the Government servants by invoking Rule 12 (A) and 26 (b) of the Rules in *pari materia* to the relevant provision of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. When the Government is empowered to extend the services for some of their employees and denying such extension to the petitioner herein, would be discriminatory.

9. The Hon'ble Supreme Court of India in the case of ***State of Uttar Pradesh Vs. Arvind Kumar Srivastava*** reported in **2015 (1) SCC 347**, has held that in service jurisprudence, when one set of employees are given a relief, the same requires to be extended to the others, who require such benefits and in the absence of the same, it would amount to discrimination. The relevant portion of the order reads as follows:-



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"22.1. Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently."

10. In view of the ratio laid down by the Hon'ble Supreme Court and by taking note of the fact that in the aforesaid four Government Orders in which a batch of Government employees have been extended the benefits of extension of probation over a period of four years to enable them to pass the required Second Class Language (Full) Test, denying the same benefits to the petitioner, would be discriminatory. Thus, when the petitioner had subsequently participated in the Second Class Language (Full) Test written examination on 11.06.2022 and completed the same, within a period of five years from 28.02.2018, this



Court is of the view that the impugned order dated 26.05.2022 discharging him from services, is discriminatory.

11. Furthermore, the reason assigned in the impugned order dated 24.05.2022 that no extension of probation is specified to acquire linguistic qualification under the Act also cannot be sustained, since Section 31(4) does not restrict the extension to linguistic qualification, but as referred to such extension for acquiring test qualifications, which would include linguistic qualification also.

12. In the light of the above findings, the impugned orders dated 24.05.2022 and 26.05.2022 of the first and second respondents respectively, are quashed. Consequently, there shall be a direction to the respondents herein to pass appropriate orders to reinstate the petitioner back into service, together with continuity of service and all other attendant benefits. Such orders shall be passed within a period of two weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

DP

12.07.2023

Index:Yes
Neutral Citation:Yes
Order : Speaking



To
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- 1.The Additional Chief Secretary
to Government,
State of Tamil Nadu,
Department of Planning, Development
& Special Initiatives,
Secretariat,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner,
Department of Economics and Statistics,
DMS Complex,
Teynampet,
Chennai-600 006.



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VERDICTUM.IN



W.P.No.14007 of 2022

M.S.RAMESH,J.

DP

ORDER MADE IN

W.P.No.14007 of 2022
and
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