

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.19426 of 2016

Tmt.C.Selvi

...Petitioner

-Vs-

1.The Director of Government Examination,
DPI Complex, Chennai - 600 006.

2.The Joint Director (Personnel),
Directorate of Government Examination,
DPI Complex, Chennai - 600 006.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st respondent in his proceeding Na.Ka.No.200474/C2 (3)/2015 dated 16.10.2015 and the impugned order passed by the 2nd respondent in his impugned proceeding Na.Ka.No.010540/C2-1/2016 dated 19.05.2016 and quash the same and consequently direct the respondents to promote the petitioner as Assistant with effect from the date on which the petitioner's juniors were given promotion as Assistant with all monetary and other attendant benefits by considering leave period spent on Maternity as Service Period for the purpose of declaration of Probation.

For Petitioner : Mr.K.Raja

For Respondents: Ms.P.Rajarajeswari,
Government Advocate

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner herein had joined the respondent department as a Typist on 21.02.2013. Between 20.05.2013 and 15.11.2013, she had availed the maternity leave, after due sanction from the respondents. Thereafter, she was regularized

in her services with effect from 21.02.2013. In view of the maternity leave availed by her, her completion of probation was declared on 18.08.2015, while her juniors had completed their probation period on 20.02.2015 itself. In view of this delay in declaring the probation, the juniors to the petitioner came to be promoted to the post of Assistant before her on 23.09.2015 itself, while the petitioner was promoted on 21.07.2016. Aggrieved against this anomaly, the petitioner made a request to treat her maternity leave period as duty period and consequently promote her on par with her juniors, which request was rejected through the impugned order dated 19.05.2016, stating that there are no regulations supporting such a claim. Hence, the present writ petition.

3. The learned counsel for the petitioner places reliance on a decision of the Hon'ble Supreme Court of India in the case of Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) and another reported in (2000) 3 SCC 224, as well as another decision of this Court in the case of N.Praveena Mary Vs. The Secretary to Government, Revenue Department and two others passed in W.P.(MD) No.22994 of 2015, dated 21.12.2015 and submitted that since the maternity leave availed by the petitioner was treated as full duty period, there was no justification on the part of the respondents to delay the declaration of her probation and thereby discriminate her seniority.

4. Per contra, the learned Government Advocate appearing for the respondents placed reliance on the averments in the counter affidavit and submitted that there are no regulations to declare the petitioner's probation without consideration of her maternity leave and since the petitioner had not denied or objected on the delayed declaration of probation at the time of her promotion, she is now not entitled for the relief sought for.

5. The Maternity Benefit Act is a welfare registration, which intends to extend benefits to the employees who avail maternity leave, without loss of any service benefits, including seniority. While dealing with this aspect, the Hon'ble Supreme Court, in the Female Workers' (Muster Roll) case (supra), had observed that such benefits which are enshrined in the Convention on Discrimination against Women, should be read into the contract of the services between the employer and the women employees. The relevant portion of the decision reads as follows:-

" 37. Delhi is the capital of India. No other City or Corporation would be more conscious than the City of Delhi that India is a signatory to various International covenants and treaties. The Universal Declaration of

Human Rights, adopted by the United Nations on 10th of December, 1948, set in motion the universal thinking that human rights are supreme and ought to be preserved at all costs. This was followed by a series of Conventions. On 18th of December, 1979, the United Nations adopted the "Convention on the Elimination of all forms of discrimination against women". Article 11 of this Convention provides as under :-

"Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular;

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave.

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage

or maternity and to ensure their effective right to work, States Parties shall take appropriate measures :

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary."

[Emphasis supplied]

38. These principles which are contained in Article 11, reproduced above, have to be read into the contract of service between Municipal Corporation of Delhi and the women employees (muster roll); and so read these employees immediately become entitled to all the benefits conceived under the Maternity Benefit Act, 1961. We conclude our discussion by providing that the direction issued by the Industrial Tribunal shall be complied with by the Municipal Corporation of Delhi by approaching the State Government as also the Central Government for issuing necessary

Notification under the Proviso to Sub-section (1) of Section 2 of the Maternity Benefit Act, 1961, if it has not already been issued. In the meantime, the benefits under the Act shall be provided to the women (muster roll) employees of the Corporation who have been working with them on daily wages."

6. Likewise, in Praveena Mary's case (supra), similar benefits of inclusion of the Government employee's name in the promotional panel was extended, by taking the period of maternity leave as "service period". The relevant portion of the order, reads as follows:-

"3. It is the case of the petitioner that the period of maternity leave shall be treated as service. Prima facie, I am of the view that the period of maternity leave sanctioned by the Government shall be treated as service for at least including her in the panel for the post of Deputy Tahsildars. If the said service period is added, then, she rendered 5 years, 8 months and 23 days. The required service is 5 years. By excluding the maternity leave, it is stated that the petitioner rendered 4 years, 11 months and 22 days.

4. Furthermore, it is the case of the petitioner that if 11 days E.L. from 18.08.2010 to 28.08.2010 during the probation period is taken into consideration for counting 5 years of service, as per the instructions issued by the Commissioner of Revenue Administration by his letter dated 02.09.2013, she is eligible to be included in the panel.

5. In these circumstances, the second respondent has to get appropriate order in this regard from the first respondent to include the name of the petitioner in the panel for promotion to the post of Deputy Tahsildars for the year 2015 by taking into account the period of maternity leave as service or at least to take the E.L. period in between 18.08.2010 and 28.08.2010, as service."

7. In the counter affidavit filed by the respondents, it is admitted that the maternity leave availed by the petitioner between 20.05.2013 and 15.11.2013, was treated as 'full duty period'. They have also stated in the same counter affidavit

that the petitioner has not lost her seniority and that the promotion was denied to the petitioner on the sole ground that there are no regulations to declare the probation by including the maternity leave period.

8. Having treated the maternity leave availed by the petitioner as a full duty period, there was absolutely no justification on the part of the respondents in delaying her declaration of probation, thereby depriving her seniority. It is needless to point out that when the maternity leave was treated as full duty period, there was a duty cast on the respondents to declare the completion of her probation on par with her immediate juniors. In the instant case, the declaration of completion of her probation ought to have been made with effect from 20.02.2015 and consequently, she should have been promoted from 23.09.2015, which is the date on which her immediate juniors were promoted.

9. A mere acceptance of the promotion without objection will not be an estoppel for claiming rectification of the anomaly, particularly when the respondents themselves have admitted that the maternity leave has been treated as duty period. There need not be separate regulations to this effect.

10. For all the aforesaid reasons, the impugned order dated 16.10.2015 passed in Na.Ka.No.200474/C2(3)/2015, declaring the completion of her probation as 18.08.2015, is quashed and consequently, there shall be a direction to the respondents to issue fresh orders, declaring the completion of the petitioner's probation with effect from 20.02.2015. In view of passing of fresh orders, the consequential impugned order dated 19.05.2016 passed in Na.Ka.No.010540/C2-1/2016, is also quashed. The respondents shall issue fresh promotion orders to the petitioner, promoting her to the post of Assistant with effect from the date on which her immediate juniors were promoted. The respondents shall endeavour to pass both the aforesaid orders, as expeditiously as possible, in any event, within a period of four (4) weeks from the date of receipt of a copy of this order.

11. The Writ Petition stands allowed, accordingly. No costs.

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

hvk
To

1.The Director of Government Examination,
DPI Complex, Chennai - 600 006.

2.The Joint Director (Personnel),
Directorate of Government Examination,
DPI Complex, Chennai - 600 006.

+1 cc to Mr.K.Raja, Advocate Sr.NO. 567

+1 cc to Government Pleader Sr.NO. 1589

W.P.No.19426 of 2016

rsi(CO)

A.SK(02.02.2022)