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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 31.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.1754 OF 2018

B.Rajeswari

... Petitioner

.Vs.

1. The Tamil Nadu State Transport
Corporation (Coimbatore) Ltd.,
Rep. by its Managing Director,
37, Mettupalayam Road,
Coimbatore.

2. The Assistant Manager,
The Tamil Nadu State Transport
Corporation (Coimbatore) Ltd.,
Chennimalai Road,
Erode.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent in Office Order No.Pa/No.1806/P1/PaP2/TAPKa/Ko/Ema/2014 dated 08.08.2014 and to quash the same and consequently direct the respondents to treat the period from 19.03.2014 to 19.07.2014 and the spell from 20.07.2014 to 14.09.2014 (totally 180 days maternity leave) as a eligible maternity leave and to sanction full wages along with all other attendant benefits inclusive of seniority and service benefits.

For Petitioner : Mr.P.Paramasiva Doss
For Ms.S.R.Sumathy

For Respondents : Mr.Arun
For Mr.A.Sundaravadanan



ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner's maternity leave from 19.03.2014 to 19.07.2014 and 20.07.2014 to 14.09.2014 was treated as leave on loss of pay, through the impugned order dated 08.08.2014. This issue with regard to the entitlement of a Government employee for maternity leave to be treated as duty period, came up for consideration before this Court in the case of Tmt.C.Selvi Vs The Director of Government Examination and another passed in W.P.No.19426 of 2016 and by an order dated 05.01.2022, I had held that such a maternity leave is required to be treated as full duty period, by placing reliance on a decision of the Hon'ble Supreme Court. The relevant portion of the said order reads as follows:-

"5. The Maternity Benefit Act is a welfare registration, which intends to extend benefits to the employees who avail maternity leave, without loss of any service benefits, including seniority. While dealing with this aspect, the Hon'ble Supreme Court, in the Female Workers' (Muster Roll) case (supra), had observed that such benefits which are enshrined in the Convention on Discrimination against Women, should be read into the contract of the services between the employer and the women employees. The relevant portion of the decision reads as follows:-

" 37. Delhi is the capital of India. No other City or Corporation would be more conscious than the City of Delhi that India is a signatory to various International covenants and treaties. The Universal Declaration of Human Rights, adopted by the United Nations on 10th of December, 1948, set in motion the universal thinking that human rights are supreme and ought to be preserved at all costs. This was followed by a series of Conventions. On 18th of December, 1979, the United Nations adopted the "Convention on the Elimination of all forms of discrimination against women". Article 11 of this Convention provides as under:-



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"Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular;

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave.

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures :

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and



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discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary."

[Emphasis supplied]

38. These principles which are contained in Article 11, reproduced above, have to be read into the contract of service between Municipal Corporation of Delhi and the women employees (muster roll); and so read these employees immediately become entitled to all the benefits conceived under the Maternity Benefit Act, 1961. We conclude our discussion by providing that the direction issued by the Industrial Tribunal shall be complied with by the Municipal Corporation of Delhi by approaching the State Government as also the Central Government for issuing necessary Notification under the Proviso to Sub-section (1) of Section 2 of the Maternity Benefit Act, 1961, if it has not already been issued. In the meantime, the benefits under the Act shall be provided to the women (muster roll) employees of the Corporation who have been working with them on daily wages."



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6. Likewise, in Praveena Mary's case (supra), similar benefits of inclusion of the Government employee's name in the promotional panel was extended, by taking the period of maternity leave as "service period". The relevant portion of the order, reads as follows:-

"3. It is the case of the petitioner that the period of maternity leave shall be treated as service. Prima facie, I am of the view that the period of maternity leave sanctioned by the Government shall be treated as service for at least including her in the panel for the post of Deputy Tahsildars. If the said service period is added, then, she rendered 5 years, 8 months and 23 days. The required service is 5 years. By excluding the maternity leave, it is stated that the petitioner rendered 4 years, 11 months and 22 days.

4. Furthermore, it is the case of the petitioner that if 11 days E.L. from 18.08.2010 to 28.08.2010 during the probation period is taken into consideration for counting 5 years of service, as per the instructions issued by the Commissioner of Revenue Administration by his letter dated 02.09.2013, she is eligible to be included in the panel.

5. In these circumstances, the second respondent has to get appropriate order in this regard from the first respondent to include the name of the petitioner in the panel for promotion to the post of Deputy Tahsildars for the year 2015 by taking into account the period of maternity leave as service or at least to take the E.L. period in between 18.08.2010 and 28.08.2010, as service."

7. In the counter affidavit filed by the respondents, it is admitted that the maternity leave availed by the petitioner between 20.05.2013 and 15.11.2013, was treated as 'full duty period'. They have also stated in the same counter affidavit that the petitioner has not lost her seniority and that the promotion was denied to the petitioner on the sole ground that there are no regulations to declare



the probation by including the maternity leave period.

The aforesaid order is self explanatory. As such, the impugned order treating the petitioner's maternity leave period as loss of pay, cannot be sustained.

3. In the result, the impugned order dated 08.08.2014 passed by the second respondent is quashed. Consequently, there shall be a direction to the respondents to treat the petitioner's maternity leave period from 19.03.2014 to 19.07.2014 and 20.07.2014 to 14.09.2014 as duty period for all purposes and pass appropriate orders, within a period of four weeks from the date of receipt of a copy of this order. The respondents shall also extend all the service and monetary benefits during the aforesaid period of maternity leave in their order.

4. The Writ Petition stands allowed, accordingly. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Managing Director,
The Tamil Nadu State Transport
Corporation (Coimbatore) Ltd.,
37, Mettupalayam Road,
Coimbatore.
2. The Assistant Manager,
The Tamil Nadu State Transport
Corporation (Coimbatore) Ltd.,
Chennimalai Road,
Erode.

+1cc to Mr.A.Sundaravadanan, Advocate, S.R.No.5473

W.P.NO.1754 OF 2018

MT(CO)
PBS/21/02/2022