

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15/10/2019

C O R A M

The Honourable Mr. Justice SUBRAMONIUM PRASAD

Writ Petition No.4539 of 2013

Smt.P.Brinda

...

Petitioner

Vs

Tamil Nadu Dr.Ambedkar Law University
rep. By its Registrar
"Poompozhi"
No.5 Greenways Road
Chennai 28.

...

Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, to call for the records relating to the order of the respondent in Lr.No.298/Regr/Aca/A1/2009, dated 17/1/2013 and quash the same as illegal and against the provisions of Maternity Benefits Act, 1961 and consequently, the respondent to direct disbursement of the monetary benefits for the duration of maternity leave in accordance with law.

For petitioner Mr.M.Venkatakrishnan

For respondent Mr.T.D.Vasu

सत्यमेव जयते
O R D E R

Instant writ petition is to quash the order, dated 17/1/2013, passed by Tamil Nadu Dr.Ambedkar Law University, respondent, in Lr.No.298/Regr/Aca/A1/2009, as illegal and against the provisions of Maternity Benefits Act, 1961 and consequently, direct the respondent to disburse the monetary benefits, for the duration of maternity leave in accordance with law.

2. Petitioner was appointed as Lecturer (Property Law), in the Constituent Law College, Chengelpet, on tenure basis by an order, dated 6/2/2006. She was posted as Lecturer, in the School of Excellence in Law, Chennai. The contract continued on an year to year basis from 2006 to 2010. Petitioner cleared the National Eligibility Test (NET) conducted by the University Grants Commission, in the year 2019. Pursuant to that she was appointed, on regular basis, from 22/6/2010.

Petitioner got pregnant and on medical advice, informed the respondent, by letter, dated 27/1/2009, requesting for grant of maternity leave, with monetary benefits, in accordance with Chapter VII of Statutes framed by the Tamil Nadu Dr. Ambedkar Law University and proceeded on leave. Application along with medical certificate was submitted on 26/2/2009. Monetary benefits under the Maternity Benefits Act, was not paid to the petitioner. Hence, petitioner submitted a detailed representation to the respondent, on 14/5/2009, requesting for early disposal of monetary benefits, as per the Maternity Benefits Act and the University Regulations. Since no action was taken on the representation, petitioner approached this Court, by filing W.P.No.12459 of 2012. Vide, order, dated 5/6/2012, this Court, directed the respondents to consider the representation of the petitioner, dated 12/4/2012, within a period of six weeks, from the date of receipt of the order copy. Representation of the petitioner has been rejected by the impugned order.

3. Registrar, Tamil Nadu Dr. Ambedkar Law University, respondent has filed a counter affidavit. In the counter affidavit, respondent has taken a stand that University that the petitioner is governed by the agreement entered into between the parties and as per the agreement, petitioner is not entitled to any relief other than casual leave.

4. Heard Mr. M. Venkatakrishnan, learned counsel for the petitioner and Mr. T. D. Vasu, learned counsel for the respondent.

5. Mr. M. Venkatakrishnan, learned counsel for the petitioner would state that under Section 5 of the Maternity Benefit Act, 1961, every woman is entitled to and her employer shall be liable for the payment of maternity benefit, at the rate of the average daily wage for the period of her actual balance immediately preceding and including the day of her delivery and for the six weeks immediately following that day.

6. Section 5 and Section 27 of the Maternity Benefit Act, 1961, read as under:-

Right to payment of maternity benefit - (1)
Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day.

(2). No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit for a period of not less than

one hundred and sixty days in the twelve months immediately preceding the date of her expected delivery.

Provided that the qualifying period of one hundred and sixty days aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of immigration.

3. The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks, that is to say, six weeks up to and including the day of her delivery and six weeks immediately following that day:

Provided that where a woman dies during this period, the maternity benefit shall be payable only for the days upto and including the day of her death:

Provided further that where a woman, having been delivered of a child dies during her delivery or during the period of six weeks immediately following the date of her delivery, leaving behind in either case the child, the employer shall be liable for maternity benefit for the entire period of six weeks immediately following the day of her delivery but if the child also dies during the said period, then for the days upto and including the day of the death of the child.

"Section 27: Effect of laws and agreements inconsistent with this Act - (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act.

7. Learned counsel for the respondent would insist that under the terms of contract, the petitioner is not entitled to maternity benefit and the parties are governed by the contract. She cannot claim for any other benefits which are not available. Section 23 of the Contract Act states that any contract which is forbidden by law or is of such a nature that if permitted, it would defeat the provisions of any law, is void. Maternity Benefit Act was brought to regulate the employment of women in certain establishment for certain period before and after child-birth and to provide for maternity benefit and certain other benefits. The contract which takes away the benefits, as provided under the Maternity Benefit Act, 1961, is void. The petitioner is therefore, entitled to grant Maternity benefit, under the Maternity Benefit Act.

8. Accordingly, Writ Petition is allowed. Respondents are directed to disburse the maternity benefits, to the petitioner, within a period of twelve weeks, from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Mvs.

TO

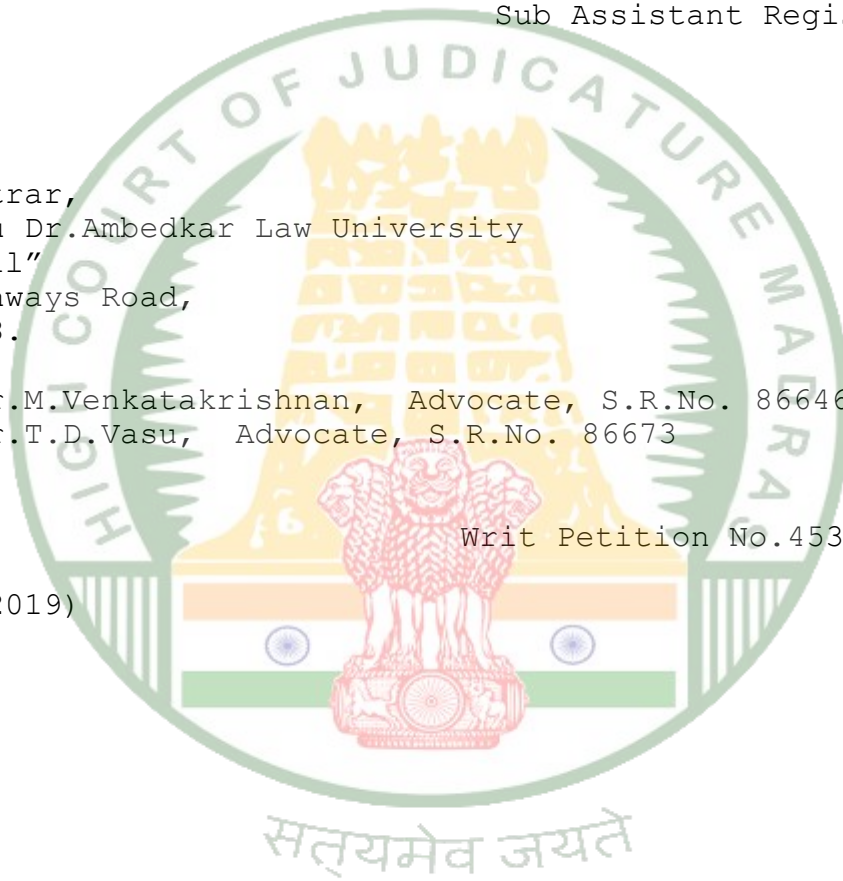
The Registrar,
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+1cc to Mr.M.Venkatakrishnan, Advocate, S.R.No. 86646

+1cc to Mr.T.D.Vasu, Advocate, S.R.No. 86673

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