



W.P(MD)No.22965 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2023

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD).No.22965 of 2022

S.Angaleswari

...Petitioner

Vs.

The Deputy Commissioner (State Taxes),
Madurai West,
Madurai District.

...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondent herein to grant maternity leave without loss of pay to the petitioner considering the petitioner's representation, dated 09.05.2022.

For Petitioner : Mrs.K.R.Shivasankari

For Respondent : Mr.N. Muthu Vijayan
Special Government Pleader



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ORDER

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This Writ Petition has been filed for issuing direction to the respondent herein to grant maternity leave without loss of pay to the petitioner considering the petitioner's representation, dated 09.05.2022.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioner was appointed as Office Assistant in the Commercial Tax Department by proceeding, dated 30.07.2018. From 01.08.2018 to 17.05.2022 the petitioner was working as Office Assistant in the Assistant Commissioner (States Taxes), Thirumangalam. From 18.05.2022 the petitioner is working as Record Clerk in the respondent office. The petitioner got married on 11.09.2013 and she was begotten with two children on 25.05.2014 and 03.10.2016 respectively, well before to the appointment of the petitioner as Office Assistant. The petitioner has not availed any maternity leave after her appointment. While so, on 01.04.2022 the petitioner got pregnant with the 3rd child. To enable herself and to give special care and assistance to her child, she sent a



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representation, dated 09.05.2022 requesting the respondent to grant maternity leave without loss of pay from the date of delivery. However, the said representation was not considered. Hence, the petitioner has filed the present Writ Petition.

4. In support of his contention, the learned counsel appearing for the petitioner relied on the order passed by this Court reported in **2022(4) CTC 761** in the case of ***A.Deepalakshmi Vs. Government of Tamil Nadu, rep. by Additional Chief Secretary, Munincipal Administration and Water Supply Department, Fort. St. George, Chennai – 600 009***, in which this Court dealt with a similar case in which a favourable order was passed. The relevant paragraph No.7 is extracted hereunder:

7. On perusing the Fundamental Rules, it is seen that the main provision states that the Maternity Leave will not be admissible to a married woman, with more than three children. In this case, admittedly the petitioner is having three children and this is the third child for which, the petitioner is seeking Maternity Leave. However, the Proviso states on and from the 29th June 1993, Maternity Leave shall be granted to a Woman Government servant with less than two surviving children. Even though the Proviso states that Maternity Leave shall be granted to the woman with less than 2 surviving children, the main clause says that Maternity Leave



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will not be admissible for more than three children. Therefore, this Court is of the considered opinion that the main Section will have over riding effect than the Proviso. Therefore, this Court is of the considered opinion that the petitioner is entitled to Maternity Leave.”

So, this Court is consonance with the order passed in the aforesaid case.

5. The learned Special Government Pleader would vehemently argued that begetting a third child is against the public policy of the state with respect to population explosion and hence, there is no way to sanction maternity leave to the third child of the petitioner for the purpose of promoting the concept of small family in the country. He also relied on the G.O.Ms.No.237 Personnel and Administrative Reforms (FR III) Department, dated 29.06.1993 and G.O.Ms.No.84 Human Management Reforms Department, dated 02.08.2021.

6. This Court is fully in consonance with the order passed by this Court in the above said order passed by this Court and hence, the respondents are directed to consider the representation of the petitioner, dated 09.05.2022 and permit her to avail maternity leave without loss of



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pay from the date of delivery of child, within a week from the date of receipt of a copy of this order. This Court is also inclined to observe that this is the first time the petitioner is seeking Maternity Leave and hence, she is entitled to 365 days of leave.

7. With the above observation, this Writ Petition is allowed.

No costs.

01.08.2023

Index : Yes / No
Internet : Yes/ No
trp



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To
The Deputy Commissioner (State Taxes),
Madurai West,
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L.VICTORIA GOWRI, J.,

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