



W.P.(MD)No.16657 of 2024

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.16657 of 2024

K.Rajalakshmi

... Petitioner

Vs.

1.The Directorate of Children Welfare and Special Services,
(Previously designated as
Director of Social Defence),
No,300, Chennai-600 010.

2.The Superintendent,
Annai Sathya Ammaiyr Memorial Government,
Children Home,
Dr.Thangaraj Salai,
K.K. Nagar,
Madurai-625 020.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling records of the first respondent relating to the impugned order passed by the Director of Children Welfare and Special Services, Chennai in his Letter No. DSD/331/2024-A2/I/140416/2024, dated 10.07.2024 and communicated to the petitioner by the



W.P.(MD)No.16657 of 2024

Superintendent, Government Children Home, Madurai on 12.07.2024 and quash

the same and consequently direct the first respondent i.e., the Director of Children Welfare and Special Services, Chennai, to declare the period of probation of the petitioner with effect from 24.01.2023 and consequently to include the name of the petitioner in the approved list of Assistant of the year 2023 on par with her juniors, 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 of the first respondent relating to the impugned order passed by the Director of Children Welfare and Special Services, Chennai in his Letter No. DSD/331/2024-



W.P.(MD)No.16657 of 2024

A2/I/140416/2024, dated 10.07.2024 communicated to the petitioner by the Superintendent, Government Children Home, Madurai on 12.07.2024 and consequently to direct the first respondent i.e., the Director of Children Welfare and Special Services, Chennai, to declare the period of probation of the petitioner with effect from 24.01.2023 and consequently to include the name of the petitioner in the approved list of Assistant of the year 2023 on par with her juniors, within a specified time frame that may be fixed by this Court.

3. The petitioner has been selected through the Tamil Nadu Public Service Commission under Group-IV examination as a 'Typist' and joined on 25.01.2021 in the office of the Annai Sathya Ammaiyar Memorial Government Children Home, Madurai. The petitioner has passed all the Departmental Examination to be included in the approved list of Assistant of the year 2023. She was on Earned Leave from 02.03.2022 to 11.03.2022 and on Maternity Leave for the period from 07.11.2022 to 06.11.2023. In view of the above leave period, the petitioner's probation has not been declared.

3.1. The petitioner has given a representation to the first respondent on 22.01.2024 seeking to declare her probation by considering the leave period as service and to include her name in the integrated seniority list and to promote



W.P.(MD)No.16657 of 2024

the petitioner as 'Assistant' on par with her juniors. So, the petitioner has filed a Writ Petition before this Court in W.P.(MD).No.7426 of 2024 under which a direction has been given on 26.03.2024 directing the Director of Children Welfare and Special Services, Chennai to pass appropriate orders within a period of two weeks. The first respondent vide order dated 10.07.2024, rejected the petitioner's request stating that the maternity period cannot be counted for probation and hence, her name was not included in the approved list of Assistants for the year 2023. Aggrieved over the same, the petitioner has filed this Writ Petition.

4. 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 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;



W.P.(MD)No.16657 of 2024

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.(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*

5. 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.



W.P.(MD)No.16657 of 2024

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

“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.”

7. The 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. It is further observed that the Court cannot give positive direction to treat the maternity leave to be included for the purpose of probation.

8. Even if someone completes the period of service prescribed for probation and if services of a person does not found to be satisfactory, then he



W.P.(MD)No.16657 of 2024

will not be considered for declaration of probation. But, in the instant case, the petitioner joined in service on 25.01.2021 and has availed 374 days of leave other than casual leave. So according to the Rules governing probation, there may not be two years period of service if available within a continuous period of three years in order to declare probation in the same day as when the batchmates of the petitioner got their probation declared. Hence, the petitioner has suffered one more year of extension of probation period. However, at the end of the completion of the period of extension, the petitioner's services can be appraised for the purpose of declaration of probation.

9. So far as the petitioner is concerned, the three years period is extended upto January 2025, if the leave period is excluded from counting the period of service for the period of probation.

10. According to Section 12 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the absence of period 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 person and whether his lien in a post borne on the cadre of such service is suspended or not, shall not, if he is otherwise fit, render him ineligible in his turn for promotion to higher cadre in such service.



W.P.(MD)No.16657 of 2024

WEB COPY

11. But all the benefits enlisted under Section 12 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, including the promotion be extended to the petitioner only if the petitioner's probation is either declared successfully or deemed to have been declared in accordance with the Rules governing probation. No proposal seems to have been sent from the office of the petitioner from the office of the petitioner for recommending to declare her probation.

12. So far as the Judgments cited by the petitioner which would direct the authorities to include the period of leave other than casual leave to be included in the service for counting the probation are concerned, they are not supported by the Rules governing probation.

13. Hence, this Writ Petition is **disposed of** and the first respondent is directed to call for the proposal for declaring the probation of the petitioner from the second respondent and pass appropriate orders for declaring the probation if the petitioner has completed the probation satisfactorily and give her the advantage of promotion on par with her juniors to the post of Assistants, when promotional orders are given to her juniors after being satisfied with her



W.P.(MD)No.16657 of 2024

services and by giving her advantage of Section 12 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and pass orders as expeditiously as possible. No costs.

07.08.2024

NCC:yes/no

Index:yes/no

Internet:yes/no

TSG

To

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.



WEB COPY



W.P.(MD)No.16657 of 2024

R.N.MANJULA, J.

TSG

Pre-Delivery Order made in
W.P.(MD)No.16657 of 2024

07.08.2024