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W.P.(MD)NO.15768 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.15768 of 2023

S.P.Muthulakshmi

... Petitioner

Vs.

1. The Director of Medical and Rural Health Service,
No.359, DMS Complex,
301, Anna Salai,
Chennai – 600 002.

2. The Joint Director of Medical and Rural Health Service,
Theni at Periyakulam,
Theni District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 2nd respondent to grant maternity leave of one year from 06.04.2023 to 04.04.2024 to the petitioner as eligible Maternity leave with pay and all salary benefits based on the petitioner's representation dated 12.06.2023.

For Petitioner : Mr.N.Marimuthu

For Respondents: Mr.N.Ramesh Arumugam,
Standing counsel.

* * *

**ORDER**

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Heard the learned counsel on either side.

2. The petitioner is working as Pharmacist. She got married to one Chellapandi and a female child was born on 10.01.2013. She gave birth to second child on 20.9.2021. The petitioner applied and was granted one year maternity leave. Now the petitioner has become pregnant once again. The petitioner gave birth to the third child on 07.04.2023. The petitioner now wants maternity leave to be granted once again for her third child birth.

3. The issue raised in this writ petition is no longer *res integra*. A learned Judge of this Court vide order dated 25.03.2022 in W.P.No.22075 of 2021 allowed the writ petition. Aggrieved by the same, the State filed an appeal before the Hon'ble Division Bench. The Hon'ble Division Bench in W.A.No.1442 of 2022, dated 14.09.2022 (The Government of Tamil Nadu Vs. K.Umadevi) held as follows:-

“4.2. So far policy of the State is concerned, it restricts the benefit of maternity



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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 writ petitioner in the case of Deepika Singh Vs. 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. Though learned Additional Advocate General has rightly relied on the decision of the Uttarkhand High Court in the



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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 Vs.



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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 Vs.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 Vs. 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.”



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4. Therefore, the legal position that obtains as of now is that the employee cannot seek maternity leave for third child birth. However, if the petitioner applies for leave on loss of pay, the same shall be granted. This writ petition stands dismissed. No costs.

30.06.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes/ No

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To:

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2. The Joint Director of Medical and Rural Health Service,
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G.R.SWAMINATHAN,J.

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