

K.Shankar Vs. Director of Public Health and Preventive Medicine

K.Shankar Vs. Director of Public Health and Preventive Medicine

SooperKanoon Citation : sooperkanoon.com/965085

Court : Chennai

Decided On : Feb-22-2013

Judge : Vinod K.Sharma

Appellant : K.Shankar

Respondent : Director of Public Health and Preventive Medicine

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

22. 2.2013 CORAM: THE HONOURABLE MR.JUSTICE VINOD K.SHARMA
W.P.Nos.9654 to 9656 of 2009 K.Shankar .. Petitioner in WP.9654/2009
N.Subramanian .. Petitioner in WP.9655/2009 P.Junayagan .. Petitioner in
WP.9656/2009 Vs.

1. The Director of Public Health and Preventive Medicine Chenna

006. .. 1st Respondent in all WPs.

2. The Deputy Director of Health Services Tiruvallur. .. 2nd Respondent in
WP.9654/2009

3. The Deputy Director of Health Services Thanjavur. .. 2nd Respondent in
WP.9655/2009

4. The Deputy Director of Health Services Perambalur. .. 3rd Respondent in WP.9655/2009

5. The Deputy Director of Health Services Villupuram. .. 2nd Respondent in WP.9656/2009 PRAYER in W.P.No.9654 of 2009: Petition under Article 226 of the Constitution of India for issue of a writ of Certiorarified Mandamus to call for the records on the file of the second respondent relating to the order issued in Na.Ka.No.147-E1-09, dated 9.1.2009, to quash the same and to consequently direct the respondents to restore the declaration of probation of the petitioner and to include the name of the petitioner in the appropriate place in the panel for promotion to the post of Assistant for the year 2009-2010 and to promote him to the post of Assistant with all consequential service and monetary benefits. PRAYER in W.P.No.9655 of 2009: Petition under Article 226 of the Constitution of India for issue of a writ of Certiorarified Mandamus to call for the records on the file of the second respondent relating to the order issued in Mu.Mu.No.2180/A1/09, dated 8.4.2009, to quash the same and to consequently direct the respondents to restore the declaration of probation of the petitioner and to include the name of the petitioner in the appropriate place in the panel for promotion to the post of Assistant for the year 2009-2010 and to promote him to the post of Assistant with all consequential service and monetary benefits. PRAYER in W.P.No.9656 of 2009: Petition under Article 226 of the Constitution of India for issue of a writ of Certiorarified Mandamus to call for the records on the file of the second respondent relating to the order issued in R.No.548/A1/2007, dated 16.2.2009, to quash the same and to consequently direct the respondents to restore the declaration of probation of the petitioner and to include the name of the petitioner in the appropriate place in the panel for promotion to the post of Assistant for the year 2009-2010 and to promote him to the post of Assistant with all consequential service and monetary benefits. For Petitioners : Mr.S.Ramesh For Respondents : Mr.R.Ravichandran Additional Government Pleader COMMON ORDER The petitioners in all these writ petitions pray for issuance of a writ in the nature of Certiorari, to quash the orders passed by the second respondent in all the writ petitions in cancelling the orders declaring the petitioners to have successfully completed their probation period successfully.

2. The petitioner in W.P.No.9654 of 2009 was appointed as Junior Assistant on compassionate ground in the year 1998, whereas the petitioners in the other two writ petitions were appointed in the year 1999 also on compassionate ground. After joining service, the petitioners in all the three writ petitions passed Account Test Subordinate Officer Part I and District Office Manual Test, apart from Medical Board Test.

3. The services of all the three petitioners were regularized since the dates of their initial appointment. The petitioners were also declared to have cleared their probation period successfully and, thus were deemed to be regular employees of the department right from the date of their initial appointment in view of the regularization of their services and orders declaring them to have cleared their probation.

4. It is not disputed that the maximum period of probation prescribed under the rules is only five years, therefore on expiry of five years of service, an employee is deemed to be a confirmed employee, even in the absence of any order declaring the employee to have completed the probation period successfully.

5. The case of the petitioners is that when the panel was to be prepared for further promotion to the post of Assistant, the impugned orders were passed cancelling the orders declaring the petitioners to have cleared the probation period, so as to deny them the right of consideration.

6. The petitioners have challenged the impugned orders, on the ground that the impugned orders, though affecting the civil rights of the petitioners, have been passed without issuing show cause notice and, therefore, are not sustainable in law.

7. The impugned orders are also challenged on the ground of colourable exercise of power and being outcome of non application of mind, as in the impugned order under challenge in W.P.No.9654 of 2009 no reason whatsoever has been given for cancelling the order declaring the probation to have been cleared, whereas in the other two writ petitions, namely W.P.Nos.9655 and 9656 of 2009, the reason given is that the cases of the petitioners herein were referred to the higher

authority for relaxation and the orders from the higher authority are still awaited.

8. On consideration, I find force in the contentions raised by the learned counsel for the petitioners. There is no justification whatsoever with the respondents to have gone into the question of clearance of probation for the simple reason that on expiry of five years of service, the petitioners would be deemed to have cleared the probation period. The impugned orders therefore, on the face of it, are arbitrary and violative of Article 14 of the Constitution of India and amounts to colourable exercise of powers, as the respondents have given no reason for cancelling the declaration of probation, nor any notice was issued to the petitioners calling them to show cause as to why the orders declaring the petitioners to have cleared probation was required to be recalled or reconsidered. The reason given in the case of Thiru P.Shankar also has no relation with clearance of probation nor it is disclosed what relaxation was asked for and was awaited.

9. For the reasons stated, all the three writ petitions are allowed. The impugned orders cancelling the orders declaring the petitioners' to have cleared the probation are quashed.

10. The impugned orders otherwise appear to have been passed with some ulterior motive to defeat the right of the petitioners to be considered for further promotion. The petitioners therefore are entitled to costs of this writ which are assessed at Rs.10,000/- (Rupees Ten Thousand only) in each of the writ petitions. Consequently, M.P.No.1 of 2009 (3 Petitions) and M.P.No.2 of 2009 (3 Petitions) are closed. sasi To:

1. The Director of Public Health and Preventive Medicine Chennai

006.

2. The Deputy Director of Health Services Tiruvallur.

3. The Deputy Director of Health Services Thanjavur.

4. The Deputy Director of Health Services Perambalur.

5. The Deputy Director of Health Services Villupuram

