



WP(MD)No.18870 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD)No.18870 of 2022
and W.M.P.(MD)No.13768 of 2022

M.Maheshwari

... Petitioner

/vs./

- 1.The Government of Tamil Nadu,
Rep. by Principal Secretary,
Home Department,
Fort St. George,
Chennai – 600 009.
- 2.The Director General of Police,
Dr.Radhakrishnana Salai,
Mylapore, Chennai – 600 004.
- 3.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.
- 4.The Deputy Superintendent of Police,
Investigative Unit for Crime against
Women (IUCAW),
Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the



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records pertaining to the impugned order passed by the 3rd respondent in Na.Ka.No.R3/MaVi.473/13695/2022, dated 29.06.2022, quash the same and direct the respondents to sanction maternity leave to the petitioner for 12 months commencing from 03.06.2022.

For Petitioner : Mr.M.Saravanan

For Respondents : Mr.R.Ragavendran,
Government Advocate.

ORDER

The petitioner herein is working as Sub-Inspector under the fourth respondent office and she delivered a girl child on 03.06.2022, at CSI Bellpins Indrani Chelladurai Mission Hospital, Tirunelveli, which is her third child. Hence, she applied for maternity leave for 12 months commencing from 03.06.2022, enclosing a copy of the order passed by this Court in W.P.(MD)No.4898 of 2022. However, through the impugned proceedings dated 29.06.2022, the third respondent has returned her application, by stating that the judgment referred to in the application is not applicable to her. As against the same, the petitioner has filed this Writ Petition.



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2. 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 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



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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 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.”

3. 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)***.

4. Accordingly, the impugned order dated 29.06.2022, 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 12 months commencing from



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03.06.2022, 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.

5. This Writ Petition stands allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

30.08.2022

vsm

Index : Yes / No

Internet : Yes / No

To:

- 1.The Principal Secretary,
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Home Department,
Fort St. George, Chennai – 600 009.
- 2.The Director General of Police,
Dr.Radhakrishnana Salai,
Mylapore, Chennai – 600 004.
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M.S.RAMESH, J.

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Order made in
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Dated:
30.08.2022