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WP.No.21485 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

WP.No.21485 of 2023

Monisha K

.. Petitioner

Versus

1.The Director
Public Health and Preventive Medicine
Chennai – 600 006

2.The Dean
Government Vellore Medical College
Vellore – 11

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 2nd respondent to consider the petitioner's request of the maternity leave from 23.07.2023 to 22.07.2024 through email dated 07.07.2023 and to pass appropriate order in accordance with the G.O.(Ms).No.84 dated 23.08.2021, Human Resources Management (FR-III) Department.

For Petitioner : Mr.B.Mohan

For Respondents : Mr.S.Rajesh
Government Advocate



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ORDER

This writ petition has been filed seeking to direct the 2nd respondent to consider the petitioner's request of the maternity leave from 23.07.2023 to 22.07.2024 through email dated 07.07.2023 and to pass appropriate order in accordance with the G.O.(Ms).No.84 dated 23.08.2021, Human Resources Management (FR-III) Department.

2. It is the case of the petitioner that she has completed her Post Graduate Course in Obstetrics and Gynaecology in Stanley Medical College, Chennai and in order to complete her bond obligation period of two years, she had been posted at the Government Vellore Medical College vide Order dated R.No.2745231/e7/a1/2022-83 dated 07.07.2022. Further, she has joined the duty of Assistant Professor in the Department of Obstetrics and Gynaecology on 22.07.2022. Since, she is a married woman, she got conceived and the expected date of delivery of the child is 14.08.2023, hence, she had applied for the maternity leave from 23.07.2023 to 22.07.2024 with the second respondent, however, she has not received any communication. Hence, according to her, she is entitled to maternity leave for a period of one year as per G.O.(Ms).No.84, Human Resources Management (FR-III) Department dated 23.08.2021.

3. Heard both sides and perused the materials placed on record.



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4. It is relevant to note that the Fundamental Rules 101 (a) of Tamil Nadu Government which deals with maternity leave to female Government servants would read as follows:

"1. A competent authority may grant maternity leave on full pay to permanent married women Government servants for a period not exceeding 90 days which may spread over from the preconfinement rest to post confinement recuperation at the option of the Government servant . The maternity leave will not be admissible to married women Government servants with more than three children. Non-permanent, married women Government servants, whether appointed in a regular capacity or under the emergency provisions of the relevant service rules should take for maternity purposes, the earned leave for which they may be eligible. If however, such a Government servant is not eligible for earned leave or if the leave to her credit is less than 180 days, maternity leave may be granted for a period not exceeding 180 days or for the period that falls short of 180 days, as the case may be. Non-permanent married women Government servants employed under the emergency provisions should have completed one year of continuous service including leave periods, if any, to become eligible for the grant of maternity leave"

5. On perusal of the same, it would indicate that Non-permanent, married women Government servants, whether appointed in a regular capacity or under the emergency provisions of the relevant service rules should take for maternity purposes, the earned leave for which they may be eligible. If however, such a Government servant is not eligible for earned leave or if the leave to her credit is less than 180 days, maternity leave may be granted for a period not exceeding 180 days or for the period that falls short of 180 days, as



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the case may be. Non-permanent married women Government servants employed under the emergency provisions should have completed one year of continuous service including leave periods, if any, to become eligible for the grant of maternity leave.

6. In light of the above provisions and also the dictum laid down by the Hon'ble Apex Court in the case of Municipal Corporation of Delhi Vs. Female Workers (Muster-roll) and another reported in 2000 (2) LLN 3990 (SC), it was held that the female workers even working on casual basis or on muster roll on daily wage basis should be given maternity benefit and a women employee cannot be compelled to undertake hard labour at the time of advanced pregnancy.

7. Such view of the matter, the second respondent is directed to consider the above provisions as well as the Judgment and pass appropriate orders on merits and in accordance with law within a period of seven weeks from the date of receipt of a copy of this Order.



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8. Accordingly, this writ petition stands disposed of. No costs.

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Internet: Yes/No

Neutral Citation: Yes/No

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N.SATHISH KUMAR, J.



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