



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.11.2021

Pronounced on : 18.11.2021

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CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) Nos.13750 and 10605 of 2014 and
M.P(MD).No.1 of 2014 in WP(MD).No.10605 of 2014

K.R. Kanimozhi

Petitioner in both W.Ps.

..vs..

1.The State of Tamil Nadu,
rep. By its Secretary,
Department of Social Welfare and
Nutritious Meal Programme,
Fort. St. George, Chennai - 600 009.

1st respondent in
W.P(MD).No.13750 of 2014

2.The District Collector,
Sivagangai, Sivagangai District.

3.The Child Development Project Officer,
The Integrated Child Development Office,
Panchayat Union Office Road,
Singampunari - 630 502.

: Respondents 2 and 3 in
W.P(MD).No.13750 of 2014
Respondents 1 and 2 in
W.P(MD).No.10605 / 2014

PRAYER in W.P(MD).No.13750 of 2014: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorari calling for the records relating to the impugned order issued by the 1st respondent Secretary Vide G.O.Ms.No.4 Social Welfare and Nutritious Meal Programme Department, dated 09.01.1995 quash the same in so far as the petitioner is concerned.

PRAYER in W.P(MD).No.10605 of 2014: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of termination issued by the 1st respondent District Collector vide Se.Mu.Na.Ka.No.843/A1/2014, dated Nil. 05.2014 (signed on 29.05.2014), quash the same and further direct the 1st respondent District Collector to forthwith reinstated the petitioner as Anganwadi Worker w.e.f 15.10.2013 with all service and attendant benefits.



For Petitioner
in both W.Ps. : No appearance
For respondents
in both W.Ps. : Mr. R. Ragavendran
Government Advocate (Civil side)

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C O M M O N O R D E R

W.P(MD).No.13750 of 2014 filed to call for the records relating to the impugned order issued by the 1st respondent vide G.O.Ms.No.4 Social Welfare and Nutritious Meal Programme Department, dated 09.01.1995 and quash the same insofar as the petitioner is concerned.

2. W.P(MD).No.10605 of 2014 filed to call for the records relating to the impugned order of termination issued by the 1st respondent District Collector vide Se.Mu.Na.Ka.No.843/A1/2014, dated Nil. 05.2014 and quash the same and further direct the 1st respondent / District Collector to forthwith reinstate the petitioner as Anganwadi Worker w.e.f 15.10.2013 with all service and attendant benefits.

3. The facts of the case are that the petitioner was appointed as Anganwadi worker on 17.05.2011 and was serving in Anganwadi Centre at Vadavanpatti, Singampunari Block, Sivagangai District. The petitioner is married to one Thiru. Thennavan on 23.06.2003 and was without child for more than 11 years. Thereafter tried In Vitro Fertilization (IVF) and conceived twin babies. On medical advise the petitioner was under bed rest throughout the gestation period, since the petitioner was having short cervix, the pregnancy was termed high risk pregnancy. Thereafter the petitioner delivered twin babies on 11.06.2014.

4. The petitioner had submitted leave letter on 10.10.2013 requesting leave from 14.10.2013 to 15.11.2013, then extended from 16.11.2013 to 26.01.2014 along with the leave letter dated 13.11.2013. However the 3rd respondent issued show cause notice dated 27.11.2013 seeking explanation for the absence beyond 15.11.2013 and also directed to join duty immediately or else further action would be initiated as per Government Norms. The petitioner had submitted explanation dated 23.12.2013 and requested to extent the leave till 26.01.2014 by considering the leave application dated 13.11.2013.

5. The respondents issued notices dated 27.01.2014 and 02.04.2014 and the petitioner had submitted explanation dated 07.02.2014 and 08.04.2014 respectively. Again the respondent issued notice dated 14.05.2014 and the petitioner had submitted 16.05.2014 that the petitioner may deliver baby on 14.07.2014 and sought leave until then. However the respondent had terminated the service of the petitioner vide order dated 29.05.2014 thereby terminated the service from 15.10.2013 for the absence of duty beyond 6 months as



per G.O. Ms. No. 4 Social Welfare and Nutritious Meal Programme Department dated 09.01.1995 and communicated to the petitioner on 30.04.2014.

6. In the meantime the petitioner delivered baby on 11.06.2014 and was discharged on 28.06.2014. Then the petitioner had filed a writ petition on 30.06.2014 in W.P.(MD) No. 10605 / 2014 inter alia praying for writ of Certiorarified Mandamus to quash the impugned termination order dated 29.05.2014 and to direct the 2nd respondent therein to forthwith reinstate the petitioner as Anganwadi Worker with effect from 15.10.2013 with all service and attendant benefits. The petitioner had filed another writ petition in W.P.(MD) No. 13750 / 2014 inter alia praying for writ of Certiorari to quash the G.O. Ms. No. 4 Social Welfare and Nutritious Meal Programme Department dated 09.01.1995 as far as the petitioner is concerned.

7. The respondents had filed counter and has stated as under:

" The petitioner represented an application on 15.10.2013 and sought leave from 15.10.2013 to 15.11.2013 totally 32 days. Thereafter, she made an application for extending leave from 16.11.2013 to 26.01.2014. Totally 72 days. Subsequently, on 27.01.2014 she presented an application to extend her leave from 27.01.2014 to 28.02.2014 totally 33 days. On 01.03.2014, an application was presented to extend further leave from 01.03.2014 to 31.03.2014 totally 31 days. Further, an application ws presented on 01.04.2014 seeking an extension of leave from 01.04.2014 to 31.05.2014 totally 61 days. In totally she has taken 229 days leave. This 229 days runs more than 6 months nearly comes around 7 months 11 days. As per G.O.No.4 referred above, if one is on leave more than 6 months she can be terminated."

8. Both the writ petitions were taken up together for hearing. The petitioner was absent. Heard the learned Government Advocate (Civil Side) appearing for the respondents.

9. It is so unfortunate to note the G.O. Ms. No. 4 has not taken into consideration the concept of maternity protection.

10. The brief history on the concept of maternity protection is as under:

The concept of maternity protection to women was recognised on November 29, 1919 by the International Labour Organization,
<https://hcservices.ecourts.gov.in/hcservices/>



wherein it adopted the Maternity Protection Convention of 1919, calling for 12 weeks of paid maternity leave, free medical care during and after pregnancy, job guarantees upon return to work and periodic breaks to nurse infant children.

11. In India the first of its kind is the Bombay Maternity Benefit Bill which was first introduced in 1929 in the Bombay Legislative Council. It was the first law established for working women in India

12. Thereafter Maternity Benefit Act, 1961 (Act 53 of 1961), a Central Act was enacted and the object has been clearly stated as under:

"An Act to regulate the employment of women in certain establishments for certain periods before and after child birth and to provide for maternity benefit and certain other benefits"

13. In the said Act under Section 5 sub clause (3) provides 12 weeks leave before and after child birth. This was amended in the Maternity Benefit (Amendment) Act, 2017 (Act 6 of 2017) wherein the period of 12 weeks was extended to 26 weeks.

14. When the Central Act clearly grants 12 weeks (26 weeks in the amended provision) protection to the pregnant women, then the respondents ought to have passed the G.O. in consonance with the statutory provision. The G.O. ought to have stated that the 12 weeks period granted under the Act cannot be taken while calculating the period. Therefore this Court holds that the said G.O. Ms. No. 4 is not in conformity with the statutory provision as stated in the Maternity Benefit Act, 1961 (Act 53 of 1961).

15. On harmonious construction of the said G.O. Ms. No. 4 and the statutory provision, this Court holds that the 12 weeks period cannot be taken into account while calculating the 6 months period stated in the G.O. In counter it has been stated that the petitioner has taken 7 months 11 days leave. After deducting 12 weeks period i.e. 3 months period, the petitioner taken leave only 4 months 11 days and has not exceeded the 6 months period stated in the said G.O. Therefore the impugned termination order ought to be quashed and the same is quashed.

16. The petitioner has challenged the termination order dated 29.05.2014 in the WP 10605 / 2014 on the ground that the enquiry was not conducted as contemplated in the service jurisprudence. Moreover while imposing major punishment of termination of service the delinquent has a right to be heard, which was denied thereby it is violating the principles of natural justice. It is seen from the records that the petitioner was not



granted any opportunity before imposing major punishment of termination of service. The counter of the respondents is silent on the allegation of granting opportunity, which means no opportunity was granted before imposing major punishment. On this ground the writ petition ought to succeed.

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17. The petitioner states that under Rule 18(1) of the Tamil Nadu Government Fundamental Rules the employee is entitled to take leave exceeding six months on production of medical certificate. The relevant provision is culled out here under:

"18(1): Except leave on medical certificate or study leave under Rule 84, no Government Servant (Permanent or Approved Probationer), who has not completed five years of service, shall be granted leave of any kind for a continuous period exceeding six months at any one time."

18. The Rule 18(1) states, leave cannot be extended beyond 6 months except with medical certificate. The petitioner had produced the medical certificate. Therefore even if the leave was beyond 6 months, as alleged by the respondents, then on production of medical certificate the petitioner is entitled to relief under Rule 18(1) and on this count also the petitioner is entitled to succeed.

19. This Court on a strong note observes that the right to maternity protection cannot be infringed at all. Therefore the punishment of termination of service is excessive and hitting the conscious.

20. Therefore this Court is passing the following order:

(i) W.P.(MD) No. 13750 / 2014:

This Court holds that the 6 months period ought to be calculated after deducting the statutory period of 3 months and if so then the petitioner had taken 4 months 11 days leave, which is well within the period prescribed under G.O. Ms. No. 4.

Hence the writ petition in W.P.(MD) No. 13750 / 2014 is allowed with the above observation.

(ii) W.P.(MD) No. 10605 / 2014:

- Since the leave is well within the said G.O. Ms. No. 4, the impugned termination order is set aside.
- The petitioner is entitled to reinstatement and the respondents are directed to reinstate the petitioner forthwith.
- As far as the service benefits are concerned the petitioner is entitled to continuity of service.



- As far the monetary benefits, since the petitioner had not worked from 14.10.2013 to 14.01.2014, but covered under the Maternity Benefits Act the petitioner is entitled to the monetary benefits for this period.
- As far as the period from 14.01.2014 to 30.06.2014 (the date of filing of the writ petition), the petitioner is entitled to 50% monetary benefits.
- As far as the period from 30.06.2014 till the date of this order the petitioner is entitled to 1/3rd of the monetary benefits.
- Thereafter the petitioner is entitled to full salary from the next date of this order and the respondents shall pay full salary thereafter.

With the above directions the writ petition in W.P.(MD) No. 10605 of 2014 is allowed.

No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

trp

To

1. The Secretary,
Department of Social Welfare and
Nutritious Meal Programme,
Fort. St. George, Chennai - 600 009.

2.The District Collector,
Sivagangai, Sivagangai District.

3.The Child Development Project Officer,
The Integrated Child Development Office,
Panchayat Union Office Road,
Singampunari - 630 502.

+1Cc to M/s.SP1 GP,SR.No.35186 dated 19/11/2021

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M.P(MD) .No.1 of 2014 in WP(MD) .No.10605 of 2014
18.11.2021

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