

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.04.2019
CORAM
THE HONOURABLE Dr. JUSTICE ANITA SUMANTH
W.P.No.17436 of 2017

V.Kamatchi

.. Petitioner

Vs.

1.The Secretary to Government,
P & AR Department,
Fort St.George, Chennai - 600 009.

2.The Secretary to Government,
RD & PR Department,
Fort St.George, Chennai - 600 009.

3.The Joint Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St.George, Chennai - 600 009. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the 1st respondent to take into account the period of maternity leave availed by her as service for the promotion to the post of Assistant Section Officer by including her name for the panel year 2009-2010 and fixed her seniority at the appropriate place viz at 50-A of the Seniority list released vide G.O.Ms.No.111, P & AR(U) Department, dated 11.11.2016.

For Petitioner : Mr.A.Muthukumar
For Respondents : Mr.Akhil Akbar Ali,
Government Advocate

सत्यमेव जयते
O R D E R

The petitioner in this case had been selected by the Tamil Nadu Public Service Commission on direct recruitment and joined duty as an Assistant in RD & PR Department, Secretariat on 25.06.2007.

2.The petitioner avert that she possesses the requisite educational qualifications and has passed the necessary foundational training to be eligible for further promotion to the post of Assistant Section Officer(ASO) in the Tamil Nadu Secretariat Services. She was under probation for a period of two years between 25.06.2007 and 25.06.2009.

3.While this is so, the petitioner was married and sought maternity leave for the period from 01.06.2009 to 29.08.2009. Upon joining services, she was promoted to the post of ASO with effect from 04.05.2010. She has been declared to have satisfactorily completed the period of probation in the category of Assistant on 14.12.2009.

4.In the aforesaid circumstances, the issue raised in the present writ petition is for seniority in the list of candidates and her eligibility for promotion even prior to the date on which she was actually promoted, being 09.04.2009. In view of her availment of maternity leave, her name was placed at Serial No.73 in the regular panel of Assistant, Senior Personal Clerk, Senior Typist and Non-Graduate Assistant, fit for inclusion in the regular panel of ASO for the year 2010-2011. Her juniors, who had stood after her in the list of seniority, have been included in the regular panel for the year 2009-10 itself. The only reason for the variance arises on account of the fact that the period of maternity leave availed of by her has not been taken into consideration as regular service.

5.The learned counsel for the petitioner relies on two decisions of this Court in W.P(MD).No.22994 of 2015 in the case of N.Praveena Mary Vs.The Secretary to Government and others dated 21.12.2015 and a recent decision in the case of Dr.U.Ishwarya Vs.Director of Medical Education and others (2018 (2) CTC 654) in support of her contention that the maternity period should be deemed to be regular service for the reckoning of promotion.

6.The only stand adopted by the respondents in the counter as well as pursued orally before me is that the petitioner has availed a part of her maternity leave even while she was on probation. The Government does not raise any quarrel on the position that, had the maternity leave been availed completely during confirmed service, she would have had the benefit of the same in reckoning promotion. I am of the view that thus distinction has no basis whatsoever.

7.I am of the view that the petitioner having availed a part of the maternity leave during the period of probation would not disentitle her in any manner to her promotion as per seniority list, as the petitioner has, admittedly, been confirmed in service in December 2009. Having confirmed her service, the prior period thereto is to be reckoned for the present purposes as regular service only.

8. In the aforesaid circumstances, the stand adopted by the Government is rejected and the respondents are directed to take into account the services of the petitioner for the period from 01.06.2009 to 28.09.2009 as regular service and include her

in the panel for the year 2009. Necessary orders as aforesaid be passed within six(6) weeks from today and the petitioner be paid over all consequent service monetary as well as other benefits.

9.The writ petition is allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
P & AR Department,
Fort St.George, Chennai - 600 009.

2.The Secretary to Government,
RD & PR Department,
Fort St.George, Chennai - 600 009.

3.The Joint Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St.George, Chennai - 600 009.

+4cc to Mr.A.Muthukumar, Advocate, S.R.No.38587

W.P.No.17436 of 2017

RK(CO)
CS(20/05/2019)

सत्यमेव जयते
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