



W.P(MD)No.21843 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.21843 of 2022

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... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Medical & Rural Health Service and Family Welfare,
Secretariat,
St.George Fort,
Chennai-600009.

2.The Joint Director,
Medical & Rural Health Service,
Periyakulam,
Theni District.

3.The Medical Officer,
Government Hospital,
Andipatti-625512,
Theni District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the second respondent to pay the salary for the petitioner maternity leave from 17.05.2022 based on the petitioner's representation dated 16.05.2022 submitted in person and the petitioner's remainder representation dated 10.07.2022 through registered post within a time limit that may be stipulated by this Court.



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For Petitioner : Mr.G.Thalaimutharasu
For Respondents : Mr.R.Sureshkumar
Additional Government Pleader

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for the respondents.

2. The writ petitioner was temporarily appointed as Assistant Surgeon under Category II of Class I of Tamil Nadu Medical Service vide proceedings bearing R.No.40914/E7/A1/2020-73, dated 15.07.2021 issued by the Director of Public Health and Preventive Medicine, Chennai. She was posted as Anesthetist in Government Hospital, Andipatti. The petitioner joined duty on 12.08.2021. She became pregnant and applied for maternity leave. She also produced the requisite medical certificate. She went on maternity leave from 17.05.2022. She gave birth to a female child on 01.06.2022. Her grievance is that she has not been paid her monthly pay. She had given a representation in this regard on 10.07.2022. Since it was not considered, the present writ petition came to be filed.

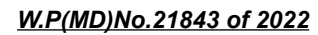
3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He drew



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my attention to the provisions set out in the Maternity Benefit Act, 1961. He laid particular stress on Section 5 and Section 27 of the Act. He submitted that the issue came up for consideration before the Madras High Court in several decisions. He drew my attention to the order dated 15.10.2019 made in W.P.No.4539 of 2013 and the order dated 11.08.2021 made in W.P.No.6845 of 2016. He also would rely on the decision of the *Hon'ble Supreme Court reported in (2000) 3 SCC 224 (Municipal Corporation of Delhi Vs. Female Workers (Muster Roll))*. He submitted that the provisions of the Maternity Benefit Act will be equally applicable to the Government servants also. His basic contention is that even though the petitioner is a temporary Government servant, she is still entitled to the benefit of the maternity leave with full pay. He called upon this Court to grant relief as prayed for.

4. The respondents have filed a detailed counter affidavit and the learned Additional Government Pleader took me through its contents. The learned Additional Government Pleader would submit that the issue on hand must be approached in the light of Fundamental Rules 101 and Circular bearing Reference No.50218/E4/3/2021, dated 10.03.2022 issued by the Director of Medical and Rural Health Services, Chennai. According to him, the petitioner will be granted maternity benefits immediately after she is regularised in service.



6. The petitioner had been granted maternity leave by virtue of G.O. (Ms.)No.84, Human Resources Management (FR-III) Department, dated 23.08.2021. She can avail maternity leave upto 12 months (365 days). The only question is whether she is entitled to full pay for the entire period of 12 months. According to the petitioner, she must be paid every month even during the maternity leave period.

7. The contention of the respondents is that this will be deferred till the date of her regularisation. This scope of controversy is narrow. FR 101 is as follows:-

101. Rules regulating the grant of –

- (a) maternity leave to female Government servants, and
- (b) leave on account of ill-health to members of subordinate services whose duties expose them to special risk of accident or illness are given in the following instructions.

Such leave is not debited against the leave account.

8. The Circular issued by the Head of the Department on 10.03.2022 is as follows:-

“5. Married women government servants appointed under temporary basis, who have completed one year of government service are eligible for maternity leave with salary. Married women government servants who have not completed one year of government service are eligible for leave without



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salary. After regularisation of services of the individual a revised maternity leave order will be issued by the competent authority with pay and allowances. Hence, salary for the above period may be claimed after regularisation of leave period. ”

9. The petitioner herein has not questioned the validity of the Circular. No declaratory relief has been sought in the writ petition. This writ petition has been filed only in the nature of writ of mandamus. As per the aforesaid circular, married women government servants who have not completed one year of government service are eligible for leave without salary. After regularisation of services of the individual, a revised maternity leave order will be issued by the competent authority with pay and allowances. In other words, salary for the maternity leave period may be claimed after regularisation of leave period.

10. I carefully went through the contents of the appointment order issued in favour of the writ petitioner. The writ petitioner was a Non-Service Postgraduate candidate. She got appointment in MD (Anesthesia) in KAP Viswanatham Government Medical College, Trichy. As per the bond executed by her, she has to serve the Government of Tamil Nadu for a minimum period of two years. It is open to the writ petitioner to seek regular absorption in Tamil Nadu Medical Service. She cannot be compelled. Like wise, if the petitioner breaches the bond condition, the only remedy open to the Government is to seek recovery of a sum of Rs.10,00,000/-.



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11. I take judicial notice of the fact that a number of students after successfully completing the postgraduate or super-speciality course do not adhere to the bond condition and this Court has also been directing the colleges concerned to return the certificates on the ground that they are not marketable commodities and no lien can be claimed thereon in terms of Section 171 of the Indian Contract Act, 1872.

12. Let us visualize this situation. The petitioner has admittedly served the Government only for a period of nine months. She has gone on maternity leave from 17.05.2022. She is entitled to avail the said benefit upto 16.05.2023. Let me assume that I accept the contention of the learned counsel appearing for the petitioner and direct the respondents to pay her monthly pay till the expiry of the maternity leave period. If she resigns or declines to rejoin the Government service thereafter, then the Government will have to file a suit for recovery of the money paid. A person who has temporarily served the Government for nine months would have enjoyed leave for one year with full pay. That would be patently unjust. That is why, the aforesaid circular dated 10.03.2022 makes it clear that the petitioner will be paid salary for the entire one year period immediately after she is regularised.



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13. Since there is no challenge to the said circular, I am of the view that the relief sought for cannot be fully granted. At the same time, I have to take note of the statutory scheme set out in Fundamental Rules 101 and the order dated 11.08.2021 made in W.P.No.6845 of 2016. The writ petitioner is of-course a temporary government servant as of now. But still she must be having earned leave to her credit. The expression “earned leave” speaks for itself. She has earned it. Therefore, whatever earned leave is available to her credit, she is entitled to be paid for the said period right now. As regards the balance period, she will be paid immediately after her service is regularised.

14. The Writ Petition is therefore disposed of accordingly. No costs.

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Index : Yes / No
Internet : Yes/ No
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To

1.The Principal Secretary,
Medical & Rural Health Service and Family Welfare,
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2.The Joint Director,
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G.R.SWAMINATHAN, J.

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