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W.P.No.43916 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T.ASHA

W.P.No.43916 of 2016
and
W.M.P.No.37748 of 2016

K.Selvakumari

...Petitioner

-VS-

1.The Principal Secretary,
Department of Personnel and
Administrative Reforms,
Secretariat,
Fort St.George,
Chennai – 600 009.

2.S.Sakthivel

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to writ of mandamus directing the 1st respondent to include the name of the petitioner in the seniority list issued by G.O.(Ms)No.111 dated 11.11.2016 above the 2nd respondent name ie., Sl.No.39 by including the maternity leave period and the leave taken on loss of pay, a total of 184 days, for calculating the probation period.



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For petitioner : Mr.L.Chandrakumar
for Mr.Thangavadhanabalakrishnan

For respondents : Mr.R.Neelakandan,
Additional Advocate General,
assisted by
Mr.S.John J.Raja Singh,
Additional Government Pleader,
for R1,

No appearance for R2.

ORDER

The above writ petition was filed originally for a direction to the first respondent to include the name of the petitioner in the seniority list issued by G.O.(Ms)No.111, Personnel and Administrative Reforms (U) Department, dated 11.11.2016, above the 2nd respondent name ie., SL.No.39 by including her maternity leave period within her probation period. This prayer was subsequently amended on 05.08.2022 as follows:

“....directing the 1st respondent to include the name of the petitioner in the seniority list issued by G.O.(Ms)No.111 dated 11.11.2016



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above the 2nd respondent name ie., Sl.No.39 by including the maternity leave period and the leave taken on loss of pay a total of 184 days for calculating the probation period.”

2. It is the case of the petitioner that she was appointed as Assistant in the Department of Highways and Minor Ports, pursuant to the selection under Group V examination conducted by the Tamil Nadu Public Service Commission. She had joined service on 25.06.2007. Her service was regularized by office proceedings No.249, Highways Department dated 07.07.2008. The petitioner would submit that she had cleared the Foundational Training Course examination conducted by the first respondent.

3. The petitioner had availed maternity leave from 05.11.2008 to 02.02.2009 and thereafter, she had continued the leave from 04.02.2009 to 19.03.2009, 23.03.2009 to 29.04.2009 and 19.05.2009 to 30.05.2009 on loss of pay as she was unable to leave



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her new born baby and travel from Kanchipuram to her office at Chennai. Her baby was very frail and weak and had to be breast fed frequently. To travel to the Secretariat, she had to travel about two hours from Kanchipuram and she would be back home only at 9.00 p.m. Long hours away from baby caused problems not only to the baby, but, also to her, as a result of which, she was constrained to avail leave on loss of pay. Therefore, she had, in addition to the sanctioned maternity leave of 90 days, availed an excess of 95 days leave for the sake of her child.

4. Since her probation period was postponed due to the maternity leave availed by her, her probation was declared by office proceedings No.49 dated 01.02.2010. She was given temporary promotion to the post of Assistant Section Officer by G.O.(4D)No.17 dated 04.05.2010 by the first respondent. The Assistants who were temporarily promoted as Assistant Section Officers were thereafter regularized on 19.05.2014 by the first



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respondent. She has been regularized by G.O.(4D)No.33 dated 19.05.2014 for the Assistant Section Officer regular panel for the year 2010-2011.

5. It is the case of the petitioner that she ought to be considered for the year 2009-2010 panel and only on account of her probation period being declared on 27.01.2010, her name has not been considered. She would submit that since her regularization was done in 2010-2011 panel instead of 2009-2010 panel, she was placed below her juniors in the seniority list. Therefore, she gave a representation dated 30.05.2014 to restore her seniority. However, there is no response to the same.

6. The Tamil Nadu Secretariat Association had also sent a detailed representation dated 19.03.2015 to the first respondent to treat the maternity leave period within the probation period not only for the petitioner, but, also for two other women staff as well, who



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had joined in the year 2007. However, there was no response to the same. Once again, the petitioner had sent a representation dated 17.03.2016 which was also not considered. However, the first respondent had issued the *inter se* seniority list between the direct recruits and the promoted Assistant Section Officer by G.O.(Ms)No.111 dated 11.11.2016. In that seniority list, the petitioner's name was not included and the names of those Assistant Section Officers in the regular panel for the year 2008-2009, 2009-2010 were alone included and therefore, the petitioner is before this Court.

7. The first respondent has filed a very detailed counter setting forth the Special Rules for the Tamil Nadu Secretariat Service and the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, relating to the norms prescribed to the post of Assistant Section Officer. After setting out the same, the first respondent had denied the allegations contained in the petition. The



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first respondent would submit that the petitioner was not considered for inclusion in the regular panel of Assistant Section Officers for the year 2009-2010, since she had not completed her probation in the post of Assistant before the crucial date *viz.*, 01.08.2009 for the year 2009-2010. It is only the persons who have completed the probation period before the said crucial date who would be eligible for promotion. The petitioner had completed her probation only on 27.01.2010, whereas, the panel for the post of Assistant Section Officers had been prepared on 01.08.2009. Thereafter, the petitioner was included in the panel of Assistant Section Officers for the year 2010-2011. Therefore, it is the contention of the first respondent that the petitioner's request has rightly not been redressed.

8. The learned counsel for the petitioner would submit that now, women are granted maternity leave for one year as the Government had taken into consideration the need of the mother's continued presence with her child till that child become a year old.



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Therefore, he would submit that if the period of 185 days which includes her sanctioned 90 days maternity leave falls within the probation period the petitioner could be considered for inclusion in the panel for the year 2009-2010 itself.

9. The learned Additional Advocate General who had endeavoured to convince the authorities to sympathetically consider the petitioner's case has today submitted the following chart to substantiate why the petitioner's case cannot be considered even sympathetically.

Details of leave taken during probation period

<i>SL. No.</i>	<i>Type of Leave</i>	<i>Period</i>	<i>No. of days</i>
1.	Earned Leave	20.11.2007 - 23.11.2007	4
2.	Extra-ordinary Leave without Allowance	27.11.2007 - 11.12.2007	15
3.	Earned Leave	23.09.2008 - 25.09.2008 15.10.2008 - 17.10.2008 21.10.2008 - 24.10.2008 29.10.2008 - 31.10.2008	13
4.	Maternity Leave	05.11.2008 - 02.02.2009	90



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SL. No.	Type of Leave	Period	No. of days
5.	Extra-ordinary Leave without Allowance with Medical Certificate	04.02.2009 - 19.03.2009 23.03.2009 - 29.04.2009 19.05.2009 - 31.05.2009	44 38 13
			217

This clearly shows that the petitioner had availed totally 217 days leave during her probation period which includes 90 days of maternity leave. Rule 27 of the General Rules for the Tamil Nadu State and Subordinate Services now [now Section 32 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Tamil Nadu Act 14 of 2016)] provides that “Period of leave, if any, taken during the period of probation shall be excluded while calculating the period of probation”.

10. Therefore, from the date of her appointment on 25.06.2007 till the date on which her probation was to be considered ie., on 23.06.2009, the petitioner had totally availed 217 days leave. That apart, the first respondent would submit that probationers are not entitled to medical leave. Therefore, if the sanctioned 90 days for



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maternity leave is considered as part of the probation period, even then, the petitioner will not qualify for being considered in the year 2009-2010 panel.

In view of the above discussion, the writ petition stands dismissed. Consequently, connected W.M.P. stands closed. No costs.

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Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
ssa

To
The Principal Secretary,
Department of Personnel and
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Secretariat,
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P.T.ASHA, J.,

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