

W.A.(MD)No.2096 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
28.04.2025	03.06.2025

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.A(MD)No.2096 of 2024

K.Santhiya

... Appellant

-Vs-

1.The Director 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 Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD).No.16483 of 2024, dated 07.08.2024.

For Appellant : Mr.S.Visvalingam

For Respondents : Mr.S.S.Madhavan



WEB COPY



W.A.(MD)No.2096 of 2024

Additional Government Pleader

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

The present W.A.(MD)No.2096 of 2024 is filed by the writ petitioner challenging the order dated 07.08.2024 passed in W.P.(MD).No.16483 of 2024.

2. The writ petition was filed for Writ of Certiorarified Mandamus, to quash the proceedings passed by the 1st respondent in Na.Ka.No.5170/2024/Po. Ni2 dated 21.06.2024 and communicated to the petitioner by the 2nd respondent in his endorsement Me.Ku.Na.Ka.5170/2024 dated, 11.07.2024 and to direct the 1st respondent to declare the period of probation of the petitioner with effect from 01.04.2023 and to include the name of the petitioner in the approval list of Junior Cooperative Auditor of the year 2024 according to her seniority in feeder category.

3. The brief facts are that the petitioner was appointed through Tamil Nadu Public Service Commission under Group-IV Examination as a Typist and joined the service on 22.01.2021 in the office of the Director of Co-operative

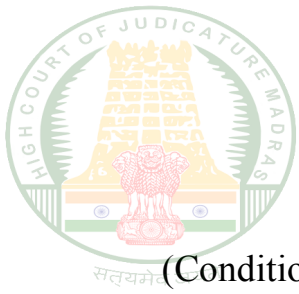


W.A.(MD)No.2096 of 2024

Audit, Department and her services have been regularised with effect from 22.01.2021. The petitioner has also passed the Accounts Test and Departmental Test and is eligible for the next promotion to the post of Junior Cooperative Auditor. In the meanwhile, the petitioner was on maternity leave from 16.08.2021 to 15.08.2022 that is for a period of 365 days and again she was on Earned Leave on medical grounds without pay from 17.08.2022 to 25.10.2022. The petitioner submitted a representation on 06.03.2024 to consider her leave during maternity period as service period and include her name in the promotional panel to the post of Junior Cooperative 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. Aggrieved over the same, the writ petition was filed.

4. After considering the submissions on either side, the Writ Court had dismissed the writ petition, hence the present writ appeal is filed.

5. The primary contention of the writ petitioner is that the maternity leave availed is not a bar for considering the name of candidate for promotion, especially after the enactment of the Tamil Nadu Government Servant



W.A.(MD)No.2096 of 2024

(Conditions and Service) Act, 2016, wherein under section 12 it is stated that the absence of the member in service from duty due to leave is not a bar from considering for promotion. The relevant portion is extracted hereunder:

12. 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 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,—

(a) for re - appointment to a substantive or officiating vacancy in the class, category, grade or post in which he may be a probationer or an approved probationer;

(b) for promotion to a higher category in such service;

(c) for appointment to any substantive or officiating vacancy in another service for which he may be an approved candidate, as the case may be, in the same manner as if he had not been absent. He shall be entitled to all the privileges in respect of appointment, seniority, promotion and appointment as full member which he would have enjoyed, but for his absence, subject to his completing satisfactorily the period of probation on his return;

(d) for appointment to any substantive or officiating vacancy in another service, if according to the provisions governing appointment to such other service—

(i) he is entitled to such appointment; and

(ii) the normal method of recruitment to such other service is by transfer from the service of which he is a member or any class or category thereof:

Provided that a member of a service who is appointed to another service outside his regular line and is continuing in that service beyond five years shall not be considered for promotion or for appointment by recruitment by transfer to a higher post in his regular line even though he is otherwise qualified for such promotion or appointment, unless he returns to the former service and puts in a fresh service for a period of not less than one year in the former service.

6. The Writ Court had accepted the above provision of section 12. But had held the Special Rules in G.O.Ms.No.253 Finance (Cooperative Audit)



W.A.(MD)No.2096 of 2024

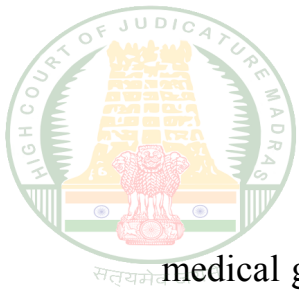
Department dated 31.03.1986 prescribe certain qualification for certain posts in the Department of Cooperative Audit and the object of the said G.O. is to ensure that the Audit Department of all Cooperative Societies independent of their Administration Department and be handled by persons having certain specific qualifications.

7. In order to consider the above issue it is necessary to peruse the qualification, wherein it is stated for the post of Junior Cooperative Auditor the recruitment is by (i) transfer (ii) Direct Recruitment (iii) Recruitment by Transfer. The petitioner would fall under (iii) Recruitment by Transfer wherein the qualification is must have passed in the District Office Manual Test and

“Must have put in service for a period of not less than two years on duty as Junior Assistant in the Cooperative Audit Department in the Tamil Nadu Ministerial Service and in the case of the person who were appointed to the post of Junior Assistant by transfer from the post of from the post of Typist must have put in a total service in the Cooperative Audit Department in the Tamil Nadu Ministerial Service in both categories for a period of not less than three years on duty as Typist / Steno Typist in Cooperative Audit Department in the Tamil Nadu Ministerial Service”

(Amended vide G.O.Ms.No.368 Finance (CA) Department dated 07.11.2002)

8. It is seen that the petitioner was appointed on 22.01.2021 and ought to complete probation on or before 22.01.2023. But the petitioner was under maternity leave from 16.08.2021 to 15.06.2022 and again earned leave on



W.A.(MD)No.2096 of 2024

medical grounds from 17.08.2022 to 25.10.2022. Thereafter, the probation was declared after extended time with effect from 27.04.2024.

9. In the present case, the petitioner was already declared probation and now the issue is to consider for promotion. On one hand, the section 12 of Tamil Nadu Government Servant (Conditions and Service) Act, 2016 states if a member is on leave, on foreign service or on deputation or leave for any other reason, the member cannot be stated as ineligible, if the member is otherwise fit for promotion to a higher category in such service. On the other hand, the Special Rules states that the member ought to have put into service **“not less than three years on duty as typist”**. It is settled principle of law, when there is a question of “a general rule vs. special rule”, then the special rule would prevail. Then in the present case the special rule would prevail and the Writ Court has rightly held the special rule will prevail. And the consequent would be the petitioner ought to have serviced as typist for three years “on duty” for seeking promotion.

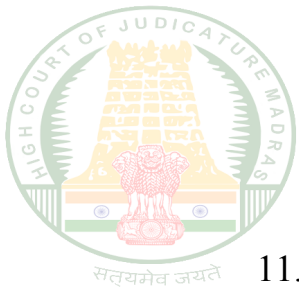
10. In such circumstances, the object of the rule ought to be seen. The Writ Court rightly recorded the object also wherein it is held that the



W.A.(MD)No.2096 of 2024

WEB COPY

government order is to ensure that the Audit Department of Cooperative Societies be handled by persons having certain specific qualifications independent of their Administrative Department. But such specific qualifications may be required from the post of Junior Cooperative Auditor, Senior Cooperative Auditor and the posts above. Such specific qualifications cannot be there for the cadre below Junior Cooperative Auditor like the post of Typist, Steno-cum-typist, Junior Assistant (these three are the feeder categories for promotion “through recruitment by transfer” to the post of Junior Cooperative Auditor). Therefore, this Court is of the considered opinion when the specific qualifications are not specialised qualifications, then the section 12 of Tamil Nadu Government Servant (Conditions and Service) Act, 2016 would prevail over the qualifications prescribed under G.O.Ms.No.253. However, it is made clear if a person is seeking promotion to Senior Cooperative Auditor, then the said person who is in the cadre of Junior Cooperative Auditor ought to fulfil the specific qualifications prescribed for the post of Senior Cooperative Auditor in order to ensure the said person is having specific qualification to be promoted for Senior Cooperative Auditor.



W.A.(MD)No.2096 of 2024

WEB COPY

11. Further the issue raised herein is regarding the Maternity Leave, which is a right of a Woman. The Hon'ble Supreme Court had considered the issue of maternity leave and miscarriage of pregnancy in the case of In Re: Termination of Civil Judge, Class-II (Jr. Division), Madhya Pradesh, Sarita Choudhary Vs. Respondent: High Court of Madhya Pradesh and Ors. and Aditi Kumar Sharma Vs. Respondent: State of Madhya Pradesh and Ors. reported in MANU/SC/0292/2025 (2025 INSC 289) In Writ Petition (C) No. 142 of 2024, Suo Moto Writ Petition (C) No. 2 of 2023 and Writ Petition (C) No. 233 of 2024 and vide judgment dated 28.02.2025 has held regarding "Women Workforce: Women in the Indian Judiciary" and the same is extracted hereunder:

17. To holistically understand women's effective participation in the Judiciary, it is important to look at three main phenomena: (I) the entry of women into the legal profession; (II) the retention of women and growth of their numbers in the profession; and (III) the advancement of women, in numbers, to senior echelons of the profession.

17.1. Many have stressed that increased diversity within a judiciary, and ensuring judges are representative of society, enables the judiciary as a whole to better respond to diverse social and individual contexts and experiences. It is a recognition of this fact that a greater representation of women in the judiciary, would greatly improve the overall quality of judicial decision making and this impacts generally and also specifically in cases affecting women.

17.2. Advancing women's greater participation in the judiciary also plays a role in promoting gender equality in broader ways:



- a. Female judicial appointments, particularly at senior levels, can shift gender stereotypes, thereby changing attitudes and perceptions as to appropriate roles of men and women.*
- b. Women's visibility as judicial officers can pave the way for women's greater representation in other decision-making positions, such as in legislative and executive branches of government.*
- c. Higher numbers, and greater visibility, of women judges can increase the willingness of women to seek justice and enforce their rights through the courts.*

17.3. Article 10 of the International Covenant on Economic Social and Cultural Rights states that special protection should be accorded to mothers during a reasonable period before and after child birth. Article 11 of CEDAW states that in order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, State Parties shall take appropriate measures, which can be extracted as under:

- (a) The right to work as an inalienable right of all human beings;*
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;*
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;*
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.*

17.4. The freedom from discrimination or equal protection of the laws during pregnancy and maternity of a woman are precious rights for women workforce. If pregnancy results in the birth of a child, it brings not only joy to the parents of the child but also a sense of fulfilment to the young mother. On the other hand, a pregnancy miscarriage has deep physical, mental and psychological aftereffects on a woman. Miscarriage is generally defined as a loss of pregnancy before viability. Psychological consequences include increase in the risk of anxiety, depression, post- traumatic stress disorder, sometimes leading to suicides. Recurrent miscarriage leads to obstetrics complications and long-term health problems. Although there is varying amount of physical aftereffects including backache and abdominal pain involved in miscarriages, the psychological and social effects may be more severe and long lasting. A miscarriage affects a person's identity, leading to disappointments and challenges to motherhood identity and role, stigma and isolation, amongst other aspects. A number of risk factors predisposing women to experience significant psychological distress following miscarriage have also been identified. There could be psychiatric illness and a previous



WEB COPY



W.A.(MD)No.2096 of 2024

pregnancy loss could lead to increase in chances of severe psychological distress.¹

17.5. In Ministry of Defence v. Babita Puniya, MANU/SC/0194/2020 : 2020:INSC:198 : (2020) 7 SCC 469, this Court castigated the State's perpetuation of anachronistic gender roles based on sex stereotypes which have long discriminated against women. Reliance was placed by the State on the "inherent physiological differences between men and women" to effectively suggest that the "weaker" sex may not undertake tasks that are "too arduous" for them. This Court rejected the State's arguments finding them to not constitute a constitutionally valid basis for denying equal opportunity to women officers.

17.6. In Nitisha v. Indian Army, MANU/SC/0216/2021 : 2021:INSC:210 : (2021) 15 SCC 125, this Court significantly advanced Indian jurisprudence on indirect discrimination. In this case, this Court explained how the facade of certain structures as harmless and as a "norm" may in reality reflect the 'insidious patriarchal system'. Cognizant of the transformative intent of our constitutional project, this Court noted the need to rebuild societal and legal structures to realise equal opportunity in public employment and gender equality.

17.7. Much like 'it is not enough to proudly state that women officers are allowed to serve the nation in the Armed Forces', it is not enough to find comfort solely in the growing number of female judicial officers if we are unable to secure for them a sensitive work environment and guidance. The High Court has erred in acting agnostic to, inter alia, claims of insubordination of Petitioner-Sarita Chaudhary and 19-05-2025 (Page 46 of 47) www.manupatra.com Judges Library, Madras High acute medical and emotional conditions battled by Petitioner-Aditi Kumar Sharma. Despite still reeling from the effects of a severe case of Covid-19 and a miscarriage, the ACR for 2021 of Petitioner-Aditi Kumar Sharma was downgraded by the Portfolio Judge from 'B-Very Good' to 'C- Good' only considering 'pendency and disposal'. While gender is not a rescue for poor performance, it is a critical consideration which must weigh for holistic decision-making at certain times and stages of a woman judicial officer."

When the maternity is a right of a women, then the Courts ought to protect the maternity right of the women. Article 11 of the United Nations Convention on

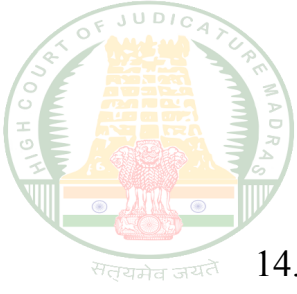


W.A.(MD)No.2096 of 2024

the Elimination of All Forms of Discrimination against Women has stated that the maternity leave cannot be considered as leave period, if considered as leave the same would amount to discrimination. Therefore, this Court is of the considered opinion that the anachronistic gender attitude cannot be allowed to perpetuate discrimination against women.

12. In the present case, the petitioner had taken maternity leave from 16.08.2021 to 15.08.2022 which the petitioner is entitled as per the statue. However the period of medical leave from 17.08.2022 to 25.10.2022 cannot be consider for granting the benefits of maternity leave. Therefore, the petitioner is entitled to be considered the maternity leave period from 16.08.2021 to 15.08.2022 as duty period. But the petitioner is not entitled to be considered from 17.08.2022 to 25.10.2022 as duty period.

13. With the above said observations and directions, the impugned order dated 07.08.2023 is set aside to the extent stated supra and consequently the order dated 21.06.2024 and 11.07.2024 passed by the respondents are set aside.



W.A.(MD)No.2096 of 2024

14. For the reasons stated supra, the writ appeal is allowed. No costs.

Consequently, connected Miscellaneous Petition is closed.

[J.N.B., J.] [S.S.Y., J.]
03.06.2025

Index : Yes / No
Tmg

To:

- 1.The Director 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.A.(MD)No.2096 of 2024

J.NISHA BANU, J.

and

S.SRIMATHY, J.

Tmg

W.A.(MD)No.2096 of 2024

03.06.2025