



W.P.(MD)No.57 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:04.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.57 of 2023
and
W.M.P(MD)Nos.71 and 72 of 2023

T.Anu Abirami

... Petitioner

Vs.

- 1.The Government of Tamil Nadu
represented by Principal Secretary,
Home Department, Fort St. George, Chennai 600 009.
- 2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.
- 3.The Superintendent of Police,
Tenkasi District, Tenkasi.
- 4.The Deputy Superintendent of Police,
Sankarankovil Sub Division,
Sankarankovil, Tenkasi District.
- 5.The Inspector of Police,
Sankarankovil Town Police Station,
Sankarankovil,
Tenkasi District.

... Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records



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pertaining to the impugned order passed by the third respondent in Na.Ka.No.R1/Ma.Vi.897/39923/2022, dated 24.11.2022 and to quash the same and direct the respondents to sanction maternity leave to the petitioner for 12 months commencing from 03.10.2022.

For Petitioner : Mr.R.Ponkarthikeyan

For Respondents : Mr.C.Satheesh

Government Advocate

ORDER

This writ petition has been filed challenging the impugned order passed by the third respondent, dated 24.11.2022 and to quash the same and consequently direct the respondents to sanction maternity leave to the petitioner for twelve months commencing from 03.10.2022.

2. The case of the petitioner is that she was appointed as Police Constable in Tamil Nadu Police on 18.02.2012 and deputed for training to Police Academy, Salem and now she is working as Police Constable Grade - II at Sankarankovil Town Police Station, Tenkasi District. She got married with one Marikannan on 02.11.2014 and they were blessed with two male children, who born on 12.01.2016 and 25.04.2018 respectively. Later, she got conceived and delivered a female baby on



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03.10.2022 at Kamala Hospital, Kovilpatti, for which she already applied for earned leave from 01.10.2022 to 22.02.2023. Since her delivery is a caesarean one, the Doctors advised her to take bed rest for a while. Though she has applied for earned leave, she learnt that the Government servants are entitled for maternity leave. Hence, she has made an application on 15.11.2022, seeking maternity leave for the delivery of third child. But the third respondent has rejected the same by proceedings dated 24.11.2022, stating that as per G.O.(Ms).No.84, Human Resources Management (FR-III) Department, dated 23.08.2021, maternity benefits cannot be granted for the delivery of third child and directed the petitioner to join duty after the expiry of earned leave on 23.02.2023 F.N. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that as per Section 5 of the Maternity Benefit Act, 1961, the petitioner is entitled to avail the maternity benefit for the delivery of third child and the G.O.(Ms).No.84, Human Resources Management (FR-III) Department, dated 23.08.2021, relied on by the third respondent is not



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applicable to the present case. Hence, he prayed for allowing this writ petition.

4. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

5. The facts in the present case are not in dispute. Admittedly, the petitioner has delivered two male children in the year 2016 and 2018 respectively. The grievance of the petitioner is that before delivery she has applied for earned leave from 01.10.2022 to 22.02.2023 and after delivering the female child on 03.10.2022, the petitioner has made an application on 15.11.2022, seeking one year maternity leave. However, the same was rejected in terms of G.O. (Ms).No.84, Human Resources Management (FR-III) Department, dated 23.08.2021. The petitioner has filed the present writ petition solely on the ground that as per the Maternity Benefit Act, 1961, even up to four children the women is entitled to avail the benefit of maternity leave for more than 12 weeks. However, the G.O., referred to in the impugned order cannot be overruled by the Maternity Benefit Act. For better



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appreciation, Section 5 of the Maternity Benefit Act, 1961, reads as follows:

“5. Right to payment of maternity benefit. -- (1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

Explanation. – For the purpose of this sub-section, the average daily wage means the average of the woman’s wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, (the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 (11 of 1948), or ten rupees, whichever is the highest.)

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than (eighty days) in the twelve months preceding the date of her expected delivery:

Provided that the qualifying period of (eighty days) aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

Explanation: - For the purpose of calculating under this sub-section the days on which a woman has actually worked in the establishment, (the days for which she has been laid-off or was on holidays declared under any law for the time being in force to be holidays with wages), during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.



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(3) The maximum period for which any woman shall be entitled to maternity benefit shall be (twenty-six weeks of which not more than eight weeks) shall precede the date of her expected delivery.

Provided that the maximum period entitled to maternity benefit by a women having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery.

Provided further that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

Provided also that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery, for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.

4. A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

5. In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.

6. A perusal of Section 5 of the Maternity Benefit Act makes it clear that the maximum period for which any women shall be entitled to



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maternity benefit shall be twenty six weeks of which not more than eight weeks shall precede the date of her expected delivery. However, in the present case, after delivery, the petitioner has made an application after lapse of one month, which was rejected in terms of G.O.(Ms).No.84, Human Resources Management (FR-III) Department, dated 23.08.2021. The Government, after careful consideration ordered that the Maternity Leave admissible to married women Government servants with less than two surviving children, which is 9 months (270 days) at present, be enhanced to 12 months (365 days), with effect from 01.07.2021 with full pay. The said G.O., is in consonance with the above said Act. Further, the G.O(Ms).No.84, dated 23.08.2021 is not challenged in the manner known to law and the same is in existence, the grievance expressed by the petitioner cannot be granted. Accordingly, this Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

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M.DHANDAPANI,J.

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