



**WA(MD). No.915 of 2018**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

WEB COPY

**Date : 05/08/2024**

**CORAM**

**The Hon`ble Mr.Justice C.V.KARTHIKEYAN  
and**

**The Hon`ble Mr.Justice J.SATHYA NARAYANA PRASAD**

**WA(MD). No.915 of 2018 and  
WMP(MD) No.5964 of 2018**

1.The Director of Rural Development and  
Panchayat Raj Department  
Panagal Building, Saidapet, Chennai 600 015.

2.The District Collector  
Thoothukudi District  
Thoothukudi.

... Appellants

**Vs**

N.Chithiraisekar

... Respondent

**PRAYER:** Writ Appeal is filed under Clause 15 of the Letters Patent  
against the order dated 06.03.2018 in WP(MD) No.2338/2018.

For Petitioner : M/s.M.Senthil Ayyanar  
Government Advocate  
For Respondent : Mr.V.Karthikeyan



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## **JUDGMENT**

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(Judgment of the Court was delivered by C.V.KARTHIKEYAN, J.)

The first and 2<sup>nd</sup> respondents in the writ petition have filed the present writ appeal aggrieved by the order of the learned Single Judge dated 06.03.2018 in WP(MD) No.2338/2018.

2. The writ petition has been filed in the nature of a Certiorarified Mandamus questioning an order of the Director of Rural Development and Panchayat Raj Department at Chennai in proceedings No. 17054/2015/EE2 dated 23.11.2017 and to quash the same and direct the respondents in the writ petition to include the writ petitioner's name in the panel for the post of Assistant Engineer for the year 2014-15 on par with his immediate juniors. The writ petitioner also sought for extension of necessary benefits.

3. In order to facilitate easier understanding, the parties will be referred in the same nomenclature as maintained in the writ petition.



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4. The writ petitioner had been appointed as Junior Draughting Officer on 23.02.2009. Under normal circumstances, if one had completed five years of service, he would be eligible to be considered for promotion. That would be on 23.02.2014. However, the writ petitioner went on medical leave from 06.04.2010 till 15.09.2010, ie., for a total period of 163 days. He also availed one day of earned leave. The respondents in the writ petition, therefore, did not give him credit for that period of absence and opined that he had not completed the statutory period of five years as on 23.02.2014 and therefore, did not grant him the subsequent promotion as Junior Engineer holding that he had not completed five years of service as Overseer. That order had been challenged by the writ petitioner.

5. The learned Single Judge had placed reliance on Rule 9 of the Tamil Nadu State and Subordinate Service Rules (hereinafter referred to as 'the Rules') and had observed that absence of a member of service from duty in such service, whether on leave or on foreign service or on deputation or for any other reason and whether his lien in a post borne on the cadre of such service is suspended or not, shall not, if he is otherwise



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fit, render him ineligible in his turn. The Rule states that if a member of service is deputed to any other department or deputed to foreign service or if there is a lien or even if his absent, he would not be ineligible, if the turn comes to him for considering him for promotion. Placing reliance on the said Rule, the learned Single Judge had granted the relief sought by the writ petitioner.

6. However, the respondents in the writ petition aggrieved by the said order. A ground has been taken that the petitioner had been on medical leave, which, though sanctioned on loss of pay, was for a total period of 164 days and also for one day of earned leave and therefore, the probation period will have to be accordingly extended for that period of 164 days. It had been contended that Rule 9 of the Rules relied on by the learned Single Judge would be applicable for the purpose of pension and not for declaring probation or for further promotion.

7. The learned Government Advocate appearing on behalf of the appellants also argued that since the writ petitioner was on leave for a considerable period of time on loss of pay, the period of leave being 164



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days and one additional day of earned leave should be taken into consideration and the period of probation should be accordingly extended.

8. However, an argument is also made on behalf of the writ petitioner herein that such leave had been sanctioned by the District Collector and therefore, there should not be a bar to declare the probation or promotion to the writ petitioner.

9. One further fact which had been brought to our notice is that after passing of the order by the learned single Judge, since the appellant herein had not put into effect the said order, the writ petitioner had filed a contempt petition in Cont,P,(MD) No.793/2018 and by proceedings in NO.8882/2018/EE1.2 dated 11.07.2018, the first appellant/Director of Rural Development and Panchayat Raj Department had promoted the petitioner as Assistant Engineer by order dated 28.01.2018 on par with his immediate juniors. It had been stated that however this promotion was granted subject to the outcome of this writ appeal.



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10. We have carefully considered the rival submissions and perused the materials available on record.

11. The moot point which we will have to consider is whether the period of absence of the petitioner on medical leave would be a bar for grant of probation or for further promotion.

12. Rule 9 of the said Rules are extracted in entirety:

*“9. Members absent from duty - The absence of a member of a service from duty in such service, whether on leave, or on foreign service or on deputation or for any other reason and whether his lien in a post borne on the cadre of such service is suspended or not, shall not, if he is otherwise fit, render him ineligible in his turn.*

*(a) for re-appointment to a substantive or officiating vacancy in the class, category, grade or post in which he may be a probationer or an approved probationers;*

*(b) for promotion from a lower to higher category in such service;”*

13. The Rule is simple. It requires a plain reading. It does not require any interpretation of the statements made. The Rule provides that if a member of service actually goes on leave, that shall not, if he is



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otherwise fit, render him ineligible for promotion. The Rule thus clearly provides that going on leave, which is also subsequently sanctioned, would not act as a bar for a member of any service from being eligible to be considered for promotion or for declaration of probation as and when that contingency arises.

14 Clause 'b' of the said Rule specifically states that even if a member of service goes on leave, he should be eligible for promotion from lower to higher category in such service. The petitioner seeks this relief. According to him, though he had been on leave, the cumulative service, which he had put, crosses the period of five years and therefore, he should have been considered for promotion.

15. In a communication by the first appellant herein to the District Collector, dated 23.11.2017, the first appellant had, however, after extracting the Rule, opined that the petitioner had not completed five years of qualifying service in the cadre of overseer. That opinion, in our considered view, is not correct. There cannot be a further interpretation of the Rule. The Rule is very clear that even if a member of service is on



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leave, he would still be eligible for promotion from a lower to higher category in such service. The learned Single Judge in his order had also placed reliance on the said Rule and had allowed the writ petition. As on date, the writ petitioner had also been granted necessary relief of promotion. That order had been passed in the year 2018. We hold there is no requirement to re-appraise that order after six years. We are clear that the Rule works in favour of the writ petitioner. We do not therefore find any ground to interfere with the order of the learned Single Judge.

16. Accordingly, the writ appeal is dismissed. The order of the learned Single Judge is upheld. No costs. Consequently connected Miscellaneous Petition is closed.

**(C.V.K.,J.)                      (J.S.N.P.,J.)**  
**05.08.2024**

**RR**



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TO

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