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W.P.No.17689 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	14.12.2022
Pronounced on	20.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.17689 of 2018

C.N.Sreenivasamurthy

...Petitioner

-Vs-

1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Rural Development Department &
Panchayat Raj (E3),
Fort St. George, Chennai - 600 009.

2.The Director of Rural Development
Department & Panchayat Raj,
Panagal Building, Saidapet,
Chennai - 600 015.

3.The District Collector,
PD Section, Krishnagiri District,
Krishnagiri.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, , directing the respondents to declare the successful completion of the probation of the petitioner in the cadre of



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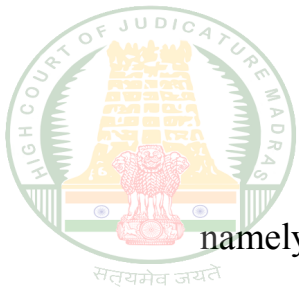
Junior Assistant from November 1993 and consequently grant retrospective promotion in the cadre of Assistant, Deputy Block Development Officer, Block Development Officer notionally with all attendant benefits in accordance with the order passed in W.P.No.14031 of 2011 dated 21.02.2014 of this Court and G.O.Ms.No.5 Rural Development and Panchayat Department dated 13.02.2015 of the first respondent.

For Petitioner : Mr.K.S.Viswanathan

For Respondents : Mr.S.Silambanan, AAG
assisted by Mr.T.Chezhiyan, AGP

ORDER

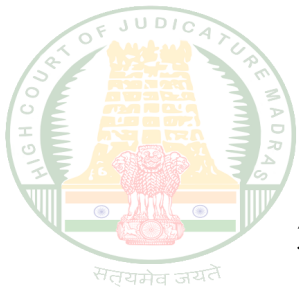
The petitioner was initially appointed as a Junior Assistant on 14.12.1987 on compassionate grounds, in the Rural Development Department. He had completed his foundation training course at Bhavanisagar Training Institute in the year 1981. The petitioner had also passed all the departmental examinations applicable for the post of Junior Assistant between May, 1990 and November, 1993. Thereafter, the petitioner had successfully completed the Tamil test on 23.12.1999. By an order dated 03.03.2005, the first respondent had regularized the services of the petitioner from 23.12.1999, the date on which he acquired the linguistic qualification,



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namely passing of the Tamil test, which was succeeded by a consequential order dated 25.01.2010 by the third respondent.

2. Claiming regularization with effect from 14.12.1987 instead of 23.12.1999, the petitioner had filed a writ petition before this Court in W.P.No.14031 of 2011 and by an order dated 21.02.2014, this Court had set aside the earlier order of regularization dated 03.03.2005 and directed the third respondent to regularize the petitioner's service with effect from 14.12.1987. Accordingly, orders of regularization came to be passed by the first respondent herein, in G.O.(2D) No.5, Rural Development and Panchayat Department, dated 13.02.2015, regularizing his services with effect from the date of his original appointment, i.e. from 14.12.1987. However, the third respondent, in his order dated 20.05.2015, had declared the petitioner's probation in the cadre of Junior Assistant, with effect from 23.12.1999, which is the date on which the petitioner has passed the Tamil test. The petitioner now seeks for a direction to the respondents to declare the successful completion of the probation of the petitioner from November, 1993 onwards, when he had passed all the departmental tests, together with retrospective promotions.

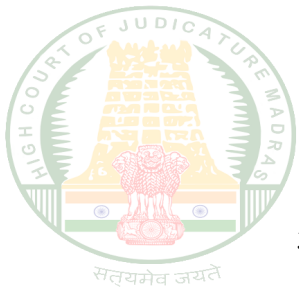


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3. The learned counsel for the petitioner placed reliance on the order passed by this Court in W.P.No.14031 of 2011 and submitted that the declaration of probation should have been made with effect from November, 1993, when he had completed the department tests, in accordance with Section 31(4) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

4. The learned Additional Advocate General, however, placed reliance on the averments in the counter affidavit and submitted that as per Rule 12(A)(b) of the Tamil Nadu State and Subordinate Service Rules, the petitioner is required to pass the language test within two years and under Section 31(4) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the maximum period upto which the period of probation of a Government servant can be extended so as to enable him to acquire the service qualification is five years, which the petitioner had not done. In this background, he sought for justifying the action of the respondents in declaring the petitioner's probation from the date of acquiring the linguistic qualification.



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5. When the first respondent herein had earlier issued G.O.Ms.No.18,

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Rural Development Department, dated 03.03.2005, regularizing the services of the petitioner from 23.12.1999, the petitioner claimed that he would be entitled for regularization of his services from 14.12.1987, in the cadre of Junior Assistant. This Court, by an order dated 21.02.2014, passed in W.P.No.14031 of 2011, had accepted the contention of the petitioner's claim and declared that the petitioner's service is liable to be regularized from the date of his initial appointment and not from the date of passing the Tamil test. While such declaration of the petitioner's entitlement with regard to regularization was made, this Court had also referred to an earlier decision of this Court, which dealt with the declaration of probation. The relevant portion of the order reads as follows:-

"11. Rule 12(A)(c) of the Tamil Nadu State and Subordinate Rules would state that no person shall be eligible for appointment to any service by direct recruitment, unless he has an adequate knowledge of official language, namely, Tamil. As per the explanation to the said Rule, a person shall be deemed to have adequate knowledge of Tamil, if he had passed Secondary School Leaving Certificate Public



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examination or its equivalent examination with Tamil as one of the languages. The petitioner herein has stated that his mother-tongue is Kannada and therefore, he was required to pass the language test. However, the Rule is for the purpose to enable the person appointed in the Tamil Nadu Government Service to execute his work without any hindrance with reference to language to be used in executing and discharging his official duties.

12. It is not the case of the respondent that on account of the petitioner having passed the Tamil Language Test only on 23.12.1999, there was any hindrance to the discharge of his official duties or he was unable to function effectively. Similar observation was made in W.P.No.25153 of 2010 in the order dated 07.01.2011. The petitioner therein had put 25 years and retired in October 2006. However, his retiral benefits was withheld as he had failed to clear Tamil language test during the period, during which he worked. Therefore, the said petitioner had filed the writ petition to regularise his services from the date of his appointment and exempting him from passing Tamil test so as to enable him to get the retiral benefits. In the said case, it was held that since the State has not taken



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any action against the petitioner for non-passing the Tamil test within 4 years as stipulated under Government order, but the petitioner was allowed to continue in service, exemption was deemed to have been granted from passing the Tamil Test and the Government had authority to relax the condition as special circumstance. Accordingly, the writ petition was allowed and the respondents therein were directed to pay the retiral benefits.

13. Therefore, it is clear that the qualification viz., passing the Tamil Language test could at best be considered as enabling qualification so that the Government employee can diligently carry out his official duties.

14. In the case of M.V.Pushpakaran, Union Overseer, Hosur Panchayat Union, approached the Government for declaration of his probation, which was not granted for the reason that he did not pass the II Class Language Test within four years from the date of his appointment. After taking into consideration the recommendations made by the Director of Rural Development and Panchayat Raj Department, vide G.O (D). No.519 dated 10.07.2008, the Government granted relaxation and declared the probation of the said



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Overseer from 12.08.1999.

15. Similarly in the case of one T.V.Nagaraj, the Government vide G.O.s.No.217 dated 24.09.2010, relaxed the provisions of Rule 12(A)(c) of the Tamil Nadu State and Subordinate Service Rules and sanctioned the monetary benefits.

16. Thus, from the above referred decision and in the light of the Government orders referred above, the petitioner is entitled to the relief sought for.

17. As pointed out earlier, the respondents have not stated that on account of the petitioner not acquiring Tamil Language test and worked in the Department till 23.12.1999 had in any manner jeopardized the official work or and that the petitioner was not able to discharge his duties efficiently. In such circumstances, the petitioner's service is liable to be regularised from the date of his initial appointment and not from the date of his passing Tamil test. Accordingly, the impugned order in G.O.Ms.No.18, Rural Development Department dated 03.03.2005 and the consequential orders passed by the first respondent dated 25.01.2010 are set aside insofar as it relates to the date of regularisation of the petitioner as 23.12.1999 and the respondents are directed to



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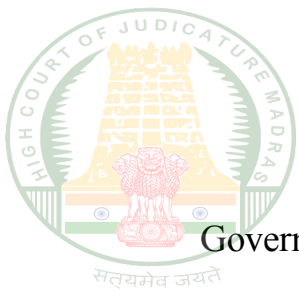


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consider the petitioner's case and regularise his service with effect from the date of his initial appointment dated 14.12.1987 within a period of three months from the date of receipt of a copy of this order."

6. This is not an isolated case where the Government had not exercised its powers of relaxation of the pre-qualification Rules for the purpose of declaration of probation to those employees who have belatedly passed the Tamil test or the departmental tests and have declared their probation, on completion of the departmental tests. One among these numerous cases is the case of M.V.Pushpakaran, which has been referred to in paragraph 14 of the aforesaid extract. In view of such relaxations granted by the Government, this Court is of the view that, the time stipulated for extension of the probation under Section 31(4) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, is not mandatory, but directory in nature.

7. Above all, this Court, in the petitioner's own case, has held in unambiguous terms as to the consequence of not passing the Tamil language test within the prescribed time to be non-detrimental to the interest of the employee. The same analogy would also apply to cases where the



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Government servants completes the departmental tests after give years, by
relaxing the period stipulated in Section 31(4) of the Act.

8. When the Government had chosen to implement the orders of this Court and had passed orders regularizing the petitioner's service from the date of his initial appointment, the mischief on the part of the third respondent in restricting the declaration of probation from the date on which the petitioner had passed the Tamil test, is opposed to the findings rendered by this Court in W.P.No.14031 of 2011.

9. In view of the unlawful and illegal declaration made, the petitioner claims to have lost his seniority and the consequential promotions which enabled his juniors to be promoted before him to the posts of Deputy Block Development Officer and Block Development Officer. In the light of the findings rendered by this Court in W.P.No.14031 of 2011, as well as in this order, the petitioner would be entitled for notional promotion to the aforesaid promotional posts, on par with his juniors.



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10. In the result, the order of the third respondent dated 20.05.2015, declaring the petitioner's period of probation with effect from 23.12.1999, is quashed. Consequently, there shall be a direction to the first respondent herein to forthwith pass orders, relaxing the requirement of Section 31(4) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, within a period of four weeks from the date of receipt of a copy of this order. Consequently, the third respondent shall pass orders, declaring the probation of the petitioner with effect from the date of passing of his department test in the month of November, 1993. The third respondent shall also pass orders, re-fixing the petitioner's seniority by taking into account his date of regularization as 14.12.1987 and his declaration of probation from the date of passing of the departmental test in the month of November, 1993 and thereby grant notional promotion to him for the posts of Deputy Block Development Officer and Block Development Officer, on par with his juniors. Such orders shall be passed atleast within a period of four weeks therefrom.

11. With the above directions, the writ petition stands allowed. No costs.



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Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

Speaking order/Non-speaking order
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M.S.RAMESH,J.

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To

- 1.The Secretary to Government,
Rural Development Department &
Panchayat Raj (E3),
Fort St. George, Chennai - 600 009.
- 2.The Director of Rural Development
Department & Panchayat Raj,
Panagal Building, Saidapet,
Chennai - 600 015.
- 3.The District Collector,
PD Section, Krishnagiri District,
Krishnagiri.

**Pre-delivery order made in
W.P.No.17689 of 2018**

20.01.2023

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