



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.09.2023

Pronounced on : 29.09.2023

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.Nos.1442, 1451 & 1465 of 2023
and W.M.P.Nos.1544, 1557, 1546, 1561 & 1530 of 2023

S.Nagajothi

.. Petitioner in all cases

Versus

1.State of Tamil Nadu

Represented by The Additional Chief Secretary/
Commissioner of Revenue Administration
Commissionerate of Revenue Administration
Disaster Management, Ezhilagam
Chennai – 600 005

2.The Additional Chief Secretary to Government
Revenue and Disaster Management Department
Secretariat, Chennai – 600 009

3.The Principal Secretary to Government
Human Resource Management Department
Secretariat, Chennai – 600 009

4.The Principal Secretary to Government
Social Welfare and Women Empowerment Department
Secretariat, Chennai – 600 009

5.The District Collector
Chennai District
Singaravelar Maaligai-Rajaji Salai
Chennai – 1

.. Respondents



Prayer in W.P.No.1442 of 2023: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for records relating to Proceeding No. A1/12495/2021 dated 9.05.2022 of the 5th respondent District collector-Chennai herein and quash the same as arbitrary, illegal and ultra vires of the Constitution of India and consequently direct the 1st and 5th respondents herein to declare the date of completion of probation period of the petitioner in the cadre of Deputy Tahsildar as 06.04.2021.

Prayer in W.P.No.1451 of 2023: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for records relating to Proceeding No.A1/PDL/289/2022 dated 09.05.2022 of the 5th respondent District Collector, Chennai herein and quash the same as arbitrary illegal and ultra-vires of the Constitution of India and consequently direct the 1st and 5th respondents herein include the name of the petitioner in the eligible Deputy Tahsildars fit for promotion as Tahsildar for the panel year 2021 with appropriate seniority and appoint the petitioner as Tahsildar forthwith.

Prayer in W.P.No.1465 of 2023: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for records relating to Proceeding No.A1/15537/ 2022 dated 18.10.2022 of the 5th respondent District collector-Chennai herein and quash the same as arbitrary illegal and ultra Vires of the constitution of India.

In all cases

For Petitioners	: Mr.P.T.Perumal
For Respondents	: Mr.M.Alagu Goutham Government Advocate

COMMON ORDER

The main grievance of the writ petitioner is that her period of maternity leave during probation period should be treated as duty period. Therefore, her



seniority should be restored and seniority list published by the respondent should be quashed and rejection order passed by the respondent should be set aside.

2. The petitioner is originally appointed as Assistant (DRA) in the Tiruvallur District on 03.01.2023. In that cadre, she has completed the probation on 09.02.2016. After reorganisation of Chennai district, the petitioner was transferred to Chennai district, she joined the duty on 09.08.2018. The petitioner was promoted as Deputy Tahsildar in Chennai district from 07.01.2019 and she was in the period of probation for the period of two years. However, during the probation period, she availed the maternity leave for a period of nine months from 07.03.2020 to 01.12.2020 as per the G.O.Ms.No.154, Personnel and Administrative Reforms (FR-II) Department dated 05.12.2017. After the period of maternity leave, the petitioner's service has been regularised and her probation was declared in the cadre of Deputy Tahsildar on 06.01.2022. Hence, it is the grievance of the writ petitioner that her leave period from 07.03.2020 to 01.12.2020 was not treated as full service period for the purpose of declaration of completion of full service.



3. According to the petitioner, if the said period is counted as duty, her probation would be completed on 06.04.2021. The crucial date of promotion for the post of Deputy Tahsildar is 30.06.2021. The panel was prepared by the fifth respondent on 09.05.2022. However, the petitioner's name has been omitted. Thereafter, all her juniors have been promoted as Tahsildars based upon the seniority panel. Hence, the impugned order has been challenged.

4. The learned counsel appearing for the petitioner would submit that the maternity leave should be considered as duty period, wherein, the petitioner is entitled to avail the maternity leave with full pay protection and the same should be treated as duty period. In this regard, he relied upon the Order of this Court in W.P.MD.No.8657 of 2016 dated 06.04.2022 and W.P.No.7699 of 2018 dated 08.09.2022.

5. It is also submitted that even the Indian Administrative Service (Probation) Rules, 1954, an amendment has been brought, wherein, it is clearly stipulated the period of absence from training by probationers will be treated as Extra Ordinary Leave. However, the same will not affect the seniority of the probationers in the Indian Administrative Service. It is the



further contention that Kerala State and Subordinate Services Rules, 1958, an amendment has been brought, wherein, it is clearly stated that when a female member is on maternity leave during her probation period, the leave period should be treated as on duty during the probation. However, no such Rule is specifically applicable in Tamil Nadu. Hence, it is the contention that even in the absence of any Rule when women employee are given the benefit under the Scheme of the Government to extend the maternity leave period should be treated as on duty and probation should not be extended to such candidates. Therefore, it is the contention that the petitioner should be entitled to restoration of seniority and her period of leave during probation should be treated as duty. Therefore, she is also entitled to restoration of the seniority and seeks to quash the panel.

6. In the counter, it is the stand of the respondents that the petitioner's name was omitted in the list of Deputy Tahsildars for the year 2021 as the crucial date for promotion for the post of Tahsildar was on 30.06.2021. On that date, the petitioner was only a probationer. Further, it is the contention that as per Rule 8(a) of the Tamil Nadu Revenue Subordinate Service Rules, every person appointed as Deputy Tahsildar shall from the date on which he



joins duty, by on probation for a period of two years on duty within a continuous period of 3 years. As per Section 32 (2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 for the purpose of calculating the period of probation of a probationer, complete calendar months, irrespective of the number of days in each month, shall first be calculated and then the odd number of days calculated subsequently. Period of leave, if any, taken during the period of probation shall be excluded while calculating the period of probation and further it is stated that a person is appointed on probation in order to assess his suitability for absorption in the service to which he has been appointed. Probation is not, therefore, be treated as mere formality.

7. In the total period of 2 years, the individual was on leave for 270 days i.e., 9 months and even in the recent Government Order, the Government has further extended the maternity leave period from 9 months to 1 year. Hence, it is the contention that such leave period of absence cannot be treated as full service for declaration of probation.

8. Heard both sides and perused the materials placed on record. The entire issue is relating to the treating the maternity leave as duty period.



9. It is relevant to note that the scheme of maternity benefit is extended by the Policy of the Government. Rule 101 of Fundamental Rules which are as follows:

"FR.101. Rules regulating the grant of -

a) Maternity leave to female Government Servants, and

b) leave on account of ill-health to members of subordinate services whose duties expose them to special risk of accident or illness are given in the following instructions.

Instructions under Rule 101 (a)-Maternity leave.

A competent authority may grant maternity leave on full pay to permanent married Government servants and to non-permanent married women Government servants, appointed on regular capacity, for a period not exceeding 365 days, which may spread on the pre-confinement rest to post confinement recuperation at the option of the Government servant. Non-permanent married women Government servants, who are appointed in capacity and join duty after delivery shall also be granted maternity leave for the period of 365 days after deducting the number of days from the date of delivery to of joining in Government service (both days inclusive) for the post confinement recuperation

Non-permanent married women Government servants, who are appointed under emergency provisions of the relevant service rules should take for maternity purposes, med leave for which they may be eligible. If however, such a Government servant is not eligible for earned leave or if the leave to her credit is less than 365 days, maternity leave may be granted for a period not exceeding 365 days or for the period that falls short of 365 days, as the may be. Non-permanent mom women Government servants employed under the agency provisions



should have completed one year of continuous service including leave periods if any, to become eligible for the grant of maternity leave:

Provided that the maternity leave referred in (i) or (ii) above shall be granted to a married man Government servant with less than two surviving children:

Provided further that in the case of a woman Government servant with two surviving children born as twins in the first delivery, maternity leave shall be granted for one more delivery.

Explanation 1.- In the case of married women Government servants who are confined in the period of their leave, including extraordinary leave, the 365 days period referred to shall be reckoned only from the date of confinement.

Explanation 2 For the purpose of this instruction, the expression two surviving children shall not include adopted children.

Explanation 3 The Women Government Servants who proceeded on maternity leave prior to the 1/7/2021 and continued to be on that leave on or after that date shall also be eligible for maternity leave for a period not exceeding 365 days.?

[G.O.Ms.No.91, P & AR (FR-II) Dept. dt. 28-07-2020]

[G.O. Ms. No. 84, Human Resources Management Dept., dt. 23.8.2021.]"

Emphasis supplied

The above Rules deals with the maternity leave granting to female Government Servants. As per the above Rule, a competent authority may grant maternity leave on full pay to permanent married Government servants and to non-permanent married women Government servants, appointed on



regular capacity, for a period not exceeding 365 days, which may spread on the pre-confinement rest to post confinement recuperation at the option of the Government servant.

10. The above Rule makes it clear that maternity leave on full pay to female Government Servants. Now, it has to be seen whether such leave could be treated as duty period as per the existing Rules and Act. It is relevant to note that Section 2 (o) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 defines, duty, wherein, (i) to (iii) reads as follows:

- (o) "on duty" means a person as a member of service, -*
 - (i) When he is performing the duties of a post borne on the cadre of such service or is undergoing the probation, instruction or training prescribed for such service*
 - (ii) when he is on joining time; or*
 - (iii) when he is absent from duty during vacation or on authorised holidays or on casual leave taken in accordance with the instructions regulating such leave issued by the Government having been on duty immediately before and immediately after such absence;*

The above Rule makes it clear that the maternity leave does not come within the ambit of the duty. Section 2 (p) defines the probationer in service.



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11. Fundamental Rules 104 deals with the leave admissibility to the probationers, the same reads as follows:

"F.R. 104. During the period of probation or apprenticeship, Probationers and Apprentices are entitled to leave as admissible under the Instructions given below:

Instructions under Rule 104.

1. In these rules,—

(a) Probationer means a Government servant recruited with a view to substantive appointment to the cadre of a department on completion of his period of probation.

(b) Apprentice means a person deputed for training in a trade or business with a view to employment in Government service, who draws pay at monthly rates from Government during such training, but is not employed in or against substantive vacancy in the cadre of a department.

2. Leave may be granted to a probationer, who has not completed his period of probation, in accordance with the provisions of Instruction 2 under Rule 103 (a). If, however, the probationer has completed the period of his probation and is awaiting appointment as a full member of the service, he may be granted such leave as would be admissible to him if he held his post substantively otherwise than on probation. This rule does not apply to a probationer in the Basic Service."

Emphasis supplied

The above Rule makes it clear that only the leave permitted under

Fundamental Rule 103A and Instruction 2 can be granted.

12. As per the Tamil Nadu Leave Rules, 1933 and G.O.Ms.No. 111, Personnel and Administrative Reforms (F.R.II) Department dated 01.10.2020 which reads as follows:



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"1. Wherever a continuous period of duty is prescribed as probation in the service rules framed by the Tamil Nadu Government, leave taken by the probationer constitutes a break in the continuity of probation. "

Therefore, the above Rule makes it very clear that wherever a continuous period of duty is prescribed as probation in the Service Rules framed by the Tamil Nadu Government, leave taken by the probationer constitutes a break in the continuity of probation. In the event, the probationer is not able to complete the probation within prescribed period, the probation has to be extended in view of the existing Rule position.

13. Section 28 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 deals with date of commencement of Probation of persons first appointed temporarily. Section 32 (2) deals with probationer's suitability for full membership which would read as follows:

"(2) If the appointing authority decides that a probationer is suitable for such membership, it shall, as soon as possible, issue an order declaring the probationer to have satisfactorily completed his probation. If no such order is issued within six months from the date on which he is eligible for such declaration, the probationer shall be deemed to have satisfactorily completed his probation on the date of expiry of the prescribed or extended period of probation. A formal order declaring the completion of probation shall, however, be issued by the competent authority. In all cases in which serious



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charges are pending, and therefore, probation cannot be declared, an order to the effect that the question of declaration of probation cannot be considered till the charges are disposed of shall be issued by the competent authority within six months from the due date for completion of probation and the final order on probation shall be passed as early as possible and in any case within one month after the disposal of the charges or six months after the due date for completion of probation, whichever is later.

Explanation.— For the purpose of calculating the period of probation of a probationer, complete calendar months, irrespective of the number of days in each month, shall first be calculated and then the odd number of days calculated subsequently. Period of leave, if any, taken during the period of probation shall be excluded while calculating the period of probation.

Emphasis supplied

The above explanation makes it clear that for the purpose of calculating the period of probation of a probationer, complete calendar months, irrespective of the number of days in each month, shall first be calculated and then the odd number of days calculated subsequently. Period of leave, if any, taken during the period of probation shall be excluded while calculating the period of probation. From the above, it is very clear that any leave which does not fall within the ambit of duty as defined under the Act or under the Leave Rules, those leave should be excluded while calculating the period of probation.



14. Admittedly, the petitioner was placed in probation under the Tamil Nadu Revenue Subordinate Service Rules. As per Rule 8(a) of the Tamil Nadu Revenue Subordinate Service Rules, every person appointed as Deputy Tahsildar shall from the date on which he joins duty, be on probation for a period of two years on duty within a continuous period of 3 years. Such being the position, when the leave availed petitioner is excluded as per Section 32(2) explanation of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The petitioner's probation ought to be declared only when she has successfully completed the probation for a period of two years within a continuous period of 3 years

15. Therefore, this Court is of the view that the petitioner cannot seek total exemption from the probation. It is relevant to note that the purpose of probation is to assess and judge the capacity of the employee or otherwise to find out the suitability to continue in the same position. Therefore, two years time in that category is required for the proper assessment of the Government servants by the head of the department or the employer. In this regard, the Division Bench of this Court in W.A.No.3097 of 2019 dated 04.02.2021, wherein, in paragraph 12, has held as follows:



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"12. From the aforesaid submissions of the counsel for both sides, it is evident that before declaration of probation on 14.12.2009, the first respondent/writ petitioner had availed various leave including earned leave and earned leave with or without medical certificate etc., It is in those circumstances, the probation of the first respondent/writ petitioner was postponed proportionate to the number of days taken by her as leave on various accounts. It is needless to mention that declaration of probation is subject to the satisfactory performance of the employee in discharge of his/her duties. In this context, it is useful to refer a judgment of this Court reported in 2019 (2) Writ LR 745 = 2020 (1) CTC 138 (Tmt.M.Priya Vs. The Registrar General, The High Court of Judicature at Madras, High Court Buildings, Chennai - 600 104, Madras and others), wherein, the Division Bench (in which one of us, R.Subbiah, J was a member), held as follows:

"33.A person who is appointed to a government service will be on probation for a period of two years. The entitlement of such person appointed to get all the benefits attached to the post such as annual increment, promotion etc., depends first on getting his probation declared. In other words, such appointment will be construed as temporary in nature and only if probation is declared, the appointee will get entitled to all the service benefits attached to the post. The regularisation of the temporary service is technically termed as declaration of probation. During the period of probation, the appointing authority is bound to assess, evaluate and adjudge the potentiality of such employee to continue in service, his basic understanding to the work assigned to him, the efficiency with which he could complete the tasks assigned, the manner in which he co-ordinates with other employees to get the work done, the behaviour towards the superiors, punctuality in attending the office etc, The two years probation period from the date of initial appointment will be a testing time for the government servant, within which time, he has to prove his potentiality and capability to discharge his work efficiently and honestly and thereby inspire the confidence of the employer. In



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the absence of possession of the above qualities during the period of probation, the appointing authority cannot be expected to mechanically declare the probation of a government servant on completion of two years. Therefore, before declaring the probation, the appointing authority will normally get the feed back relating to the employee from his immediate superiors, the conduct of the employee during the discharge of the work and thereafter form an opinion as regards the suitability of the employee to continue in service. The potentiality or suitability of the employee appointed to a government service is an important factor for declaration of probation. For assessing the same, the appointing authority is given a discretionary power. It is sufficient for the appointing authority to merely say that the performance of an employee during the course of his probation is satisfactory or not satisfactory and the appointing authority need not elaborate reasons for coming to such conclusion. On the contrary, if any allegation of misconduct is made, during the period of probation, then the appointing authority, even before declaring the probation, is bound to conduct a disciplinary proceeding to prove the charges levelled against the employee."

16. Therefore, this Court is of the view that placing the person in probation is not a mere formality and she has to undergo the various tests also during the probation. Only on successful completion of probation, he will be observed and regularised for the permanent post. Such being the position, it cannot be termed that probation period is mere formality. Therefore, merely because the benefit is extended in the form of maternity leave, one cannot take advantage of that benefit to seek exemption from undergoing the mandatory period of probation. If such contentions are allowed, the very purpose of placing the Government servants on probation to assess the



suitability to substantive vacancies will get defeated.

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17. Much emphasis was placed in W.P.No.19426 of 2016, wherein, the learned Single Judge directed to declare the period of probation on par with the immediate junior. It is relevant to note that Rule position was not the subject matter of the issue in the above writ petition. Therefore, I am unable to follow the above Order.

18. Similarly, in the case of W.P.(MD).No.8657 of 2016 dated 06.04.2022, the learned Single Judge has directed the respondents to consider granting the notional promotion by taking the maternity period and grant the petitioner promotion. Though the learned Judge has followed the direction of the Hon'ble Apex Court in the case of *Municipal Corporation of Delhi Vs. Female Workers (Muster Roll)* reported in (2000) 3 SCC 224, para 37 and 38, this Court has followed the guidelines of the Article 11 of Convention of the United Nations and directed to comply the Orders of the Industrial Tribunal.

19. Even in the Indian Administrative Service (Probation) Rules, 1954



makes it very clear that the period of absence from training will be treated as extra ordinary leave as provided for in Rule 15 of the AIS (Leave) Rules, 1955 except for the period which can be treated as maternity leave as provided for in Rule 18 of AIS (Leave) Rules, 1955 and period of probation will be extended accordingly. Such view of the matter, merely because the leave has been availed during the probation period, such period cannot be treated as duty in the absence of any statutory provisions.

20. Even assuming that any persons had availed the benefit of maternity leave during probation and the probationer is not in a position to complete the probation, the employer has well within its right to extend the period of probation to complete the period of probation.

21. Such view of the matter on considering as there is express proviso made in any of the Rule by way of amendment, this Court is of the view that unless the Government amends the necessary rules treating the maternity leave as on duty period and amendments that dispense with the probation as required in various service rules. This Court cannot give any positive directions directing the respondents to treat the maternity leave as duty



period. Any amendment is well within the domain of the State. Such view of the matter, this Court is not inclined to direct the State Government to amend the law. Therefore, I do not find any infirmity in the orders passed in these cases.

22. Accordingly, these writ petitions stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

29.09.2023

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Internet : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No



To

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Commissioner of Revenue Administration
State of Tamil Nadu
Commissionerate of Revenue Administration
Disaster Management, Ezhilagam
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