



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.09.2020**

CORAM

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.10971 of 2020

S.Subalakshmi

...Petitioner

-Vs-

1.The Director of Co-operative Audit,
Nandanam,
Chennai-600 035.

2.The Joint Director of Co-operative Audit,
Tirunelveli Region,
Tirunelveli-627 011.

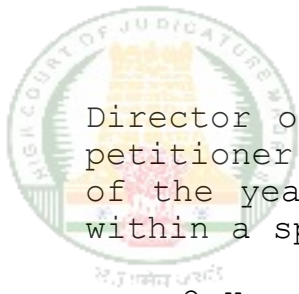
...Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent relating to the Director of Co-operative Audit, Chennai passed in Annexure-II in ந.க.எண் .22850/2019/பொ.நி.3 நாள் :27.11.2019 and communicated to the petitioner by the second respondent i.e., the Joint Director of Co-operative Audit, Tirunelveli in his endorsement மே.எ.ந.க.3810/2019/அப நாள் :10.12.2019 and quash the orders under Sl.No.9 only and consequently direct the first respondent i.e., the Director of Co-operative Audit, Chennai to include the name of the petitioner in the approved list of Co-operative Audit Officer (CAO) of the year 2019 according to her seniority in the feeder category within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam,
For Respondents : Mr.G.Arjunan,
Government Pleader

ORDER

The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus, calling for the records of the first respondent relating to the Director of Co-operative Audit, Chennai passed in Annexure-II in ந.க.எண் .22850/2019/பொ.நி.3 நாள் :27.11.2019 and communicated to the petitioner by the second respondent i.e., the Joint Director of Co-operative Audit, Tirunelveli in his endorsement மே.எ.ந.க.3810/2019/அப நாள் :10.12.2019 and quash the orders under Sl.No.9 only and consequently direct the first respondent i.e., the



Director of Co-operative Audit, Chennai to include the name of the petitioner in the approved list of Co-operative Audit Officer (CAO) of the year 2019 according to her seniority in the feeder category within a specified time frame that may be fixed by this Court.

2. Heard Mr.S.Visvalingam, learned counsel appearing for the petitioner and Mr.G.Arjunan, learned Government Advocate appearing for the respondents.

3. The petitioner was appointed as Stenographer Grade-III, after being selected through TNPSC under Group-IV examination and was appointed as such and joined duty on 26.06.2009 at the office of the Joint Director of Co-operative Audit, Madurai Region. Thereafter, she was promoted as Junior Co-operative Auditor by proceedings of the Assistant Director of Co-operative Audit, Tiruchirapalli, dated 20.03.2013, accordingly, she joined in the said post on 21.03.2013. Then, she was further promoted as Senior Co-operative Auditor as per the proceedings, dated 19.01.2016, of the Assistant Director of Co-operative Audit, Kovilpatti and accordingly, she joined duty as Senior Co-operative Auditor on 20.01.2016 and has been continuously working in that post till date at the office of the Joint Director of Co-operative Audit, Tirunelveli.

4. In this regard, it is the further case of the petitioner that, the next promotional avenue for the petitioner is to the post of Co-operative Audit Officer i.e., in the cadre of Co-operative Sub Registrar, for which, a feeder category is Senior Co-operative Auditor.

5. However, for the year 2018-2019 by taking into account the crucial date as 01.10.2019, a panel of Senior Co-operative Auditors have been prepared by the respondents fit for promotion to the post of Co-operative Audit Officer, where, a set of people fit for promotion have been released and along with said order, a list of candidates, who are not fit or eligible for promotion to be included in the panel also, have been released. In the said order, dated 27.11.2019, the first respondent has issued the panel of Senior Co-operative Auditor fit for promotion, where, in annexure-II, some of the candidates who are not included for want of completion of three years in the feeder category, the name of the petitioner also found at Serial No.9. Challenging this non-inclusion in the panel fit for promotion to the post of Co-operative Audit Officer issued by the first respondent, dated 27.11.2019, the petitioner has moved this writ petition with the aforesaid prayer.

6. I have heard the learned counsel appearing for the petitioner, who would submit that, the petitioner, as on 01.10.2019, since according to the respondent, has not completed three years service as Senior Co-operative Auditor, was not included in the



Maternity leave for 8 months and 28 days i.e., from 01.08.2017 to 25.04.2018 and the same was allowed by the proceedings of the Additional Director of Co-operative Audit, Chennai, dated 14.05.2018.

7. In this context, the learned counsel appearing for the petitioner would submit that, under Section 12 of the Tamil Nadu Government Servant (Conditions of Service) Act, 2016 the periods spent on leave will not be a bar for any individual for being promoted if he or she is otherwise fully qualified to hold the post.

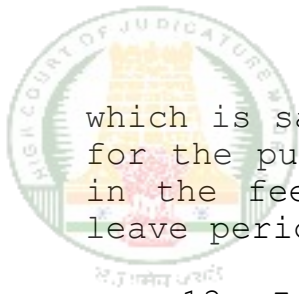
8. In this context, the learned counsel appearing for the petitioner would rely upon two decisions of this Court i.e., in W.P. (MD)No.8115 of 2018, dated 25.04.2018 and in W.P.(MD)No.6545 of 2020, dated 09.06.2020.

9. By relying upon these decisions, the learned counsel for the petitioner would further submit that, in view of Section 12 of the Act as referred to above and in view of the aforesaid decisions, 8 months and 28 days Maternity Leave taken by the petitioner shall also be included for the total requiring period of service in the feeder category in order to fulfill the previous service in the feeder category for consideration for promotion to the post of Co-operative Audit Officer. However, without considering the same, since the name of the petitioner has been excluded from the list as shown in the annexure in the impugned order, the said non-inclusion is bad in law and un-sustainable, therefore, the learned counsel appearing for the petitioner seeks indulgence of this Court.

10. I have heard the learned Government Advocate appearing for the respondents, who would submit that, since the petitioner admittedly has not completed three years service in the feeder category, namely, Senior Co-operative Auditor and admittedly, she has been with shortfall of 3 months and 22 days as on 01.10.2019 which is a crucial date, it was taken into account for the purpose of preparing the list of fit persons to be considered for promotion to the post of Co-operative Audit Officer. The said exclusion or non-inclusion of the petitioner's name, in the list of persons fit for promotion as provided in the impugned order, is fully justifiable and is sustainable and therefore, no interference is required from this Court.

11. I have considered the said submissions made by both, the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents and perused the materials available on record.

12. Admittedly, the petitioner had taken Maternity Leave for 8 months and 28 days from 01.08.2017 to 25.04.2018 and the said leave also has been duly sanctioned by the authorities concerned. If, be



which is sanctioned to any employee, the same shall also be included for the purpose of taking the total service as experiential service in the feeder category for the purpose of promotion and the said leave period if it is already sanctioned shall not be excluded.

13. In this context, I had an occasion to consider a similar issue, which has been relied upon by the learned counsel appearing for the petitioner in W.P.(MD)No.8115 of 2018 cited supra, where, I had passed the following orders:-

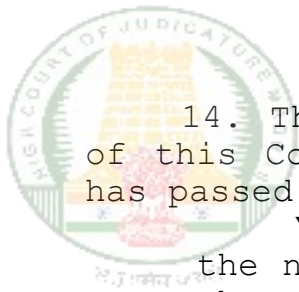
"10.I have heard the rival submissions made by both sides.

11.As has been rightly pointed out by the learned counsel for the petitioner, if the Act, 2016 came into effect with retrospective application, wherein under Section 12 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the leave period will also be taken for duty for the purpose of completion of 5 years period or any eligible period for the purpose of service benefits like, promotion etc., and based on the said Rule, since the very same second respondent passed an order for a similarly placed candidate by order date 17.02.2018, insofar as the petitioner's case is concerned, the second respondent cannot take a different stand, as has been taken in the impugned order.

12.On perusal of the order dated 17.02.2017 in respect of the similarly placed candidate and the order impugned herein dated 04.09.2017, this Court finds that there clear discrimination has been shown, that too, without properly complied with the provision of law under the Act, which came into effect retrospectively, and therefore, the reason stated in the impugned order, undoubtedly, is unsustainable and therefore, this Court has no hesitation to hold that the impugned order is liable to be interfered with.

13.Accordingly, the impugned order is quashed and the respondents are directed to consider the request of the petitioner for inclusion of her name in the panel of Deputy Tahsildar for the year 2008. Accordingly, her seniority, promotion and other service benefits and pay benefits payable shall be calculated and the same shall be disbursed to the petitioner. The needful as directed shall be undertaken by the respondents within a period of 8 weeks from the date of receipt of a copy of this order.

With these directions, the writ petition is allowed. No costs."



14. The said order has been followed by another learned Judge of this Court in W.P(MD)No.6545 of 2020, where, the learned Judge has passed the following order:-

"3. The learned counsel for the petitioner brings to the notice of this Court that according to Section 12 of the Tamil Nadu Government Servant (Conditions of Service) Act, 2016, the periods spent on leave will not bar any individual from being promoted if she is otherwise fully qualified. The learned counsel also placed reliance on the judgment delivered on 25.04.2018 in WP(MD) No.8115 of 2018 (S.Renuka Vs.The Principal Secretary to Government and others), wherein, a learned single Judge stated that the respondents should consider the request of the petitioner therein for inclusion of his name in the seniority panel.

4. The above case is squarely applicable to the present case on hand. Therefore, a direction is issued to the respondents to consider the name of the petitioner in the approved list for Co-operative Audit officer (CAO) in the year 2019-2020. The respondents cannot hold that the petitioner was on medical leave from 26.09.2016 to 22.06.2017. The period of leave availed by the petitioner may be deemed to be period in service.

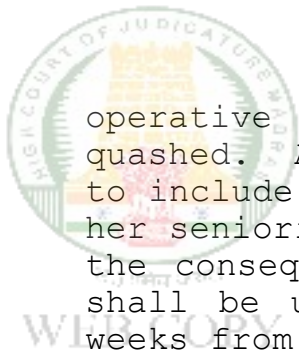
5.The impugned order is hereby set aside and the matter is remanded back to the authorities concerned for fresh consideration. Such exercise shall be completed before 31.07.2020.

6. With the above directions, the Writ Petition is ordered. No costs.

15. In view of the said principle stated in the said two orders, out of which, I am the author in respect of one order in W.P (MD)No.8115 of 2018, this Court has no hesitation to hold that the exclusion of the petitioner's candidature in the list fit for promotion to the post of Co-operative Audit Officer as released through the impugned order dated 27.11.2019, cannot be sustained.

16. Since, admittedly, the petitioner availed the Maternity Leave for 8 months and 28 days, which has been duly sanctioned by the authorities, that period also should be taken into account for the purpose of completing three years period in the feeder category and accordingly, as on 01.10.2019 since the petitioner has duly completed three years of service, she should have been included in the list of persons fit for promotion to the next higher category, therefore, such non-inclusion on the part of the respondents in respect of the petitioner, is bad in law, this Court is inclined to quash the impugned order.

17. In the result, the impugned order insofar as the non-inclusion of the petitioner's name in the list of Senior Co-operative Audit Officer for the purpose of promotion to the post of Co-



operative Audit Officer as issued dated 27.11.2019, is hereby quashed. Accordingly, there shall be a direction to the respondents to include the name of the petitioner in the said panel according to her seniority, if she is otherwise qualified and accordingly, extend the consequential benefits of promotion and the aforesaid exercise shall be undertaken by the respondents, within a period of eight weeks from the date of receipt of a copy of this order.

18. With the above directions, the writ petition is ordered to the term as indicated above. No costs.

Sd/-

Assistant Registrar (AS)

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/ /2020

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Director of Co-operative Audit,
Nandanam,
Chennai-600 035.

2. The Joint Director of Co-operative Audit,
Tirunelveli Region,
Tirunelveli-627 011.

+1 CC to SPL GP (SR-16087[F] dated 07/09/2020)

Order made in
W.P. (MD) No.10971 of 2020
04.09.2020

VB(17.12.2020) 6P 4C