



W.P.No.15344 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.15344 of 2023
and
W.M.P.No.14874 of 2023

S.Abhirami

...Petitioner

-Vs-

1.The Inspector General of Police
(Technical Services),
Mylapore, Chennai - 600 004.

2.The Deputy Inspector General of Police
(Technical Services),
Mylapore, Chennai - 600 004.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 1st respondent C.No.N1/6955/2020-1, D.No.130/2022 dated 27.04.2022 and to quash the same and consequently directing the respondents to declare the probation of the petitioner on completion of 2 years of service, as having completed 2 years of service within 3 years of service from the date of appointment, with



W.P.No.15344 of 2023

all consequential benefits, including annual increment and other service benefits.

For Petitioner : Mr.G.Sankaran, Sr. Counsel
Mr.S.Nedunchezhiyan

For R1 to R3 : Mr.P.Sanjay Gandhi
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 services of the respondent department on 01.03.2019. During her service, the petitioner became pregnant and she had availed maternity leave for 270 days between 11.02.2021 and 07.11.2021 and again between 08.11.2021 and 10.02.2022 for 95 days. The first respondent, through the impugned order dated 27.04.2022, had claimed that the probation commences afresh from 01.03.2022 for a period of two years within a continuous period of three years, since she had not completed her probation of two years within the continuous period of three years, i.e. between 01.03.2019 and 28.02.2022.



3. The learned Government Advocate appearing for the respondents placed reliance on the averments in the counter affidavit and submitted that since the petitioner had availed maternity leave during the period of probation, the same requires to be excluded and hence commencement of her probation afresh through the impugned order cannot be found fault with.

4. Insofar as the maternity leave availed by the petitioner from 11.02.2021 to 07.11.2021 and from 08.11.2021 to 10.02.2022 is concerned, this Court, in the case of ***C.Selvi Vs. The Director of Government Examination, Chennai and another*** passed in ***W.P.No.19426 of 2016, dated 05.01.2022***, have dealt with this aspect and had held that the maternity leave period should be treated as duty period for all purposes. The relevant portion of the order reads as follows:-

"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:-



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W.P.No.15344 of 2023

"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."

5. The aforesaid extract is self explanatory. Hence, exclusion of the maternity leave period and refusing to declare the probation of the petitioner or commencing the probation period afresh from 01.03.2022, is opposed to the aforesaid ratio laid down by this Court.

6. The respondents are unable to produce any specific regulation, which may empower them to exclude the maternity leave, while calculating the service period for declaration of probation. Thus, in the light of the decision of this Court (cited supra), the impugned order, commencing the petitioner's probation afresh from 01.03.2022, cannot be sustained. Consequently, it requires to be held that the petitioner's probation should be



W.P.No.15344 of 2023

declared on completion of two years of her service from the date of her initial appointment, i.e. from 01.03.2019 onwards.

7. In the light of the above observations and findings, the impugned order dated 27.04.2022 is quashed. Consequently, the first respondent herein shall pass fresh orders, declaring the petitioner's probation period on completion of two years of service from 01.03.2019 and thereby extend all the service and other monetary benefits that may be due to the petitioner owing to such declaration. Such orders shall be passed by the first respondent atleast within a period of four weeks from the date of receipt of a copy of this order.

8. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

15.06.2023

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No
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To

10/12



W.P.No.15344 of 2023

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W.P.No.15344 of 2023

M.S.RAMESH,J.

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W.P.No.15344 of 2023

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