



WP(MD)No.16015 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.08.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD)No.16015 of 2022

M.Devi

... Petitioner

/vs./

1.The Managing Director,
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Kumbakonam.

2.The General Manager,
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Pudukkottai Region,
Pudukkottai.

3.The Assistant Manager (Administration),
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Pudukkottai Region,
Pudukkottai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent culminating in his impugned proceedings in ThAa Poga/Kum/Puthu/E1/0152/2022 dated 08.04.2022 quash the same and direct the respondents to sanction maternity leave for the petitioner for the period from 31.10.2021 till 04.07.2022 with full pay and all attendant benefits.



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For Petitioner : Mr.G.Mathavan
For Respondents : Mr.K.Jagadees Balan
Standing Counsel

ORDER

By consent of both the parties, this Writ Petition is taken up for final disposal.

2.The petitioner herein was granted medical leave for the period between 31.10.2021 and 04.07.2022, in connection with her pregnancy and delivery of the third child. Subsequently, when she had given a request to convert her medical leave into maternity leave, the same came to be rejected by the third respondent herein, through the impugned proceedings dated 08.04.2022 by stating that the benefits of maternity leave are available only to the first two children of the Government Employee and hence, her request to convert her medical leave into maternity leave was rejected.

3.The issue as to whether the privileges available to an employee under the Maternity Benefit Act, 1961 for a pregnancy and delivery of a third child can be



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denied, had come up for consideration before this Court in the case of **K.Umadevi vs. The Government of Tamil Nadu, Represented by its Chief Secretary to Government, Chennai**, in **WP.No.22075 of 2021** and by order **dated 25.03.2022**, this Court had held that denial of maternity leave to the employee for the birth of third child cannot be countenanced in law. The relevant portion of the order reads as follows:

“32. The above provision which deal with the grant of maternity benefit does not impose per se, two child norm. It only differentiates the period of maternity benefit available to women employee with two surviving children and women having two or more than two surviving children. Despite several amendments, introduced in the year 2017 in the Act, as far as Section 5 is concerned, a restriction has been brought about by inserting a proviso under sub-clause (3) as to the entitlement of the period of maternity leave. A woman employee having less than two surviving children is entitled to the maximum period of benefit i.e. twenty six weeks and for a woman employee having two or more than two surviving children, the benefit is restricted to twelve weeks. However, no ceiling on the number of children has been imposed towards entitlement of the maternity leave per se. Even assuming on an hypothetical consideration that the relevant GOs aforementioned herein have a statutory force, to be read as integral part of FR 101(a) and thus enforceable, the restriction of two child



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norm stipulated in the rule has to be declared as repugnant to the Central legislation (M.B. Act, 1961) and therefore, the same to be held, void, in terms of Article 254 of the Constitution.”

4.Thus, when Section 5 of the Maternity Benefit Act, 1961, does not restrict the benefits to the first two children alone, denial of such benefits to the third child cannot be sustained, in the light of aforesaid decision in the case of **K.Umadevi (supra)**.

5.Accordingly, the impugned order dated 08.04.2022 on the file of the third respondent is quashed. Consequently, there shall be a direction to the third respondent herein to pass appropriate orders, sanctioning maternity leave to the petitioner for the period between 31.10.2021 till 04.07.2022, together with full pay and other attendant benefits, within a period of four (4) weeks from the date of receipt of a copy of this order. This Writ Petition stands allowed accordingly. There shall be no order as to costs.

12.08.2022

Index : Yes / No
Internet : Yes / No



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To:

- 1.The Assistant Manager (Administration),
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Pudukkottai Region,
Pudukkottai.



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M.S.RAMESH, J.

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Order made in
W.P.(MD)No.16015 of 2022

Dated:
12.08.2022