

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.04.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.P.No.1507 of 2021
and W.M.P.No.1705 of 2021

The Director .. Petitioner
JIPMER, Pondicherry

Versus

1.The Central Administrative Tribunal
Rep.by its Registrar,
Madras Bench, City Civil Court Buildings,
High Court Complex, Madras 104.

2.V.Jayanthi .. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the order dated 17.10.2019 made in O.A.No.1439 of 2015 on the file of the CAT respondent No.1 and quash the same.

For Petitioner :Mr.M.T.Arunan

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The official respondent in O.A.No.1439 of 2015, on the file of the Central Administrative Tribunal, Madras Bench is the petitioner. The 2nd respondent is working as Pharmacist in the services of petitioner /official respondent from the year 2011 onwards and she was appointed on contractual basis, vide order dated 05.12.2011. Though the appointment of the 2nd respondent was for a period of six month on a consolidated pay, the contract has been extended from time to time and in the year 2014, she got married and the 2nd respondent was in her family way and she expected to give birth of a child during second week of June 2015 and therefore, submitted an application for leave under Rule 43 of the Leave Rules and however, the petitioner / official respondent did not sanction the same and hence she filed O.A.No.705 of 2015, praying for appropriate orders.

2. The Tribunal, vide interim order dated 27.05.2015, directed the official respondent therein to sanction maternity leave to the 2nd respondent herein, for a period of three months (90 days) from 01.06.2015 and directed the listing of the matter on 24.07.2015.

3. In the light of the fact that the order of ad-interim direction has worked out itself, this Court is of the considered view that nothing would have survived for adjudication in the Original Application and status of the same is not made known to this Court. Thereafter the petitioner submitted one more application for availment of the maternity benefits and the same was rejected vide communication dated 22.09.2015, stating that the further extension of 90 days of Maternity Leave is not admissible and therefore, the 2nd respondent's request for extension of leave for further three months beyond the sanctioned leave was not approved and the petitioner challenging the legality of the same, has filed O.A.No.1439 of 2015 and it was entertained.

4. The petitioner / official respondent has filed the reply statement contenting among other things that since, admittedly, the 2nd respondent was appointed on contractual basis, the leave rule under CCS Rule is not applicable to her and further pointed out that in compliance of the order dated 27.05.2015, made in O.A.No.705 of 2015, the Maternity Leave of 90 days was granted from 01.06.2015 and she is not entitled for any further leave and prays for dismissal of the Original Application.

5. The Tribunal has taken note of the factual aspects and also considering the judgment rendered by the Principal Bench of Central Administrative Tribunal in O.A.No.543 of 2011 (Mrs.Anju Sharma Vs. t.Governor, NCT of Delhi) and yet another judgment reported in 2018 (1) KLT 530 (Mini Vs. Life Insurance Corporation of India), has directed the respondent to grant further 90 days Maternity Leave, in continuation of the 3 months leave, already granted and thereby allowed the Original Application, vide impugned order dated 17.10.2019 and challenging the legality of the same, the official respondent has filed this Writ Petition.

6. The learned counsel appearing for the petitioner would submit that admittedly, the 2nd is a contractual employee and therefore, she is not entitled to invoke CCS Leave Rules and in compliance of the order dated 27.05.2015, passed in O.A.No.75 of 2015, by the Central Administrative Tribunal, Madras Bench, she was granted Maternity Leave for a period of 90 days from 01.06.2015 and that itself was a benevolence and she was not entitled for CCS leave Rules for a further period of 90 days and

would also argue that the Tribunal has failed to take note of the Rule position and erroneously granted leave and hence prays for interference.

7. This Court has carefully considered the rival submissions and also perused the materials placed before it.

8. The Maternity Benefit Act, is not in the nature of the benevolent Act and the interpretation of the provision of the same would enure in favour of the persons, who seek to avail maternity benefits. The High Court of Kerala in the decision reported in 2018 (1) KLT 530 (Mini Vs. Life Insurance Corporation of India) had taken note of the said decision and observed that "It is stated that the right to maternity leave is an essential element of the fundamental right to life as far as a woman employee is concerned and the issue has to be seen in the contest of Articles 14, 15 and 16 of the Constitution of India and the woman employee cannot be discriminated on account of compelling family responsibilities and that the said aspect of the matter are also to be taken into account while considering the issue for grant of maternity leave"

9. It is also a well settled position of law that there cannot be a strict interpretation of the benevolent legislation, namely, Maternity Benefits Act. Even as per Rule 43 of the Leave Rules, a period of 108 days, is allowable toward maternity leave, in respect of a female government servant. The 2nd respondent, who is the contractual employee is performing her duties in that capacity, in pursuant to the order of appointment on contract basis dated 05.12.2011 onwards, for the past nine years.

10. In the light of the above facts and circumstances, and reasons assigned above, this Court is of the considered view that there is no error apparent on the face of the record or infirmity in the reasons assigned by the Tribunal, in allowing the Original Application filed by the 2nd respondent and finds no merits in this Writ Petition.

11. The Writ Petition is dismissed, by confirming the order of the Central Administrative Tribunal, dated 17.10.2019 in O.A.No.439 of 2015. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

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Sub Assistant Registrar

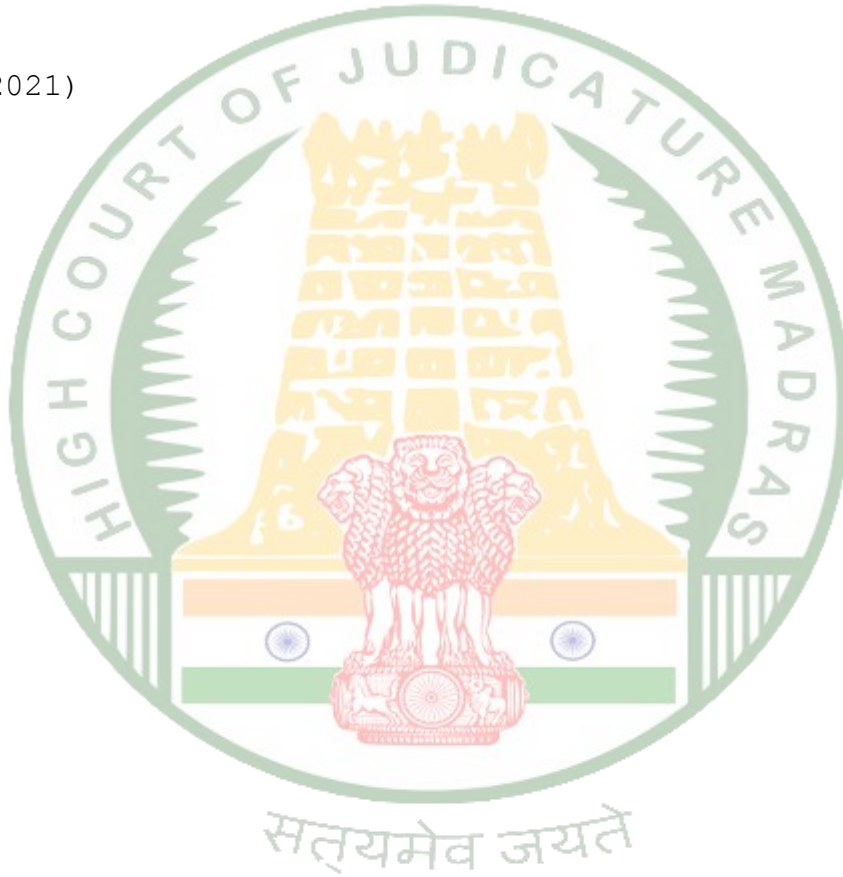
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To
The Registrar,
The Central Administrative Tribunal
Madras Bench, City Civil Court Buildings,
High Court Complex, Madras 104.

+lcc to Mr.M.T.Arunan, Advocate, S.R.No.21673

W.P.No.1507 of 2021

GPL (CO)
CB(21/05/2021)



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