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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.17392 OF 2021

AND

W.M.P.NO.18451 OF 2021

(Through Video Conferencing)

Regina

... Petitioner

.Vs.

1. The Secretary to Government,
Health & Family Welfare Department,
Fort St.George,
Chennai.
2. The Director of Medical & Rural Health Services,
Chennai.
3. The Joint Director of Health Services,
Nagapattinam.
4. The Hospital Superintendent,
Government District Headquarters Hospital,
Nagapattinam.

... Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in connection with the impugned order passed by him in Mu.Mu.No.70649/SP.1/3/2018 dated 05.03.2019 and quash the same and direct the respondents to treat the medical leave of 270 days from 27.05.2017 to 20.02.2018 as maternity leave on medical certificate with salary along with service benefits and further direct the respondents to draw and disburse the salary due to her for the said period within a reasonable time.



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For Petitioner : Mr.M.Muthappan

For Respondents : Mr.V.P.R.Elamparithi
Government Advocate

ORDER

This writ petition has been filed by the petitioner, to quash the impugned communication dated 05.03.2019 whereby the period of maternity leave undergone by the petitioner between 27.05.2017 and 20.02.2018 has been treated as leave without pay.

2. The case of the petitioner is that the petitioner was admitted to hospital for a delivery of second child on 20.05.2017 and had delivered a child on 21.05.2017 and thereafter discharged on 22.05.2017. Under these circumstances, the petitioner availed maternity leave from 27.05.2017 to 20.02.2018 for a period of 270 days in terms of G.O.Ms.No.105, Personnel and Administrative Reforms (FR.III) Department dated 07.11.2016.

3. The learned counsel for the petitioner submits that maternity leave availed under the aforesaid Government Order cannot be treated as leave without pay.

4. The learned Government Advocate for the respondents submits that the impugned order is well reasoned and the petitioner is not entitled to avail 270 days maternity leave.

5. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents and G.O.Ms.No.105, Personnel and Administrative Reforms (FR.III) Department dated 07.11.2016.

6. The aforesaid Government Order makes it clear that six months maternity leave was enhanced to nine months with full pay, which may spread over from the pre-confinement rest to post-confinement recuperation, at the option of the women Government Servants. In this case, the petitioner has availed maternity leave for post-confinement recuperation and for tending the birth of her child.

7. Paragraph 2 of the Government Order in G.O.Ms.No.105, Personnel and Administrative Reforms (FR.III) Department dated 07.11.2016 reads as under:-

"2. The Government, after careful consideration, based on the announcement made in the Tamil Nadu Legislative Assembly by the Hon'ble



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Chief Minister on 01.09.2016, under Rule 110 of the Legislative Assembly Rules order that the maternity leave admissible to married women Government servants with less than two surviving children, which is 6 months (180 days) at present, be 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 women Government servant. The women Government servants who proceeded on maternity leave, prior to the date of issue of this order and continue to be on that leave as of now, are also eligible for availing maternity leave upto 9 months (270 days), in total."

8. Considering the same, the impugned order dated 05.03.2019 cannot be sustained and is accordingly quashed with consequential relief to the petitioner. The second respondent is directed to take steps to implement the content of this order within a period of six months from the date of receipt of a copy of this order.

9. This Writ Petition stands allowed with consequential relief to the petitioner. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Government of Tamil Nadu,
Health & Family Welfare Department,
Fort St.George,
Chennai.
2. The Director of Medical & Rural Health Services,
Chennai.
3. The Joint Director of Health Services,
Nagapattinam.



4. The Hospital Superintendent,
Government District Headquarters Hospital,
Nagapattinam.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.42165

+1cc to the Government Pleader, S.R.No.42622

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W.M.P.NO.18451 OF 2021

PMK (CO)
PBS/21/09/2021