



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.8657 of 2016

and

W.M.P. (MD)No.6920 of 2016

WEB COPY

T. Vanitha ... Petitioner

vs

1. The Government of Tamil Nadu,
represented by its Principal Secretary,
Home (Court VI) Department,
Fort St.George, Secretariat,
Chennai - 600 009.

2. The Director of Prosecution,
Tamil Nadu Slum Clearance Board Complex,
2nd Floor, No.5, Kamaraj Salai,
Chennai- 600 005.

3. The Deputy Director of Prosecution,
Tirunelveli Region,
Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 2nd respondent in R.C.No.571/A1/DOP/2016 dated 02.03.2016 quash the same and direct the respondents 1 and 2 to include the name of the petitioner in the panel Assistant Public Prosecutor Grade II fit for promotion as A.P.Ps. Grade I for the year 2015-2016 by placing the name of the petitioner above the name of her immediate junior S.Mythili.

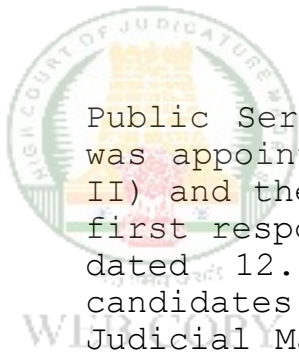
For Petitioner : Mr.M.Saravanan
For Respondents : Mr.Kameshwaran R1 to R3
Government Pleader

O R D E R

This writ petition is filed to quash the impugned order dated 02.03.2016 and direct the first and second respondents to include the petitioner's name in the panel of Assistant Public Prosecutor Grade II fit for promotion as Assistant Public Prosecutor Grade I for the year 2015-2016 by placing the petitioner's name immediate before her junior.

2. The brief facts of the case are that the petitioner was one among the 77 candidates provisionally selected by the Tamil Nadu

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Public Service Commission (TNPSC) during the year 2009-2010 and he was appointed in Assistant Public Prosecutor Grade II (A.P.P. Grade II) and the petitioner's seniority as assigned by TNPSC was 18. The first respondent issued G.O.Ms.(4D)No.24 Home (Court VI) Department, dated 12.04.2013 appointing the petitioner and certain other candidates as A.P.P Grade II and the petitioner was appointed as Judicial Magistrate Court No.II, vide order, dated 27.05.2013. The petitioner joined the post on 03.06.2013 and the first respondent regularized the petitioner's service vide G.O.(2D)No.110 Home (Court VI) Department, dated 23.03.2015 with effect from 03.06.2013. The petitioner's probation commenced from 03.06.2013 and the petitioner's name was placed in 14th rank in the seniority of A.P.Ps. Grade II and the probation is for two years. The petitioner sanctioned medical leave on loss of pay from 20.01.2014 to 28.02.2014 as she was in her pregnancy. Thereafter, the petitioner was granted maternity leave from 05.08.2014 to 04.02.2015.

3. The contention of the petitioner is that the authority has not communicated any order for extending the period for probation. In January 2016, the panel of names in A.P.Ps. Grade II fit for promotion as A.P.P. Grade I was prepared for the year 2015-2016 and the petitioner's name was not included. Hence the petitioner submitted a representation to the respondents to include her name. The second respondent, vide order, dated 28.01.2016 declared the probation with effect from 15.01.2016, then passed the impugned order, dated 02.03.2016 rejecting the petitioner's request to include in the panel of A.P.Ps. Grade II fit for promotion for the year 2015-2016 by stating that the petitioner has not completed the period of probation on 05.01.2016 and the petitioner was not eligible to be included in the panel since the crucial date for the said panel was on 01.09.2015. The contention of the petitioner is that the respondents have erroneously excluded the period of maternity leave granted to the petitioner while considering the petitioner's eligibility for declaring the probation. The maternity leave is statutory leave granted to the pregnant women. Aggrieved over the same, the present writ petition is filed.

4. The respondents have filed a counter affidavit stating that on 01.09.2015 the petitioner has not completed her probation of two years. The petitioner continued her service only on the probation period on the crucial date. Only for these reasons, the petitioner's name was not included in the promotional panel. Promotional panel was prepared after following all the established procedures of law. The question here is not whether the petitioner has suffered disqualification or ineligibility. But the question here is whether, the petitioner has completed her probation on the crucial date i.e., 01.09.2015. Even, if it is so, the petitioner has joined duty on 03.06.2013, the probation completed on 02.06.2015. Since the petitioner was in medical leave on loss of pay on 20.01.2014 to 28.02.2014 and the maternity leave from 05.08.2014 to 04.02.2015, hence the petitioner's probation was completed on 15.01.2016 by



short for two months and 28 days on the date of crucial date. Therefore, it is crystal clear, that on the crucial date of promotion panel, the petitioner has not completed her period for probation. Unless the candidate's service is regularized and completed her probation, the candidates cannot be considered for promotion. Therefore, the respondents prayed to dismiss the writ petition.

5. Heard Mr.M.Saravanan, learned Counsel appearing for the petitioner and Mr.Kameshwaran, learned Government Pleader appearing for the respondents.

6. The learned Counsel appearing for the petitioner submitted that if the maternity period was not taken into consideration, then there will be a gender bias. The petitioner has completed the probation by working for eight more months and thereafter, the probation was declared. If the probation was declared, it has to be dated back to the date after the completion of two years. If that is so, the petitioner is entitled to notional promotion. The learned Counsel appearing for the petitioner relied on the judgment rendered in Municipal Corporation of Delhi vs. Female Workers (Muster Roll) reported in (2000) 3 SCC 224, in para 37 and 38, where it has been stated as under:

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."

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."

The petitioner also relied on judgment in W.P.(MD)No.17436 of 201,7 dated 23.04.2019 in para 7, where it has stated as under:

"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."

In W.P.(MD)No.19426 of 2016 dated 05.01.2022 in para 8, it has been stated as under:

"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."

7. It is an admitted fact the petitioner was in maternity leave during 05.08.2014 to 04.02.2015. It is an admitted fact that the petitioner has worked for subsequent period and thereafter, the probation was declared. If it is so, it has to be dated back to the date that she would have been originally completed the probation. Then, on the date of crucial date for preparation of panel, the



petitioner would become eligible subsequently. Therefore, this Court is of the considered opinion that the petitioner is entitled to be considered for notional promotion.

8. Therefore, the respondents are directed to consider the petitioner's name for granting notional promotion by taking the maternity leave period and grant notional promotion to the petitioner. The respondents are directed to consider for subsequent promotion also by taking the period as stated supra.

9. With the above direction, the Writ Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

jbr

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 Principal Secretary,
The Government of Tamil Nadu,
Home (Court VI) Department,
Fort St.George, Secretariat,
Chennai - 600 009.
- 2.The Director of Prosecution,
Tamil Nadu Slum Clearance Board Complex,
2nd Floor, No.5, Kamaraj Salai,
Chennai- 600 005.
- 3.The Deputy Director of Prosecution,
Tirunelveli Region,
Tirunelveli.

+1 CC to M/s.R. SUBRAMANIAN, Advocate (SR-17262[F] dated 07/04/2022)
+1 CC to M/s.SPL.GP (SR-17217[F] dated 07/04/2022)

Order made in

W.P. (MD)No.8657 of 2016

06.04.2022

na (CO)

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