

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Coram

Dated: 11.01.2017

The Honourable Mr. JUSTICE M.SATHYANARAYANAN

Writ Petition No.936 of 2017

and W.M.P.No.939 of 2017

M.J.Meenakshi ... Petitioner

-Vs-

1. The Principal Secretary to Government,
Personal and Administrative Department,
Fort St.George,
Chennai - 600 009.
2. The Commissioner,
Thiruvallur Municipality,
Thiruvallur. ... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent made in Na.Ka.No.3064/2016/C1 dated 05.10.2016 and quash the same and direct the 2nd respondent to grant maternity leave for the petitioner on the basis of the petitioner's application dated 19.09.2016 or the period of 270 days as per G.O.ms.No.105 Personnel and Administrative Reforms (FR.III) Department dated 07.11.2016.

For Petitioner : Mr.G.Jeremiah

For Respondents : Mr.K.Dhanjayan, Spl.Govt.Pleader

ORDER

By consent, the writ petition is taken up for final disposal.

2. The petitioner is working as Junior Assistant in the service of the 2nd respondent Municipality and out of wedlock, she gave birth to twins during the first delivery on 04.11.2013 and availed maternity leave period during November 2013 to April 2014 and after three years, she got conceived and gave birth to a male child on 19.09.2016 and she availed for maternity leave

before the 2nd respondent enclosing the medical certificate. However, by the impugned proceedings dated 05.10.2015, the 2nd respondent has rejected the said application, on the ground that in the light of the fact she had already gave birth to twin children, the benefit of G.O.Ms.No.51 P & A R (FR.III) Department dated 16.05.2011 and G.O.(Ms.)No.61 dated 16.06.2011 will not come to the aid of the petitioner and challenging the legality of the same, the petitioner came forward to file this writ petition.

3. Mr.G.Jeremiah, learned counsel for the petitioner has drawn the attention of this Court to G.O.Ms.No.105 P & A R (FR.III) Department dated 07.11.2016 and would submit that the maternity leave of 6 months (180 days) has been enhanced to 9 months (270 days) with full pay which may be spread over from the pre-confinement rest to post-confinement recuperation at the option of the Government Employee and he further drawn the attention of this Court to the order dated 19.10.2010 made in W.P.(MD). No.13555 of 2009 (J.Sharmila v. The Secretary to Government, Education Department, Chennai-9 & 2 others) and would submit that the intention of the Government is to afford protection to women for two deliveries and it should not be based upon the number of children she delivers during those two deliveries and therefore, prays for interference.

4. Per contra, Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents would contend that the Government orders cannot be read like a Statute and it speaks about the eligibility to avail the maternity leave in respect of women Government employee with less than two surviving children and since the petitioner had already availed the benefit of G.O.Ms.No.105 P & A R (FR.III) Department dated 07.11.2016, the said benefit cannot be granted to the petitioner and prays for dismissal of the writ petition.

5. This Court has considered the rival submissions and also perused the materials available on record.

6. The single Bench of this Court in the above cited order dated 19.10.2010 made in W.P.(MD). No.13555 of 2009 (J.Sharmila v. The Secretary to Government, Education Department, Chennai-9 & 2 others) has taken note of the various decisions and has held as follows:

27. In the present case, it is suffice to state that if the intention of the State Government is to afford protection of the women for her second delivery, then it should not be based upon the number of children she delivers during those two deliveries. The importance has to be seen

only from the health point of the women Government servant and not the number of children one delivers during each delivery. Hence this court is not inclined to accept the reasons found in the impugned order based upon the so-called Explanation 1 to Rule 101(a) of the Fundamental Rules. The petitioner who had availed maternity leave for the period from 16.10.2006 to 11.1.2007 during her second pregnancy, is entitled to be paid full salary for that period.

7. No doubt, the petitioner has delivered twins during the first delivery on 04.11.2013 and got conceived for the second time and during second delivery, she delivered a male child on 19.09.2016. In the light of the ratio laid down in the above cited judgement, the number of children should not be considered but only the number of deliveries. Therefore, this Court is of the view that the petitioner is entitled to avail the benefits conferred upon her in G.O.Ms.No.105 P & A R (FR.III) Department dated 07.11.2016 .

8. In the result, the writ petition is partly allowed. The impugned order dated 05.10.2016 is set aside and the matter is remanded back to the 2nd respondent who shall pass orders on the maternity leave application submitted by the petitioner dated 19.09.2016 on merits and in accordance with law in the light of the observation made in this writ petition and also in terms of G.O.Ms.No.105 P & A R (FR.III) Department dated 07.11.2016 and such exercise shall be completed within one week from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi
To

1. The Principal Secretary to Government,
Personal and Administrative Department,
Fort St.George,
Chennai - 600 009.

2. The Commissioner,
Thiruvallur Municipality,
Thiruvallur.

+lcc to Mr.G. Jeremiah, Advocate, S.R.No.2725

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