



W.P(MD)No.4954 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4954 of 2023

and

W.M.P.(MD)Nos.4625 and 4627 of 2023

T.Sathya

... Petitioner

Vs.

The Dean,
Kanyakumari Government Medical College,
Asaripallam, Kanyakumari District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order of the respondent in Na.Ka.No.7975/Ni3/2022 dated 19.12.2022 and quash the same as illegal and consequently direct the respondent to sanction maternity leave to the petitioner for a period of 12 months commencing from 07.11.2022 to 06.11.2023

For Petitioner : Mr.M.Kannan

For Respondent : Mr.T.Villavankothai,
Addl. Government Pleader.



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ORDER

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Heard the learned counsel on either side.

2.The petitioner had filed this writ petition on the strength of the order dated 25.03.2022 made in W.P.No.22075 of 2021. The said order has been subsequently reversed by the Hon'ble Division Bench vide order dated 14.09.2022 in W.A.No.1442 of 2022. The Hon'ble Division Bench had held as follows:-

“4. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under:-

4.1 The writ petitioner had married in the year 2006 and from the said wedlock had given birth to two children on two different occasions. In the year 2017, the said marriage stood dissolved. The writ petitioner re-married in the year 2018 and from the said second wedlock, she has given birth to the child, for which she claims benefit of maternity leave. She claims that, the custody of two children from the first wedlock are with the



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father of those children. In this factual background, the claim of the writ petitioner needs to be weighed vis-a-vis her service conditions and any other law which may confer any right to the writ petitioner.

4.2 So far policy of the State is concerned, it restricts the benefit of maternity leave to two deliveries / two children. The writ petitioner therefore could not have asked for and could not have been granted the benefit of maternity leave for the third child, as per the policy of the State.

4.3 Grant of maternity leave is not the fundamental right. It is either a statutory right or the right which flows from the conditions of service. Once the rights of the writ petitioner are governed by the service conditions as applicable to her, as framed by the State, the Maternity Benefit Act, 1961 would be inapplicable. This is the law, going by even the decision of the Supreme Court of India relied on behalf of the the writ petitioner in the case of Deepika Singh v Central Administrative Tribunal and Others (Civil Appeal No.5308 of 2022 arising from S.L.P.(C) No. 7772



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of 2021 dated 16.08.2022), more particularly para : 17 thereof. Though learned Additional Advocate General has rightly relied on the decision of the Uttarkhand High Court in the case of State of Uttarakhand v Smt.Urmila Manish and others (Special Appeal No.736 of 2019 dated 17.09.2019), since the subsequent decision of the Supreme Court also stipulates this, further discussion qua the decision of the Uttarkhand High Court is not required. We find that, in the facts of the case, it would neither be necessary nor even open to take aid from the Act of 1961, to explore, whether the writ petitioner was entitled to the benefit as claimed by her, which is inconsistent with the policy of the State, which is neither under challenge nor can be said to be illegal or arbitrary in any manner. If the reasons contained in the order under challenge are weighed keeping this in view, we find that, the order of learned Single Judge is unsustainable. The same therefore needs to be quashed and set aside.

4.4 So far the reliance on behalf of the writ petitioner, on the decision of the Punjab and Haryana High Court in the case of Ruksana v



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State of Haryana and others (Civil Writ Petition No.4229 of 2022 dated 21.04.2011) is concerned, we find that, the issue no.iv framed by the Court in the said case, which may have some bearing, is not answered by it and in any case, we are not in agreement with other observations made therein. As against that, according to us, it is the decision of the Uttarakhand High Court in the case of State of Uttarakhand v Smt.Urmila Manish and others (Special Appeal No.736 of 2019 dated 17.09.2019) which sounds to be a good law, more particularly in view of the recent decision of the Supreme Court in the case of Deepika Singh v Central Administrative Tribunal and Others (Civil Appeal No.5308 of 2022 arising from S.L.P.(C) No. 7772 of 2021 dated 16.08.2022), more particularly para : 17 thereof. In totality, we find that, the writ petitioner was not entitled to relief as claimed by her and the judgment and order impugned in this appeal is unsustainable, which needs to be quashed and set aside.”

3.Respectfully following the decision of the Hon'ble Division Bench, the order impugned in this writ petition is sustained and the writ



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petition stands dismissed. No costs. Consequently, connected
miscellaneous petitions are closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

The Dean,
Kanyakumari Government Medical College,
Asaripallam,
Kanyakumari District.



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G.R.SWAMINATHAN, J.

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