

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.9185 of 2016

and

W.M.P.No.8191/2016

B.Malini

.... Petitioner

Vs

1.The Managing Director,
Chennai Metropolitan Water Supply and
Sewerage Board,
No.1 Pumping Station Road,
Chennai-2.

2.The General Manager,
Chennai Metropolitan Water Supply and
Sewerage Board,
No.1 Pumping Station Road,
Chennai-2.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent with respect to Promotion List dated 26.02.2016 vide Proceedings No.CMWSSB/P&A/STF/RA2/9836/2015 and Proc.No.CMWSSB/P&A/STF/RA2/9836/2015-1 and consequently, direct the respondent Department to relax the shortfall of 4 days of qualifying service and promote the petitioner and maintain seniority as it was in existence.

For Petitioner : Mr.G.Thyagarajan

For Respondents : Mr.N.Ramesh,
Standing Counsel

O R D E R

This Writ Petition has been filed challenging the Draft Panel of Typists/Junior Assistants for promotion to the Post of Assistant dated 26.02.2016 vide Proceedings No.CMWSSB/ P&A/ STF/ RA2/ 9836/2015 and Proc.No.CMWSSB/P&A/STF/RA2/9836/2015-1 of the 2nd respondent and for consequential direction, directing the respondent Department to relax the shortfall of 4 days of qualifying service and promote the petitioner as Assistant during 2015-2016 and maintain seniority as it was in existence.

2. Learned Counsel appearing for the petitioner submitted that the petitioner was initially recruited as a Junior Assistant in the respondent Board on 24.11.2011 and thereafter made as permanent employee. After joining the respondent department, she sent a request letter to the 2nd respondent to permit her to continue her final semester of Law Degree at Dr.Ambedkar Government Law College, Chennai. Accepting the same, the 1st respondent has granted permission to continue her studies by availing leave for 133 days (LLP) vide Letter No. Proc.No.CMWSSB/P&A/STF/RA5/730/2012 dated 18.1.2012 in the light of the Government Order in G.O.Ms.No.732, Public (Services-A) Department, dated 16.03.1973. Accordingly, the petitioner availed leave for 133 days w.e.f. 19.01.2012 to 30.5.2012. However, on completion of the said leave period, she has rejoined duty on 31.5.2012. She has also successfully obtained her Law Degree. From the date of joining, she has been rendering unblemished continuous excellent service to the respondent Department.

3. The learned Counsel for the petitioner further submitted that the respondent officials have openly appreciated the work executed by the petitioner and her name was also shown in Sl.No.9 in the Promotion Panel for Suitability Report vide U.O. Note No.CMWSSB/P&A/RA2/9835/2015 dated 10.4.2015. Thereafter, a Draft Promotion List was also released by the 2nd respondent for the year 2015-2016 vide Proceedings No.CMWSSB/P&A/STF/RA2/9836/2015 dated 10.02.2016. But the name of the petitioner was not included in the promotion list on the ground that the petitioner has completed 1091 days against the requisite 1095 days of service by shortfall of 4 days. As the petitioner has obtained permission for availing leave to continue her studies from the respondent Department and the 1st respondent has granted the same by examining G.O.Ms.No.732, Public (Services-A) Department dated 16.3.1973, the respondents cannot say that the petitioner was running a shortfall of 4 days to possess qualifying service for promotion to the post of Assistant.

4. The learned Counsel for the petitioner also submitted that when several other Junior Assistants working in the same department were granted relaxation by condoning long period of leave of 1 to 3 years, the respondents could have appreciated the purpose for which the petitioner has taken 133 days leave which was also approved citing the reason that the petitioner wanted to continue her Law Degree at Dr.Ambedkar Government Law College, Chennai. Thereafter, she has also obtained a Law Degree that shows that the petitioner has not misused the leave granted in favour of her. Therefore, when the respondents have granted relaxation for several other employees thereby condoning long leave of one year or two years, the shortfall of four days leave in respect of the petitioner has also to be exempted and her case has to be considered for promotion during 2015-2016 itself.

5. Learned Standing Counsel appearing for the respondents 1 and 2 submitted that the petitioner knowing very well that she would not be able to contribute anything to the respondent department went on leave for long time, namely, for 133 days on loss of pay. As per Regulation 2(b) of Pay Regulation of the CMWSSB, if any employee goes on loss of pay, it will not come within the purview of duty. Therefore, while calculating the qualified service for promotion, he was found lacking 4 days. Therefore, the petitioner was not shown in the promotion list during 2015-2016. However, she was given promotion in the next year 2016-2017. Therefore, she cannot ask for seniority.

6. But this Court is unable to find any justification on the part of the respondents to single out the case of the petitioner alone. Admittedly, the 1st respondent has granted exemption even in a case where a person has gone on one year leave on loss of pay, sometimes two years also. That apart, this Court finds that G.O.Ms.No.1238, Public (Services-D) Department dated 23.5.1072 stipulates that under Rule 33(a) of the Special Rules for the Madras Ministerial Service, when a probationer is permitted by the competent authority to undergo the desired course of study, he may also be granted the entire amount of leave, if any, admissible under the rules applicable to him, but for such leave, he would have continued to be on duty. Even under Rule 33 (6b) of the said Special Rules, approved candidates, who join duty and apply for leave to complete their study soon after they join duty but prior to the regularisation of their services may be permitted to undergo any course of study only if they are in the midst of a course of a study at the time of joining duty and not if they wish to take up any fresh course of study after joining duty in the service. The said Government Order further stipulates that the candidates who apply for leave to complete their study soon after they join duty may simply be permitted to continue their studies.

Further, the candidates, who join duty and proceed on leave to continue their studies will be probationers in that post. They will be eligible for extraordinary leave without allowances only for 6 months at a time, if leave is required for more than six months at a time, the relevant rule in the Madras Leave Rules, 1933 will have to be relaxed. The proceedings dated 27.01.2014 issued by the General Manager, Chennai Metropolitan Water Supply and Sewerage Board, shows that a resolution was passed by the Board according approval to relax the qualifying service of Accounts Officers/Administrative Officers for promotion to the post of Senior Accounts Officer/Senior Administrative Officer as two years from five years. Therefore, when relaxation was granted to a person who went on leave for more than two years, the respondents cannot refuse the promotion to the petitioner from the post of Junior Assistant to Assistant on the ground that the petitioner was lacking 4 days as a qualified service for promotion inasmuch as the petitioner has completed 1091 days as against the requisite 1095 days, the shortfall of 4 days can also be exempted.

7. In view of all the above, the Writ Petition stands allowed and the impugned Draft Promotion List dated 26.02.2016 vide Proceedings No. CMWSSB / P&A / STF / RA2 / 9836 / 2015 and Proc. No. CMWSSB/P&A/STF/RA2/9836/2015-1 of the 2nd respondent are quashed with a direction to the respondent Department to relax the shortfall of 4 days of qualifying service in respect of the petitioner and maintain seniority as it was in existence and accordingly, promote her in the year 2015-2016 itself. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

- 1.The Managing Director,
Chennai Metropolitan Water Supply and
Sewerage Board,
No.1 Pumping Station Road,
Chennai-2.

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2.The General Manager,
Chennai Metropolitan Water Supply and
Sewerage Board,
No.1 Pumping Station Road,
Chennai-2.

+1cc to Mr.G.Thyagarajan, Advocate Sr.82462
+2cc to Mr.N.Ramesh, Advocate Sr.82504

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srg 19/12/2018



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