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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.07.2024

Pronounced on : 07.08.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.16483 of 2024

K.Santhiya ... Petitioner

Vs.

1.The Directorate of Co-operative Audit Department,
#571, Anna Salai,
2nd Floor,
Perasiriyar K.Anbalagan Maaligai,
Veterinary Hospital Campus,
Nandanam,
Chennai-600 035.

2.The Assistant Director of Co-operative Audit,
Government Multi Storied Building,
Khajamalai,
Tiruchirappalli-620 020. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling records of the 1st respondent relating to the Director of Co-operative Audit, Chennai passed in Na.Ka. 5170/2024 / Po.Ni.2 dated 21.06.2024 and communicated to the

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petitioner by the second respondent i.e., the Assistant Director of Co-operative Audit, Tiruchirappalli in his endorsement Me.Ku.Na.Ka. 5170/2024 dated 11.07.2024 and quash the same and consequently direct the 1st respondent i.e., the Director of Co-operative Audit, Chennai to declare the period of probation of the petitioner with effect from 01.04.2023 and consequently to include the name of the petitioner in the approved list of Junior Co-operative Auditor of the year 2024 according to her seniority in the feeder category within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.S.Kameshwaran,
Government Advocate

ORDER

Heard Mr.S.Visvalingam, learned counsel appearing for the petitioner and Mr.S.Kameshwaran, learned Government Advocate appearing for the respondents.

2. This Writ Petition has been filed challenging the order of the first respondent in Na.Ka. 5170/2024 / Po.Ni.2, dated 21.06.2024 and consequently to direct the first respondent to declare the period of probation of the petitioner

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with effect from 01.04.2023 and consequently to include the name of the petitioner in the approved list of Junior Co-operative Auditor of the year 2024 according to her seniority in the feeder category within a specified time frame that may be fixed by this Court.

3. The petitioner has been appointed through the Tamil Nadu Public Service Commission under Group-IV examination as a 'Typist' and joined on 22.01.2021 in the office of the Director of Co-operative Audit Department and her services have been regularized with effect from 27.04.2024 subsequently. The petitioner has also passed the Account Test and Departmental Test and made herself eligible for the next promotion to the post of Junior Co-operative Auditor. The petitioner was on maternity leave from 16.08.2021 to 15.08.2022 i.e., for a period of 365 days and thereafter, she was on earned leave on medical grounds without pay from 17.08.2022 to 25.10.2022.

3.1. The petitioner made a representation to the first respondent on 06.03.2024 to consider her leave during maternity period as service and include her name in the promotional panel to the post of Junior Co-operative Auditor of the year 2024 along with her juniors, but, the same was rejected on the ground that the maternity period cannot be counted for promotion.

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4. Mr.S.Visvalingam, learned counsel appearing for the petitioner submitted that as per Section 12 of the Tamil Nadu Government Servants (Conditions and Service) Act, 2016, the absence of a member of a service from duty in such service, whether on leave or on foreign service or on deputation or for any other reason shall not, render him ineligible to promotion to higher category in such service.

5. Defence was taken in the respondents' counter about the Co-operative Audit Department Adhoc Rules which would enlist those period of service which could be included for the purpose of probation and those period of service could not be included for the purpose of probation and in the said list, the period of leave other than the casual leave will not be included for the purpose of computing the period of probation.

6. No doubt the period during which the petitioner was on maternity leave will be included in her total service. But, whether that part of the service will give the benefit of continuity of service for the purpose of declaration of probation matters. Only because the leave other than the casual leave cannot be included for the purpose of calculating the qualifying period for probation, the

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petitioner's probation was extended till 06.03.2024 and thereafter, declared on 27.04.2024. Since the petitioner is aware of the Rules of probation, she did not dispute the extension of probation till 06.03.2024 and also the consequent declaration of probation with effect from 27.04.2024.

7. The petitioner's only grievance is that her name has not been included in the panel for the promotion year 2024 to the post of Junior Co-operative Auditor. The qualification and eligibility criteria for the post of Junior Co-operative Auditor prescribed in the Government Order in G.O.(Ms).No.253, Finance (Co-operative Audit) Department, dated 31.03.1986. As per the said Rule, if recruitment is by transfer from the post of Typist, then, the individual should have completed the required Departmental Examinations and she should also have completed service for a period of not less than three years as Typist / Steno Typist in the Co-operative Audit Department in the Tamil Nadu Ministerial Service. For the sake of clarity, the above Rule is extracted below:

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3.Junior Co-Operative Auditor	(I) Transfer (ii) Direct Recruitment (iii)Recruitment by transfer	Must have served as Junior Inspector of Co-operative Societies Must possess B.B.M. Degree awarded by the Universities and Institutions in Tamil Nadu or B.Com., Degree or B.A. (Co-operation) Degree or B.A. (Economics) Degree (Amended in G.O.(Ms).No.376 Fin (CA) Department, dated 09.07.2004 Executive (Corporate Secretaryship)Degree awarded by Universities in Tami Nadu as equivalent in G.O.(Ms).No.303, Fin (CA)Department, dated 27.05.2004 (I) Must Possess the minimum General Educational Qualification specified in Schedule-I in the Tamil Nadu State and Subordinate Services Rules; (ii). Must have passed the Account Test or Subordinate Officers Part I; (iii).Must have passed the District Office Manual Test; and (iv).**Must have put in service for a period of not less than two years on duty as Junior Assistant in the Co-operative Audit Department in the Tamil Nadu Ministerial Service and in the case of persons who were appointed to the post of Junior Assistant by transfer from the post of Typist must have put in a total service in the Co-operative Audit Department in the Tamil Nadu Ministerial Service in both categories for a period of not less than three years on duty; or must have put in a service for a period of not less than three years on duty as Typist / Steno Typist in Co-operative Audit Department in the Tamil Nadu Ministerial Service.”** (Amended vide G.O.(Ms).No.368, Finance (CA) Department, dated 07.11.2002)

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8. Mr.N.Ramesh Arumugam, learned Government Advocate stressed upon a point that the period during which the petitioner was on leave other than casual leave cannot be considered as duty and hence, the petitioner did not fulfil the eligibility requirement criteria.

9. The word 'duty' defined in Section 3 (o) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is extracted hereunder:

> ***Section 3 (o).***
>
> ***"On duty" means a person as a member of service,-***
>
> *(i) When he is performing the duties of a post borne on the cadre of such service or is undergoing the probation, instruction or training prescribed for such service*
>
> *(ii) When he is on joining time; or*
>
> *(iii) When he is absent from duty during vacation or on authorised holidays or on casual leave taken in accordance with the instructions regulating such leave issued by the Government having been on duty immediately before and immediately after such absence;*
>
> *(iv) when he has compulsorily to wait for orders of posting on return from leave."*

10. Admittedly, the petitioner, who had availed Maternity Leave and other leave for a total period of 464 days, cannot claimed that she had been on

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duty for three years as Typist as prescribed under the Government Order in G.O.(Ms).No.253, Finance (Co-operative Audit) Department, dated 31.03.1986.

11. However, Mr.S.Visvalingam, learned counsel appearing for the petitioner submitted that in many judgments of this Court, it is held that the Maternity Leave period shall be considered as 'on duty'.

12. Mr.S.Visvalingam, learned counsel appearing for the petitioner had relied on the following judgment in support of his contention that the leave other than the casual leave shall be considered as 'on duty' as per Section 12 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

> "*(1). Selvi Vs. The Director of Government Examination, DPI Complex, Chennai-600 006 and another in W.P.No.19426 of 2016, dated 05.01.2022;*
>
> *(2). The Principal Secretary to Government, Revenue Department, Secretariat, Chennai-600 009 and others Vs. S.Renuka in W.A.(MD).No.200 of 2019 in W.P.(MD).No.8115 of 2018, dated 08.06.2021;*
>
> *3. D.Vedhanagi Vs. The Director of Co-Operative Audit Department, 571, Anna Salai, 2nd Floor, Amma Complex, Veterinary Hospital Campus, Nandanam, Chennai-600 035 and another in W.P.*

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(MD).No.6545 of 2020, dated 09.06.2020;

4. S.Subalakshmi Vs. The Director of Co-operative Audit, Nandanam, Chennai-600 035 and another in W.P.(MD).No.10971 of 2020, dated 04.09.2020;

5. T.Priyatharsini Vs. The Secretary to Government, Co-operation, Food and Consumer Protection Department, Secretariat, Chennai-600 009 and others in W.P.(MD).No.23939 of 2016 dated 15.03.2021;

6. S.Abhirami Vs. The Inspector General of Police (Technical Services), Mylapore, Chennai-600 004 and another in W.P.No.15344 of 2023, dated 15.06.2023

13. He also relied on another judgment of this Court in the case of ***T.Ramya Vs. The Secretary to Government of Tamil Nadu, Law Department, Secretariat, Chennai and others*** in ***W.P.(MD).No.4574 of 2021***, dated 03.04.2024, wherein, the learned Single Judge of this Court directed the respondents to declare the probation of the petitioner without excluding the maternity leave period (i.e., 180+270=450 days) and after excluding 5 days, availed on other heads.

14. Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents in support of his contention has relied on the following judgment:

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"S.Nagajothi Vs. The State of Tamil Nadu, Represented by the Additional Chief Secretary / Commissioner of Revenue Administration, Commissionerate of Revenue Administration, Disaster Management, Ezhilagam, Chennai-600 005 in W.P.Nos. 1442, 1451 and 1465 of 2023, dated 29.09.2023."

15. Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents submitted that in the above decision of this Court rendered in W.P.Nos.1442, 1451 and 1456 of 2023, it is held that the probation is not a mere formality and hence, one cannot take advantage of the benefit to seek exemption from undergoing the mandatory period of probation and it is further observed that the Court cannot give any positive direction to treat maternity period as a duty unless amendment is brought in this regard.

16. On perusal of all the cases relied upon by the learned counsel appearing for the petitioner that all these orders are primarily for the purpose of declaring the probation by including the period during which the petitioner was on maternity leave by giving the benefit of Section 12 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The period during which any individual is absent from duty, according to the said Rule, will not render him ineligible for promotion from a lower cadre. No doubt, the above

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Rules are applicable in the normal course for considering the promotion from a lower cadre or appointment of any other sort prescribed under Section 12 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. But, in the instant case, there are certain special Rules that prescribed certain qualification for certain posts in the Department of Co-Operative Audit. The Government Order in G.O.(Ms).No.253, Finance (Co-operative Audit) Department, dated 31.03.1986, which prescribes certain qualification would state that the object of the said Government Order is to ensure that the Audit Department of all Co-Operative Societies independent of their Administrative Department and be handled by persons having certain specific qualifications.

17. So far appointing a Junior Co-operative Auditor by transfer from the post of Typist, if certain number of years of service alone is sufficient, the Rules would have conveniently stated about the same. In such case, the service of an individual would also include the period during which she was absent from duty to any leave otherwise as stated under Section 12 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. But the Rules prescribing eligibility specifically mentions that certain years on duty is required. In such case, it cannot be presumed as mere service and hence, the word 'On duty' assumes more significance.

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18. As stated supra, on duty would mean the time when the member of the service performs his duty in a post falling under the service or undergoes the probation, instruction or training prescribed for which service or avails joining time, or is absent from duty during vacation or on authorised holidays or on casual leave or when the member has been kept under compulsorily to wait for orders of posting on return from service. When the definition does not include the leave other than casual leave, vacation or otherwise holidays, it is difficult to imagine that the term 'On duty' would include the maternity leave availed by the petitioner.

19. As the petitioner who had been on leave other than the casual leave and maternity leave for more than 464 days, she cannot expect that period to be included in period ‘On duty’ under Section 3(o) of the of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The petitioner should fulfil the qualification requirement for the Junior Co-operative Auditor prescribed in the Government Order in G.O.(Ms).No.253, Finance (Co-operative Audit) Department, dated 31.03.1986, apart from her seniority in the cadre of ‘Typist”.

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20. Since the petitioner does not fulfil the said eligibility criteria due to long leave other than the casual leave and which got excluded from the period 'On duty', it is right for the respondents to reject the request to treat maternity leave of the petitioner as 'on duty'.

21. In such view of the matter, I do not find any infirmity in the impugned order passed by the second respondent.

22. Accordingly, this Writ Petition stands dismissed. No costs.

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NCC:yes/no
Index:yes/no
Internet:yes/no
TSG
To
1.The Directorate of Co-operative Audit Department,
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R.N.MANJULA, J.

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