BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.09.2023

DELIVERED ON : 12.10.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD)No.22825 of 2022
and
W.M.P(MD)No.16951 of 2022

C.Santhammal ... Petitioner

Vs.

1.The Commissioner of Revenue Administration,
Chepauk, Chennai.

2.The District Collector,
Sivagangai.

3.The District Revenue Officer,
Sivagangai.

4.A.Jeeva,
Senior Revenue Inspector,
Tahsildar Office,
Karaikudi.

5.V.Vala Parameswaran,
Senior Revenue Inspector,
Forest Settlement Office,
Sivagangai. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceeding of the third respondent in Na.Ka.A2/30177/2022, dated 23.08.2022 and quash the same and consequently direct the respondents 1 and 2 to promote the petitioner herein as Senior Revenue Inspector with effect from 04.05.2018, the date as which her juniors viz. respondents 3 and 4 were promoted instead of 12.07.2019 and confer her all monetary and service benefits by declaring the probation of petitioner with effect from 25.08.2016 instead of 21.02.2017 and by ignoring the delay on the part of respondents in sending the petitioner for Junior Assistant training.

For Petitioner : Mr.VR.Shanmuganathan

For R-1 to R-3 : Mr.M.Prakash
Additional Government Pleader

For R-4 & R-5 : No appearance

ORDER

The present writ petition has been filed for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceeding of the third respondent in Na.Ka.A2/30177/2022, dated 23.08.2022 and quash the same and consequently direct the respondents 1 and 2 to promote the petitioner herein as Senior Revenue Inspector with effect from 04.05.2018, the date as which her juniors viz. respondents 3 and 4 were promoted instead of 12.07.2019 and confer her all monetary and service benefits by declaring the probation of petitioner with effect from 25.08.2016 instead of 21.02.2017 and by ignoring the delay on the part of respondents in sending the petitioner for Junior Assistant training.

2. Heard the learned Counsel for the petitioner and the learned Additional Government Pleader for the respondents 1 to 3 and carefully perused the materials available on record.

3. The petitioner was selected as Typist by the proceedings of TNPSC, dated 10.06.2014 and was allotted Revenue Department, Sivagangai. Thereafter, vide the proceedings of the P.A General to the Collector of Sivagangai, dated 25.08.2014, the petitioner was given with an appointment as Typist, the office of the Tahsildar, Thirupathur. On 27.08.2015, the petitioner's services were regularised with effect from 25.08.2014. In the meanwhile, the petitioner got married and got conceived, for which, she availed maternity leave from 26.10.2015 to 22.04.2016. However, vide proceedings, dated 16.06.2016, the then P.A to Collector, held that out of the

said 180 days, only 164 days were treated as maternity leave and the remaining 16 days were treated as earned leave and on that basis, the entire 180 days leave was regularised.

4. Thereafter, the petitioner joined service on 22.04.2016. Thereafter, vide proceedings, dated 11.07.2017, the petitioner's completion of probation was declared with effect from 21.02.2017 and the same is erroneous. Once the petitioner's maternity leave is regularised and the same is treated as duty period, the petitioner's probation will follow immediately on completion of two years of service (i.e.,) on 25.08.2016 and not 11.07.2017. Likewise, vide the proceedings of the second respondent, dated 04.05.2018, the panel of the Senior Revenue Inspectors were published and the petitioner's name did not find place in it. Thereafter, once again vide proceedings, dated 12.07.2019 of the second respondent, another panel of Senior Revenue Inspectors were published and the petitioner's name was placed at serial No. 7. Following which, the petitioner was posted as Senior Revenue Inspector, Karaikudi, from where, she was transferred to Devakottai. But in the 04.05.2018 panel itself, the petitioner was entitled to be posted as Senior Revenue Inspector. The names of the respondents 3 and 4, who were juniors

to the petitioner in service were included in the panel, whereas the petitioner was not included. For which, on 02.11.2021, the petitioner had also made a request with the second respondent through proper channel and the same was not considered.

5. On the other hand, vide proceedings of the P.A to Collector, dated 02.09.2017, one year training as Junior Assistant has been ordered from 25.09.2017 to 24.09.2018, which is required for a promotion to the post of Assistant. Vide proceedings, dated 12.10.2018, the P.A to Collector declared that the petitioner has successfully completed the training. Though there were instructions vide Government Letter, dated 22.01.2021, there is no need to wait for completion of probation for sending to training as Junior Assistant. However, the same was not followed and the petitioner was sent for training only after declaration of the completion of probation. Therefore, there is no fault on the petitioner's part in either declaring the probation belatedly (i.e.,) 25.08.2016 instead of 21.02.2017 or sending the petitioner for Junior Assistant Training. While so, many of the petitioner's Juniors have been promoted and the petitioner's request in this regard to place her above them was not acceded to. For which, the petitioner was orally

informed that the maternity leave availed by her had pushed her down in the service. But the petitioner reiterates that the maternity leave was regularised on 16.06.2016. The respondents 4 and 5 were promoted on 04.05.2018. Once, the leave period is regularised, the petitioner is entitled to all service benefits.

6. In the said circumstances, W.P(MD)No.15239 of 2022 came to be filed by the petitioner, directing the respondents 1 and 2 to promote her as a Senior Revenue Inspector with effect from 04.05.2018, the date at which her juniors and respondents 3 and 4 were promoted instead of 12.07.2019 and to confer all monetary and service benefits. This Court on 14.07.2022 was pleased to direct the respondents 1 and 2 to consider the petitioner's representation, dated 02.11.2021 and pass appropriate orders. Pursuant to the said order, the petitioner had given a representation, dated 01.08.2022 along with the order of this Court to the respondents through proper channel. However, without any further notice or enquiry, the second respondent had passed the impugned proceedings, dated 23.08.2022, rejecting the petitioner's request for promotion on par with her juniors. Assailing the same, this writ petition came to be filed.

7. The learned Additional Government Pleader for the third respondent has filed counter and he submitted that vide proceedings of the third respondent, dated 12.07.2019, a panel for Senior Revenue Inspector was published and in the cadre of Assistant (i.e.,) Revenue Inspector for the panel of 2019, the petitioner's name was placed at serial No.7. Later, she was promoted as Senior Revenue Inspector, Karaikudi. The pre-requisite qualifications as per Rule 30 (C) of the Tamil Nadu Ministerial Service read with Annexure IV fixed for Senior Revenue Inspector promotion from feeder category are as follows:

> *"a) Should be an approved probationer (For a period of 2 years within 3 years.*
>
> *b) Should have passed Revenue test I, II, III.*
>
> *c) Should have completed the Bhavanisagar Basic Training (For Junior Assistant Only, and also after Assistant Promotion for Typist).*
>
> *d) Should have completed the survey and settlement training for a period of 35 days. (For both Junior Assistant and Typist).*
>
> *e) Should have completed 1 year Junior Assistant training before promotion of Assistant. (For Typist Only)"*

8. After being promoted as Senior Revenue Inspector during 2019, she made an appeal to include her name in the panel of Senior Revenue Inspector for the year 2018, for which, she is not entitled as she has not completed the period of probation and has not completed one year of Junior Assistant training before 15.03.2018 (i.e.,) crucial date of consideration for 2018 panel. The respondents 4 and 5, who are juniors to the petitioner in service were included in the panel for the year 2018, as they have completed all the pre-requisite qualification before 15.03.2018. The crucial date for drawal of panel is 15th March of every year. As the petitioner completed two pre-requisite qualification after the crucial date 15.03.2018, she was not included in 2018 Senior Revenue Inspector panel and was rightly included in the panel for the year 2019. Based on the leave availed by the petitioner from 26.10.2015 to 22.04.2016 for 180 days, 164 days was considered as maternity leave and 16 days as earned leave and the earned leave cannot be taken into account, while the maternity leave may be taken into account for probation for other service benefits such as increments, pensions etc. So, the delay in declaration of probation is not due to administrative reasons. The petitioner herself is responsible for the delay. Hence, the claim of the

petitioner that the delay in declaration of probation was caused by the respondents is not sustainable.

9. That apart, the learned Additional Government Pleader relying upon Section 40 (6) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 submitted that application for the revision of seniority of a person in a service, class, category or grade shall be submitted to the appointing authority within a period of three years from the date of appointment to said service, class, category or grade or within a period of three years from the date of order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts. However in the instant case, the petitioner was appointed on 25.08.2014 and the request to revise the seniority was made on 02.11.2021, (i.e.,) beyond a period of three years from the date of appointment.

10. That apart, a person working as Typist will become eligible for the promotion to the post of Senior Revenue Inspector only on clearing

Revenue Tests Part I (Paper I and II), Part II, Part III, revenue survey training for a period of not less than four weeks and settlement training for a period of not less than one week and on completion of probation period. The respondents 4 and 5 have completed all the pre-requisite qualifications before 15.03.2018 and rightly included in the panel for the year 2018, whereas the petitioner did not complete the same. Hence, the petitioner is not eligible for the panel year 2018 and hence, the same is not sustainable. On that basis, the learned Additional Government Pleader pressed for dismissal of this writ petition.

11. The entire crux of the issue has emanated from the issue that, of the petitioner's total 180 days of maternity leave, only 164 days were treated as maternity leave and the remaining 16 days were treated as earned leave though the entire 180 days leave was regularised. The second respondent ought to have considered that once maternity leave is regularised and is treated as period spent on duty, all consequential benefit would follow. Therefore, probation for two years would be completed on 25.08.2016 as appointment was made on 25.08.2014. Therefore, declaration of probation on 21.02.2017 is belated and not at the fault of petitioner. Despite the

availability of a circular that there is no need to wait for declaration of probation for sending an employee to Junior Assistant training, the petitioner was not sent for the said training and that was not at her fault. Had she been sent immediately after her maternity leave, she would have completed the training as on the cut of date (i.e.,) 15.03.2018. But she was sent for training only on 25.09.2017 after a lapse of 1 ½ years. The delay, laches and fault is on the respondent's side and the same cannot be thrust against the petitioner.

12. That apart, the third and fourth respondents being juniors by service to the petitioner, as on 04.05.2018 when they were promoted and placed as Senior Revenue Inspectors, the petitioner was eligible for promotion as her probation ought to have been declared as early as on 25.08.2016. The petitioner ought to have been sent for Junior Assistant training without waiting for probation to be declared. Therefore, by all means, the petitioner should have been promoted and placed above the third and fourth respondents and hence, the impugned proceeding is *per se* illegal. Precisely the matter in hand is no more *res integra*.

13. This Court in a case in ***W.P(MD)No.22994 of 2015 (N.Praveena Mary Vs. The Secretary to Government, Revenue Department, Secretariat, Chennai-600 009 and Others), dated 21.12.2015*** has held 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 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."*

14. In yet another case in ***W.P(MD)No.16755 of 2017 (Mrs.M.Uma Meenakshi Vs. The Secretary to Government, Revenue Department,***

Secretariat, Chennai-600 009 and Others), dated 05.09.2017, this Court has dealt with a similar case and the relevant portion of which is extracted as follows:

> *"2. ....While so, in the year 2010, she went on earned leave from 27.05.2010 to 10.06.2010 for about 15 days; and maternity leave from 11.06.2010 to 24.08.2010 for about 75 days. The said leave was also sanctioned and regularised by the Personal Assistant [General] to the District Collector, Sivagangai District, in his proceedings in Moo.Mu.A3/22265/2010, dated 06.10.2010. The petitioner also received salary for the said period. The third respondent while preparing the panel for promotion to the post of Deputy Tahsildar for the year 2017 excluded the name of the petitioner, for the reason that she was not working from 27.05.2010 to 24.08.2010 for a period of 90 days. Since the said period of leave was regularised and the petitioner was also paid salary for the said period, a representation was given by the petitioner to the third respondent on 21.08.2017, requesting him to include her name in the promotion panel."*

15. In yet another case in ***W.P(MD)No.8115 of 2018 (S.Renuka Vs. The Principal Secretary to Government, Revenue Department, Secretariat, Chennai-600 009 and Others), dated 25.04.2018,*** this Court

has dealt with a similar case and the relevant portion of which is extracted as follows:

> *"6. ....In this case, Tmt.N.Praveena Mary has acquired all the prescribed qualifications. But she was not considered for the Deputy Tahsildar panel, because the leave period of 9 months and 1 day was not treated as duty period as it was maternity leave and not eligible to be treated as duty as conceived by officers preparing the panel. Thus the individual fell short by 8 days of the 5 year service completion qualification as on 15.09.2015.*
>
> *According to Section 12 of Tamil Nadu Government Servant (Conditions of Service) Act 2016, the period spent on leave will not bar any individual from being promoted if he is otherwise fully qualified to hold the post..............*
>
> *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, dated 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."

16. Though the respondents had categorically submitted that any leave availed by the petitioner even if it is maternity leave will be excluded for the purpose of calculating the petitioner's seniority, the same is not sustainable. On the basis of Section 12 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 in almost identical circumstances, a learned Single Judge of this Court has held that the period spent on maternity leave will not be a bar for any individual for being promoted, if she is otherwise qualified for the post.

17. On a *prima facie* consideration, this Court is of the considered view that the petitioner is also eligible for the very same relief and 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 Senior Revenue Inspector. If the said service period is added as duty period, then her probation will follow immediately on the completion of two years of her service (i.e.,) on 25.08.2016 and not on 11.07.2017. By excluding the maternity leave, it is stated that the petitioner completed her probation only on 11.07.2017. In these circumstances, the first and second respondents ought to take necessary steps to promote the petitioner as Senior Revenue Inspector with effect from 04.05.2018 (i.e.,) on the date of which her juniors (i.e.,) the respondents 3 and 4 were promoted instead of 12.07.2019 and confer her with all monetary and service benefits, by declaring the probation of the petitioner with effect from 25.08.2016 instead of 21.02.2017 and by ignoring the delay on the part of the respondents in sending the petitioner for Junior Assistant training.

18. In the facts and circumstances of this case, this Court hereby quash the impugned proceedings of the third respondent in proceeding

Na.Ka.A2/30177/2022, dated 23.08.2022 and consequently direct the respondents 1 and 2 to promote the petitioner as Senior Revenue Inspector with effect from 04.05.2018 (i.e.,) the date on which her juniors 3 and 4th respondents were promoted and further to confer her with all monetary and service benefits by declaring the probation of the petitioner with effect from 25.08.2016.

19. Accordingly, the writ petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

12.10.2023

NCC : Yes
Index : Yes
Internet : Yes
BTR

To

1.The Commissioner of Revenue Administration,
Chepauk, Chennai.

2.The District Collector,
Sivagangai.

3.The District Revenue Officer,
Sivagangai.

4.The Senior Revenue Inspector,
Tahsildar Office,
Karaikudi.

5.The Senior Revenue Inspector,
Forest Settlement Office,
Sivagangai.

L.VICTORIA GOWRI, J.

BTR

Order made in
W.P(MD)No.22825 of 2022

12.10.2023