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W.P.No.4940 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.4940 of 2023
& WMP.No.4955 of 2023

A.Persia Prescilla Diana

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep by its Chief Secretary to Government,
Fort St. George,
Chennai 600 009.

2.The Principal Secretary to Government,
Energy Department,
Fort St.George,
Chennai-600009.

[Writ petition dismissed as against R1, R2
vide order dated 22.02.2023 made in
W.P.No.4940 of 2023]

3.The Chief Engineer/Personnel,
No.144, Anna Salai, Chennai-02.

4.The Superintending Engineer,
Purchase & Administrative Office,
North Chennai Thermal Power Station Stage 1,
Chennai – 600 120.



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5.The Chief Engineer,
Chemical Division,
North Chennai Thermal Power Station stage 1,
Chennai – 600 120.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 4th respondent in his proceeding made in Memo No.4825/Adm1/A.2/F.Maternity Leave/2022 dated 11.07.2022 and quash the same as null and void and direct the respondent to sanction maternity leave to the petitioner for the period from 22.11.2022 to 21.11.2023 with full pay and all attendant benefits.

For Petitioners : Mr.D.Padmanabhan

For Respondent : R1 & R2 – Given up
Mr.David Sundar Singh (R3 to R5)
Standing Counsel

ORDER

By placing reliance on Regulation 24 of the Service Regulation governing TANGEDCO, the petitioner request for maternity leave has been rejected through an impugned order dated 11.07.2022, on the ground that such maternity leave cannot be granted for the 3rd child. Challenging the said order, this Writ Petition has been filed.



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2.Regulation 44 of TANGEDCO Service Regulations, imposes restriction for grant of maternity leave for the 3rd leave. In the instant case, the petitioner was appointed with TANGEDCO on 18.05.2017 at which point of time, she had already given birth to a child. In other words, the petitioner was not under the services of TANGEDCO, when the 1st child was born. After joining duty, she had availed maternity leave for the 2nd child in the year 2018. The present request for maternity leave, is for her 3rd child for the period between 22.11.2022 and 21.11.2023.

3.The impugned order rejecting the petitioner's request for maternity leave cannot be sustained for two reasons. Firstly, this Court in its order passed in the case of ***Umadevi Vs. The Government of Tamil Nadu & ors***, in W.P.No.22075 of 2021 dated 25.03.2022 had held that denial of maternity leave to the employee for the birth of third child cannot be countenanced in law.



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4. In the case of ***Tmt.C.Selvi Vs. The Director of Government Examination*** in W.P.No.19426 of 2016 dated 05.01.2022, this Court had placed reliance on the decision of the Hon'ble Supreme Court in the ***Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) and another*** reported in (2000) 3 SCC 224 has held that 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. The Hon'ble Supreme Court had also 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.

5. Following the decision of ***Umadevi*** [cited supra], several orders came to be passed by this Court, including the case of ***K.Kalaivani Vs. The Government of Tamil Nadu & ors*** in W.P.No.10278 of 2022 dated 30.08.2022. The relevant portion of the order reads as follows:-

“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



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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 benefit i.e. twenty six weeks and for a woman employee



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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.”

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). .”

6.In the light of the aforesaid decision, the stand taken by the respondents for denying the grant of maternity leave cannot be sustained.



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7.Secondly, even assuming that the regulation restricts the grant of maternity leave and same is sustainable, the claim of the petitioner for maternity leave is only for the second child when she was in her services. As observed earlier, the first child was born to the petitioner, even before she had entered into the service. During her services with TANGEDCO, the 2nd child was born to the petitioner in the year 2018, for which she had availed maternity leave. In this background, she had now claimed for grant of maternity leave for her 3rd child. Evidently, the petitioner had availed maternity leave only on one previous occasion in the year 2018 for the birth of her 2nd child, while she was under the services of TANGEDCO and the present request for maternity leave for her 3rd child is for the 2nd time. For the purpose of interpretation of Regulation 24, it is not the number of children that matters for imposing restriction on grant of maternity leave, but the number of spells of maternity leave availed by an women employee of TANGEDCO. Viewed from that angle, the present leave sought for the period from 22.11.2022 and 21.11.2023 is only for the second time during her service under TANGEDCO and thus, when an



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interpretation, as mentioned above, is given to Regulation 24, the petitioner would be eligible to avail maternity leave for her 3rd child. Thus, when the petitioner had a sought for grant of maternity leave for the second time, under the services of TANGEDCO, Regulation 24 will not stand in the way as a disqualification.

8.For the aforesaid reasons, the proceeding made in Memo No.4825/Adm1/A.2/F.Maternity Leave/2022 dated 11.07.2022 by the 4th respondent is quashed. Consequently, there shall be a direction to the respondents herein to pass appropriate orders, granting maternity leave to the petitioner herein for the period from 22.11.2022 to 21.11.2023, within a period of four (04) weeks from the date of receipt of a copy of this order.

9.Accordingly, this Writ Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

22.12.2023

Index:Yes
Speaking order
Neutral Citation Case:Yes
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M.S.RAMESH,J.

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