



W.P.(MD)No.4787 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED:08.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.4787 of 2018
and
W.M.P(MD)Nos.4800 & 4801 of 2018

N.Sajitha

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Health and Family Welfare
Fort St. George, Chennai – 600 009.

2.The Director of Public Health and Preventive Medicine,
Teynampet, Chennai – 600 006.

3.The Deputy Director of Health Services,
Krishnankovil, Vadaseri,
Nagercoil – 629 001.

4.The Block Medical Officer,
Government Primary Health Care,
Edaicode, Kanyakumari – 629 152.

... Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the third respondent Deputy Director of Medical Service, Nagercoil in O.Mu.No.1826/C1/2018 dated 09.02.2018



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and quash the same and further direct the third respondent to grant post-natal child care leave to the petitioner on equal footing under Rule 101 (ab) of the Tamil Nadu Government Fundamental Rules.

For Petitioner : Mr.K.Ragatheesh Kumar for
M/s.Isaac Chambers
For Respondents : Mr.K.Christy Theboral,
Additional Government Pleader

ORDER

This writ petition has been filed to quash the impugned order of the third respondent Deputy Director of Medical Service, Nagercoil in O.Mu.No.1826/C1/2018, dated 09.02.2018 and to further direct the third respondent to grant post-natal child care leave to the petitioner on equal footing under Rule 101 (ab) of the Tamil Nadu Government Fundamental Rules.

2. The case of the petitioner is that the petitioner was appointed as Radiographer in Tamil Nadu Medical Services under the 1st and 2nd respondents. In the year 2002, the petitioner got married and had continuous miscarriage despite medical advice and treatment. Subsequently, in view of the failed attempts to bear the child, the Doctors advised the petitioner to go for surrogate procedure to have a child.



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Subsequently, the petitioner entered into an arrangement with Chennai Fertility Centre, Chennai, to have a baby through surrogate procedure. A surrogate mother was also arranged by the Centre and she has also undergone the procedure. While being so, the petitioner sought for leave for post-natal child care and sent an application to the fourth respondent Block Medical Officer. The same was forwarded to the third respondent. The third respondent vide the impugned proceedings, informed the fourth respondent that there is no provision for post-natal child care under the Tamil Nadu Leave Rules. Hence, challenging the same, the petitioner has filed this writ petition.

3. The learned counsel appearing for the petitioner would submit that though there is no direct provision available for granting leave for post natal child care in the Fundamental Rules, during the pendency of this writ petition, the Government issued G.O.(Ms)No.44, Social Welfare and Women Empowerment Department, dated 29.07.2022, granting 270 days leave for maintenance of the infant. By virtue of the interim order, the petitioner availed leave and therefore, liberty may be given to the petitioner to make representation for regularization of the leave



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availed in terms of G.O.No.44.

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4. In view of the said submission, this Court grants liberty to the petitioner to make a representation before the third respondent to regularize the leave availed by her in terms of the interim order passed by this Court. On such representation being made by the petitioner, the third respondent is directed to consider the same in terms of G.O.Ms.No.44, dated 29.07.2022 and pass orders within a period of six weeks thereafter.

With the above direction, this writ petition is disposed of.
No Costs. Consequently, connected miscellaneous petitions are closed.

08.02.2023

pm
NCC:Yes/No
Index:Yes/No

To

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M.DHANDAPANI,J.



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