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W.P.No.20629 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.20629 of 2023
and W.M.P.Nos.20006 & 20007 of 2023

Veerakajalakshmi

...Petitioner

-Vs-

1. The Director of Medical and
Rural Health Services,
No.361 – DMS Complex,
Anna Salai,
Chennai – 600 006.
2. The Director of Medical Education (DME),
Kilpauk,
Chennai – 600 001.
3. The Registrar,
Tamil Nadu Dr. MGR Medical University,
No.69, Anna Salai Road,
Guindy,
Chennai – 600 032.
4. The Dean
Coimbatore Medical College and Hospital,
Coimbatore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus, calling for the



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records on the file of the fourth respondent relating to the impugned order passed on 23.06.2023 in NA.KA.No.1334/MAKA1/2023 and to quash the same, consequently to direct the respondents to grant maternity leave benefits from 18.01.2013 to 17.01.2024 to the petitioner for her maternity period as per G.O.Ms.No.84.

For Petitioner : Mr.N.U.Pressanna
For Respondents : Mr.S.Arumugam
For R1 & R2 : Mr.S.Arumugam
Government Advocate.

ORDER

This writ petition has been filed challenging the order passed by the fourth respondent dated 23.06.2023, thereby directing the petitioner to get condonation order from third respondent and to rejoin the course.

2. The petitioner after completing her M.B.B.S. decree, she was appointed to the post of Assistant Surgeon by an order dated 26.04.2012 and she was posted to the Government Headquarters Hospital, Kallakurichi, Villupuram District. While she was in service, she got married on 12.06.2017 and gave birth to a male child on 03.03.2019. Thereafter, she qualified in the NEET examination to do her post



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graduate decree. Thereafter, she was selected for post graduate course in microbiology and she was allotted to Coimbatore Medical College, Coimbatore. Accordingly, she joined in the post graduate course in microbiology course at Coimbatore Medical College and Hospital, Coimbatore.

3. While she was in-service doctor, she got pregnant and gave birth to a male child on 18.01.2023 at Sri Ramakrishna Multi Specialty Hospital, Coimbatore. The petitioner was discharge from the hospital on 21.01.2023. Due to which, she could not able to attend the post graduate course after the birth of her child. Therefore, on 31.01.2023, she applied for maternity leave from the period of one year as per the G.O.Ms.No.84 Human Resources Management (FR-III) Department dated 23.08.2021. She also requested the authorities concerned to grant maternity leave with salary from 18.01.2023 to 17.01.2024. She further requested to permit her to write her final year post graduate examination during the month of June to July, 2023. Once again, she submitted representation on 01.02.2023, seeking permission to write the examination. Since her request was not considered, she was constrained to approach this Court by way of writ petition in W.P.No.9251 of 2023 and this Court by an



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order dated 03.04.2023, directed the respondents to consider the representation submitted by the petitioner and pass appropriate orders.

4. Thereafter, an enquiry was conducted and the fourth respondent passed order dated 23.06.2023, thereby directing the petitioner to get condonation order from the third respondent and to rejoin the course. In the meanwhile, the petitioner was unable to appear for her examination and she was denied opportunity to write her final year examination. Hence, the petitioner filed this present writ petition.

5. Heard the learned counsel appearing on either side and perused the material placed before this Court.

6. The government issued order in G.O.Ms.No.105, Personnel and Administrative Reforms (FR-III) Department, dated 07.11.2016, thereby enhancing the maternity leave from 180 days to 270 days to married women government servants, with less than two surviving children, which may be spread over from pre-confinement rest to post-confinement recuperation, with full pay at the option of the women government servants. Subsequently, by way of another government order



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in G.O.Ms.No.84 Human Resourced Management (FR-III) Department dated 23.08.2021, the maternity leave admissible to married women government servants with less than two surviving children, enhanced from 9 months to 12 months with effect from 01.07.2021, with full pay, which may be spread over from the pre-confinement rest to post-confinement recuperation, at the option of the married women government servants.

7. The petitioner was admitted in the hospital on 18.01.2023 and gave birth to a male child on the same day. Subsequently, she was discharged from the hospital on 21.01.2023 and applied for maternity leave by way of representation dated 31.01.2023. She also requested to permit her to write her final year examination of her post graduate degree, to be held in the month of June to July, 2023. However, the said request was not considered and as directed by this Court, on the request made by the petitioner, a committee was constituted headed by the Dean of the Coimbatore Medical College, consisting the Vice Principal, Medical Superintendent, and Head of the Department of Coimbatore Medical College. The said committee enquired the petitioner's request and submitted report dated 21.06.2023, thereby informed the petitioner



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whenever if any leave taken by the individual has to get condonation order from the third respondent and rejoin the course.

8. After completion of maternity leave for one year as applied by the petitioner, she ought to have joined in the course on 18.01.2024. However, the fourth respondent refused to permit the petitioner to rejoin her in the post graduate course and directed the petitioner to get condonation order from the third respondent. Further the claim of the petitioner such as maternity leave salary during the maternity period can be considered only after completion of her study in the post graduate course.

9. In this regard, the learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India reported in **MANU/SC/0922/2023** in the case of **Kavita Yadav Vs. The Secretary, Ministry of Health and Family Welfare Department and ors** in Civil Appeal No.5010 of 2023 dated 17.08.2023, which held as follows :-

“5. The main question which falls for determination in this appeal is as to whether the



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maternity benefits, as contemplated in the 1961 Act, would apply to a lady employee appointed on contract if the period for which she claims such benefits overshoots the contractual period. Ms. Rachita Garg, learned counsel appearing for the respondent employer, sought to defend the reasoning given in the judgment under appeal. Her main argument is that once the term or tenure of the contract ends, there cannot be a notional extension of the same by giving the employee the benefits of the 1961 Act in full, as contemplated in Section 5(2) thereof. It is her submission that any benefits that the appellant would be entitled to ought to be within the contractual period.

6. We have reproduced earlier in this judgment the provisions of Section 12(2)(a) of the 1961 Act. The aforesaid provision contemplates entitlement to the benefits under the 1961 Act even for an employee who is dismissed or discharged at any time during her pregnancy if the woman, but for such discharge or dismissal, would have been entitled to maternity benefits or medical bonus. Thus, continuation of maternity benefits is in built in the statute itself, where the benefits would survive and continue despite the cessation of employment.



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In our opinion, what this legislation envisages is entitlement to maternity benefits, which accrues on fulfillment of the conditions specified in Section 5(2) thereof, and such benefits can travel beyond the term of employment also. It is not coterminus with the employment tenure. A two Judge Bench of this Court in the case of Municipal Corporation of Delhi vs Female Workers (Muster Roll) & Anr. [(2000) 3 SCC 224], while dealing with a similar claim by female muster roll workers who were employed on daily wages, opined that the provisions relating to maternity benefits in the 1961 Act would be applicable in their cases as well. That dispute had reached this Court through the Industrial Tribunal and the High Court. Before both these fora, the Union espousing the cause of the female workers was successful. In that case, point of discrimination was highlighted as regular women employees were extended the benefits of the said Act but not those who were employed on casual basis or on muster roll on daily wage basis. This Court observed, in paragraph 27 of the said judgment:

“27. The provisions of the Act which have been set out above would indicate that they are wholly in consonance with the Directive Principles



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of State Policy, as set out in Article 39 and in other articles, specially Article 42. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery. We have scanned the different provisions of the Act, but we do not find anything contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis or on muster roll on dailywage basis.”

Thus, it is clear that even for an employee who is dismissed or discharged at any time during her pregnancy if the woman, but for such discharge or dismissal, would have been entitled to maternity benefits or medical bonus. Thus, continuation of maternity benefits is in-built in the statute itself, where the benefits would survive and continue despite the cessation of employment.

10. Further, the maternity leave is a fundamental right and the intention of the government to grant maternity leave and other benefits in



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order to protect the interest of the women and the foetus and it should not be lightly ignored. Further when the intention is to give benefits to the women, the same intention should not take away the consequential benefits given to the in-service women candidates, as held by the Hon'ble Division Bench of this Court in the judgment reported in *MANU/TN/2037/2018* in the case of *P.Sowmyaa and ors Vs. The Secretary, Tamil Nadu Health and Family Welfare Department and ors.*

11. In view of the above discussions, the impugned order passed by the fourth respondent in NA.KA.No.1334/MAKA1/2023, dated 23.06.2023, is hereby quashed. The fourth respondent is directed to permit the petitioner to join her post graduate course in the Coimbatore Medical College and Hospital, Coimbatore, forthwith, and also permit her to write her final year examination during her course. The petitioner is directed to rejoin her post graduate course on or before 05.02.2024. It is needless to say that the petitioner shall complete her course for the period of 36 months. It is also made clear that the maternity benefits such as leave salary during the leave period can be considered only after completion of post graduate course by the petitioner.



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12. Accordingly, the Writ Petition stands allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

***Note : Issue order copy on
or before 02.02.2024***

rts

To

1. The Director of Medical and
Rural Health Services,
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