



W.P.(MD)No.16606 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2024

CORAM

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.16606 of 2017

and

W.M.P.(MD)Nos.13217 to 13219 of 2017

T.Pattukani

: Petitioner

Vs.

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.Personal Assistant to District Collector (Development),
Thoothukudi District,
Thoothukudi.

3.Block Development Officer (Village Panchayats),
Tiruchendur,
Thoothukudi District.

4.Moolakari Village Panchayat,
Rep. by its President / Special Officer,
Moolakarai,
Tiruchendur Panchayat Union,
Thoothukudi District.



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5.Kayamozhi Village Panchayat,
Rep. by its President / Special Officer,
Moolakarai,
Tiruchendur Panchayat Union,
Thoothukudi District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in connection with the impugned order of re-fixation of seniority in his proceedings in Na.Ka.Va.12/7597/2012 dated 19.12.2012 and consequential impugned rejection of fixation of seniority passed by the first respondent in Na.Ka.No.Va.12/7597/2012 dated 01.07.2013 followed with Na.Ka.No.Va.12/5410/2012 dated 09.12.2014 and quash all as illegal and arbitrary and consequently direct the respondents to restore the petitioner's seniority as on 01.01.2012 at Sl.No.18 issued by the second respondent in his proceedings in Na.Ka.Va. 12/7597/2012 dated 05.10.2012 and thereby promote the petitioner accordingly as Junior Assistant on par with her batch mater ie., Mr.V.Murugan placed at Serial No.19 with effect from his date of appointment ie., 26.06.2014 with all service and monetary benefits within the time limit that may be stipulated by this Court.

For Petitioner : Mr.K.Gurunathan

For Respondents : Mr.G.Suriya Ananth

Additional Government Pleader



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ORDER

This Writ Petition has been filed challenging the impugned orders dated 19.12.2012, 01.07.2013 and 09.12.2014 passed by the second respondent rejecting the petitioner's request for re-fixation of her seniority on the ground that erroneously the seniority of the petitioner at Sl.No.18 as on 01.01.2012 for the very first time when the seniority was drawn in Tuticorin District in the cadre of Panchayat Assistant by taking into account the date of joining as 01.11.1996 was suddenly re-fixed based on the objections as Sl.No. 191-A.

2.According to the petitioner, the re-fixation of the petitioner's seniority at Sl.No.191-A by the respondents is totally unjust and arbitrary and the re-fixation has been done in violation of the principles of natural justice.

3.A counter affidavit has been filed by the respondents denying the contentions of the petitioner, as according to them the petitioner has not worked during the period from 02/1997 to 09/2000 resulting in break of service. It is also contended by them that as per the Rules of the Panchayat Secretary, there is no medical leave or maternity leave. It is their contention that since the petitioner was



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unauthorisedly absent from 03/1997 to 09/2000, the petitioner is not eligible for the relief sought for in this Writ Petition. It is also their contention that G.O.(Ms).No.148 dated 27.11.2014, granting maternity leave for Panchayat Secretaries does not apply to the facts of the petitioner since the petitioner was appointed in the year 1996 itself and G.O.(Ms).No.148 dated 27.11.2014 is not retrospective.

4.Learned Counsel for the petitioner drew the attention of this Court to Rule 101 of the Fundamental Rules which is applicable for the Tamil Nadu Government servants. Relying upon the said Rule, learned Counsel for the petitioner would submit that the petitioner did not take leave for three years but was on leave only for three months for the period from 01.11.1998 to 31.01.1999 in respect of her first child and in respect of her second child from 01.07.2000 to 30.09.2000. He would also rely upon the report of the Block Development Officer which is filed as a document along with this writ petition and would submit that the same confirms the leave period of the petitioner, on account of maternity leave. According to him, if Rule 101 of the Fundamental Rules is applied, the petitioner's seniority as fixed earlier in Sl.No.18 cannot be brought down to Sl.No.191-A. He would also submit that without any prior notice to the petitioner, by violating the principles of natural justice, the seniority has been revised by bringing the petitioner's seniority from Sl.No.18 to Sl.No.191-A which is arbitrary and illegal.



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5. On the other hand, learned Additional Government Pleader appearing for the respondents would submit that G.O.Ms.No. 148 dated 27.11.2014 does not apply to the case of the petitioner since the same applies only with effect from 2014 but the petitioner was appointed as Panchayat Secretary in the year 1996 itself. He would submit that only due to the break of service of the petitioner, the seniority of the petitioner was refixed from Sl.No.18 to Sl.No. 191-A. According to him, there is no irregularity or illegality committed by the respondents while passing the impugned order in refixing the petitioner's seniority. However, as seen from the impugned order, Rule 101 of the Fundamental Rules which applies to Tamil Nadu Government servants, has not been given due consideration. The petitioner categorically contends that she had taken maternity leave on two spells ie., for the first child between 01.11.1998 to 31.01.1999 and for the second child from 01.07.2000 to 30.09.2000. She also categorically contends that there is no break of service ever since her date of appointment and taking charge of the subject post as Panchayat Secretary she has been in continuous service and therefore, the question of refixing the seniority by bringing her seniority down to Sl.No.191-A from Sl.No.18 does not arise. Rule 101 of the Fundamental Rules is extracted hereunder:



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***“Rule 101.- Rules regulating the grant
of -***

(a) maternity leave to female Government servants,

*(ab) *Special adoption leave to female Government servants*

(b) leave on account of ill-health to members of subordinate services whose duties expose them to special risk of accident or illness are given in the following instructions. Such leave is not debited against the leave account.”

6.The petitioner claims that only after prior approval, the maternity leave was taken by the petitioner. Though the respondents contend that being a probationer the petitioner is not entitled for maternity leave, the same is not reflected in the impugned order. Admittedly, no prior notice was also issued to the petitioner prior to the passing of the impugned order. The petitioner was also allowed to rejoin duty after her leave and is in continuous service. In the counter affidavit filed by the third respondent before this Court, they have also not stated as to whether any charge memo has been issued to the petitioner for her unauthorised absence, since in the normal circumstance, since the respondents claim that the petitioner is not entitled for maternity leave and on account of her long absence ie., almost six months, the respondents would have initiated disciplinary



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proceedings against the petitioner for her unauthorised absence.

But the same is not disclosed in the counter affidavit filed by the third respondent before this Court.

7.The contentions of the petitioner as raised in this Writ Petition have not been answered in the impugned order by giving proper reasons for rejecting the petitioner's request for refixation of her seniority. Since no opportunity of hearing was also granted to the petitioner and no sufficient reasons have been given by the respondents in the impugned order, this Court is of the considered view that the impugned order is a non-speaking order and is in violation of principles of natural justice.

8.For the foregoing reasons, the impugned orders dated 19.12.2012, 01.07.2013 and 09.12.2014 are hereby quashed and the matter is remanded back to the first respondent for fresh consideration on merits and in accordance with law. The first respondent is directed to pass final orders after giving one opportunity of personal hearing to the petitioner by adhering to the principles of natural justice and after giving due consideration to Rule 101 of the Fundamental Rules applicable to the Government servants in Tamil Nadu as well as the written submissions to be filed by the petitioner, if any, within a period of eight [8] weeks from the date of receipt of a copy of this order.



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9. With the aforesaid directions, this Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes / No
NCC : Yes/No
MR



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- 4.The President / Special Officer,
Moolakari Village Panchayat,
Moolakarai,
Tiruchendur Panchayat Union,
Thoothukudi District.
- 5.The President / Special Officer,
Kayamozhi Village Panchayat,
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ABDUL QUDDHOSE, J.

MR

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