



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.6845 of 2016

and

W.M.P.Nos.6096 & 6097 of 2016

(Through Video Conferencing)

G.Uma

...Petitioner

Vs

1. The Director of Medical and Rural
Health Services and Family Welfare,
Thenampet, Chennai - 600 006.

2. The Joint Director of Health Services
and Family Welfare,
Kuppur Post, Dharmapuri,
Dharmapuri District - 636 701.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating the impugned orders of cancellation maternity leave salary order dated 2011.2014 made in Mu.Mu.No.6521/Ni.1/2014 consequential recovery order dated 21.11.2014 made in Na.Ka.No.6521/Nil/14 passed by the second respondent quash the same and consequently direct the respondents to regularise the petitioner's maternity leave from 20.01.2014 to 17.07.2014 as eligible maternity leave on full pay and to pay salary for the said period with all monetary and attendant benefits with interest and cost by considering the petitioner's representations dated 11.06.2015, 13.07.2015.

For Petitioner : Mr.R.Prabakar

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate

ORDER

This writ petition has been filed for Writ of Certiorarified Mandamus, to call for the records relating the impugned orders of cancelling the maternity leave salary order dated 2011.2014



made in Mu.Mu.No.6521/Ni.1/2014 and consequential recovery order dated 21.11.2014 made in Na.Ka.No.6521/Nil/14 of the second respondent and to quash the same and to consequently direct the respondents to regularise the petitioner's maternity leave from 20.01.2014 to 17.07.2014 as eligible maternity leave with full pay and to pay salary for the said period with all monetary and attendant benefits with interest and cost by considering the petitioner's representations dated 11.06.2015, 13.07.2015.

2. The petitioner had applied for maternity leave between 20.01.2014 to 17.07.2014 for a period of 179 days. The second respondent had also sanctioned the maternity leave by a maternity leave order dated 31.07.2014. After the aforesaid order was passed, the respondents have cited Rule 101(a) of the Fundamental Rules and have stated that the petitioner was not entitled to the aforesaid maternity leave and have initiated recovery proceedings under the second mentioned impugned order.

3. The respondents have stated that the recovery is in terms of Rule 101(a) of the Fundamental Rules as the service of the petitioner has not been regularized and in that rule there is no mention of regularizing the leave with or without salary to the non permanent women Government servants.

4. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents. I have perused the impugned orders and the affidavit filed in support of the writ petition and the counter filed on behalf of the respondents.

5. The impugned order cancelling the maternity leave sanctioned to the petitioner is contrary to the fundamental rights as amended by G.O.Ms.No.51, P & AR (F.R.III) Department, dated 16.05.2011 which amended Rule 101(a) of the Fundamental Rules. In fact, the Government vide its order dated 20.04.2015 bearing Government Letter (Ms) No.13965/FR-3/2015 has also issued clarification in the context of Rule 101(a) of the Fundamental Rules as far as the maternity leave for women Government Servants on probation in service with less than two surviving children are entitled to maternity leave. The relevant clarification reads as under:-

"(ii) Maternity Leave may be granted for a period of not exceeding 180 days or for the period that falls short of 180 days, after availing the Earned Leave, as the case may be."

The above clarification makes it clear that the petitioner was indeed entitled to maternity leave.



6. Therefore, cancellation of the maternity leave order dated 31.07.2014 vide impugned order dated 20.11.2014 and consequential recovery order dated 21.11.2014 are without any justification. Under these circumstances, the impugned orders are quashed and if any recovery is made shall be restored to the petitioner together with interest at 6% from the date of recovery till the date of payment to the petitioner.

7. This Writ Petition stands allowed with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Director of Medical and Rural
Health Services and Family Welfare,
Thenampet, Chennai - 600 006.
2. The Joint Director of Health Services
and Family Welfare,
Kuppur Post, Dharmapuri,
Dharmapuri District - 636 701.

+lcc to the Government Pleader, Sr.40059
+lcc to M/s.R.Prabakar, Advocate, Sr.39616

W.P.No.6845 of 2016
and
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PL[co]
NSK 06/09/2021