



W.P(MD)No.25490 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.25490 of 2022

I.Manohari

... Petitioner

Vs.

1.The Principal Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Secretariat,
Chennai-600009.

2.The Director,
Directorate of Medical and Rural Health Services,
DMS Complex 361, Anna Salai,
Teynampet, Chennai-600018.

3.The Joint Director,
Office of the Joint Director of Health Services,
Santhanathapuram 6th street,
Pudukkottai-622001.

... Respondents

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 third respondent herein pertaining to its proceedings in O.Mu.No. 4136/Ni-1/2022, dated 03.09.2022 and to quash the said impugned Letter of Rejection as illegal and consequently, direct the respondents to provide tot he



W.P(MD)No.25490 of 2022

petitioner maternity leave of 12 months (365 days) from 06.09.022 based on the petitioner's leave application dated 11.08.2022.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.K.Balasubramani
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2. The petitioner is holding the rank of Assistant Surgeon (Class I) in Tamil Nadu Government Service. The petitioner was blessed with three children. The petitioner had taken maternity leave only for the second child who was born on 26.05.2016. The petitioner had joined the Government service in 2014. The first child was born earlier ie., on 02.03.2013. Contending that the petitioner is seeking only second maternity leave, the petitioner called upon the employer to grant her maternity leave even for the third child. Citing G.O.Ms.No.84, Human Resources Management (FR-III) Department, dated 23.08.2021, the petitioner's request was denied. Challenging the same, the present writ petition has been filed.



W.P(MD)No.25490 of 2022

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3. The learned counsel appearing for the petitioner placed reliance on the order dated 18.03.2022 made in W.P.(MD)No.4898 of 2022 and the order dated 30.08.2022 made in W.P.(MD)No.18870 of 2022. He called upon this Court to set aside the impugned order and grant relief as prayed for.

4. I am not persuaded by the submission advanced by the learned counsel appearing for the petitioner for the reason that the issue has already been settled by the Hon'ble Division Bench in *W.A.No.1442 of 2022, dated 14.09.2022 (The Government of Tamil Nadu Vs. K.Umadevi)*. The Hon'ble Division Bench held as follows:-

“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 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 Uttarakhand High Court in the case of State of Uttarakhand V.smt.Urmila Manish and others



W.P(MD)No.25490 of 2022

(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 Uttarakhand 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 Harynan High Court in the case of Ruksana Vs. 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.”

5. In view of the categorical decision rendered by the Hon'ble Division Bench, the petitioner cannot place reliance on the orders passed by the learned Single Judges. That apart, as pointed out by the learned Special Government Pleader, G.O.Ms.No.84, Human Resources Management (FR-III) Department,



W.P(MD)No.25490 of 2022

dated 23.08.2021 makes it clear that the benefit of maternity leave will be available only to married women Government servants with less than two surviving children. Therefore, the order impugned in the writ petition is sustained. However, the authorities cannot come in the way of the petitioner to avail whatever leave to her credit. The order of the Hon'ble Division Bench can only mean that the maternity leave with monetary benefit will not be available for the third child. If the concerned Government servant wants to avail leave that is available to her credit and that she wants to go on loss of pay even upto twelve months, the same will have to be permitted. As on date, the Government has not imposed any condition on the number of children one can have. We are yet to adopt the Chinese policy. The position of the women Government servants who has delivered a child or who is undergoing pregnancy can very well be understood by this Court. The Government can only decline to extend her monetary benefits if the employee is not entitled to the benefit of maternity leave. At the same time, taking note of her condition, she has to be permitted to avail leave standing to her credit. If the employee is not having any leave to her credit, she can very well go on leave on loss of pay. The maximum period can be 12 months.



W.P(MD)No.25490 of 2022

G.R.SWAMINATHAN, J.

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6. The order impugned in the writ petition is sustained. With this liberty to the petitioner, the Writ Petition is disposed of accordingly. No costs.

20.03.2023

Index : Yes / No
Internet : Yes/ No
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To

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W.P(MD)No.25490 of 2022