



WP NO.24773 OF 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2023

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.NO.24773 OF 2017
AND WMP NO.26156 OF 2017

V.Dharanikumar

... Petitioner

Vs.

1.Committee on Appeal

Rep. By the Principal Secretary to Government
Micro, Small and Medium Enterprises Department
Secretariat, Fort St. George,
Chennai – 600 009.

2.The Government of Tamil Nadu

Rep. By the Principal Secretary to Government
Micro, Small and Medium Enterprises Department
Secretariat, Fort St. George,
Chennai - 600 009.

**3.The Industries Commissioner and Director
of Industries & Commerce**

Guindy,
Chennai – 600 032.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to proceeding of the second respondent No.6798/EII (1)/2015-1 dated 30.10.2015 and quash the same with consequential direction to the first respondent to convene the Appeal Committee Meeting to consider the representations of the petitioner 18.03.2011 submitted to the first respondent and the representations dated 09.10.2013 addressed to the Secretary to the Government, MSME Department, Secretariat, Chennai, in respect of the Panel drawn for the year 2009-10 providing an opportunity of being heard to the petitioner.

For Petitioner : Mr.R.Tholgappian

For Respondents : Mr.D.Gopal
1 and 2 Government Advocate

ORDER

The petitioner herein had joined the services of the respondents as Junior Assistant and subsequently promoted as Assistant. His request for leave on foreign service was sanctioned in terms of Section 27(A) of Section II-A of Tamil Nadu Leave Rules 1933. As per the sanctioned leave, he was granted three spells of leave from 03.06.2005 to 02.06.2006; 03.06.2006 to 31.05.2008; and 01.06.2008 to 12.02.2009. When the panel for promotion to the post of Superintendent for the year 2009-2010 was prepared with the



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crucial date of 15.03.2009, his name was not included. To his request for inclusion of his name in the said panel, the second respondent herein, through the impugned order dated 30.10.2015 had rejected his request by stating that as on the crucial date, he had not completed one year of service as stipulated under Rule 36(c) of the General Rules for the Tamil Nadu State and Subordinate Services. Challenging the same, the present writ petition has been filed.

2. The learned counsel for the petitioner submitted that under Rule 9 of the General Rules, the respondents cannot render him ineligible for his absence, while on foreign service, which was a sanctioned leave and therefore, the impugned order requires to be quashed.

3. It is not in dispute that the petitioner was sanctioned leave on foreign service as per Fundamental Rule 9(vii).



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4. Per contra, the learned Government Advocate placed reliance on Rule 36(c) of the General Rules and stated that for the purpose of consideration of promotion to an employee who was on foreign service, he must have rendered one year of service, from the date on which, he joins the duty, on return from leave, and therefore, the rejection is proper.

5. As per Rule 9 of the General Rules for Tamil Nadu State and Subordinate Services, when a member of the service goes on leave, on foreign service, he would still be entitled for promotion from a lower category to higher category, in such service. However, Rule 9 of the General Rules for Tamil Nadu State and Subordinate Services, would be subject to Rule 36(c) which places an embargo of such member of a service, who had been on leave for a period three years continuously, for any reason, or for a period of four years continuously, for higher studies, unless he has completed service for a period of one year, from the date on which he joins duty on return from leave. Rule 9 of the General Rules is an enabling provision to give the benefit of promotion to a member of service after he returns from



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leave on foreign service, whereas, Rule 36(c) is a provision imposing a pre-condition for entitlement of such a promotion to a member of service who had returned from leave on foreign service. In other words, the provisions under Rule 36(c), requires to be read into Rule 9 of the General Rules, as they are *mutatis mutandis*.

6. If that be so, the requirement for consideration of promotion to a member of service, who has returned from leave on foreign service would be that he must complete one year of service after his return for the purpose of claiming the benefit of promotion. If looked at from this perspective, the reasoning adopted by the respondents in the impugned order cannot be found fault with.

7. It is now brought to the notice of this Court that the petitioner's name was thereafter included in the promotion panel for the year 2009-2010 and he was also promoted to the post of Superintendent.



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8. In the light of the above observations, I do not find any infirmity in the impugned order. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
TK



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To

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M.S.RAMESH, J.

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