IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.11.2022

Coram:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.14440 of 2020

--

A.Chitra .. Petitioner

Vs.

1. The Commissioner,
   Commercial Taxes,
   Chepauk, Chennai-05.

2. The Joint Commissioner,
   Commercial Taxes,
   Coimbatore.

3. The Deputy Commissioner,
   Commercial Taxes (Zone-I),
   Coimbatore. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to fix the seniority on par with her juniors/batch-mates with all consequential service and monetary benefits including her name in the regular promotion for the panel year 2015 to the post of Assistant (Commercial Tax).

For petitioner : Mr.S.Sivakumar

For respondents: Mr.T.N.C.Kowshik, Addl.G.P.

ORDER

This Writ Petition has been filed for a Mandamus seeking for a direction to the respondents to fix the seniority of the petitioner on par with her juniors/batch-mates with all consequential service and monetary benefits by including her name in the regular promotion for the panel year 2015 to the post of Assistant (Commercial Tax).

2. The petitioner is a graduate and she entered public service as Typist through the Tamil Nadu Public Service Commission (TNPSC) and she joined duty on 11.03.2013 and she was promoted as Assistant on 16.09.2016. The petitioner claims that there is no adverse remarks against her from the respondents.

3. On her appointment as Typist on 11.03.2013, she was placed under probation for the total period of two years as per Rule 32(a) of the Tamil Nadu Ministerial Service Rules. According to her, even before completion of the two-year period, she had to avail maternity leave on account of her advanced pregnancy from 24.02.2014 to 22.08.2014.

4. The petitioner claims that her maternity leave was also sanctioned by the respondents. Her probation was declared on 22.09.2015 and in the probation order, it was disclosed that the period of probation got completed on 07.09.2015. According to the petitioner, there was a delay on the part of the respondents to declare her probation. It is her case that her juniors were declared probation earlier, but her probation was declared subsequently due to the maternity leave availed by her.

5. According to the petitioner, the respondents issued order for promotion to the post of Assistant for the panel year 2015, but to her shock, her name was not included in the said panel. The petitioner claims that her juniors were included in the promotion panel 2015 for the post of Assistant. According to the petitioner, only in the next year, i.e. 2016, she was included in the promotion panel for the post of Assistant.

6. The petitioner's grievance in this Writ Petition is that in the promotional panel of 2015 itself, for the post of Assistant, her name ought to have been included, but arbitrarily and erroneously, taking into consideration the period of maternity leave availed by the petitioner, her name has been erroneously excluded for the promotion panel for the year 2015 to the post of Assistant.

Aggrieved by the same, the petitioner has filed this Writ Petition seeking for her notional promotion in the year 2015 itself as an Assistant in order to claim monetary benefits that would have accrued to her if she was promoted as Assistant in the year 2015 itself, instead of in the year 2016.

7. Counter affidavit has been filed by the respondents denying the contentions of the petitioner and their main defence is as follows:

(a) Any leave availed by the petitioner even if it is maternity leave, will be excluded for the purpose of calculating the petitioner's seniority.

(b) Having availed the maternity leave during the period of her probation, the said period was rightly excluded and that is the reason for not including the petitioner's name in the seniority panel for the post of Assistant in the year 2015.

(c) The period of absence of the petitioner during the period of her probation, was rightly excluded and that is the reason as to why the petitioner was not considered for promotion for the year 2015 itself, but was promoted only in the year 2016.

8. Learned counsel for the petitioner relies upon the order dated 25.04.2018 passed by the Madurai Bench of this Court in W.P.(MD).No.8115 of 2018 (S.Renuka Vs. Principal Secretary to Government Revenue Department,

Secretariat, Chennai-600 009 and two others) and in the said order, Section 12 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which the petitioner relies upon, was considered, in almost identical circumstances and the learned Judge in the said Madurai Bench case, has held that the period spent on maternity leave, will not bar any individual from being promoted if she is otherwise fully qualified to hold the post.

9. Therefore, the learned counsel for the petitioner herein submitted that the respondents may be directed to pass final orders on the petitioner's representation dated 27.01.2020 seeking for her notional promotion on par with her batch-mates as Assistant in the year 2015, in the light of the aforesaid order passed by this Court.

10. No prejudice would be caused to the respondents if the petitioner's representation dated 27.01.2020, is considered on merits and in accordance with law, in the light of the said order dated 25.04.2018 passed in W.P.(MD).No.8115 of 2018.

11. On a prima-facie consideration, this Court is of the considered view that, the petitioner is also eligible for the very same relief that was granted to

the petitioner in the above said Writ Petition.

12. For the foregoing reasons, this Writ Petition is disposed of by directing the second respondent to pass final orders, on merits and in accordance with law, on the petitioner's representation, dated 27.01.2020 seeking for notional promotion to the post of Assistant for the panel year 2015 along with her batch-mates, in the light of the afore-said order dated 25.04.2018 passed by the Madurai Bench of this Court in W.P.(MD).No.8115 of 2018, within a period of 12 weeks from the date of receipt of a copy of this order.

13. There shall be no order as to costs.

25.11.2022

Index: Yes/no
Speaking Order: Yes/no
cs

To

1. The Commissioner,
   Commercial Taxes,
   Chepauk, Chennai-05.

2. The Joint Commissioner,
   Commercial Taxes,
   Coimbatore.

3. The Deputy Commissioner,
   Commercial Taxes (Zone-I),
   Coimbatore.

ABDUL QUDDHOSE, J

cs

W.P.No.14440 of 2020

25.11.2022