



W.P.(MD).No.19662 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.19662 of 2023

and

W.M.P(MD) Nos.16243 and 21347 of 2023

G.Vimala

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by the
Principal Secretary to Government,
Health and Family Welfare Department,
Fort St, George, Chennai – 9.
2. The Mission Director,
National Health Mission – TN
No.359, Anna Salai,
DMS Annex Building,
Teynampet, Chennai – 600 006.
3. The Director of Medical and
Rural Health Services,
Teynampet, Chennai – 6.
4. The Joint Director of Health Services,
Tenkasi,
Tenkasi District.



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5. The Block Medical Officer,
Government Primary Medical Center,
Kuruvikulam – 627 754,
Tenkasi District.

... 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 impugned proceedings passed by the first respondent in Government letter No.48408/AA1/2021-3, Health and Family Welfare (AA1) Department, dated 04.11.2022 and consequential proceedings passed by the second respondent in Ref.No.1982/NHM/P7/2021, dated 02.05.2023 as well as proceedings of the fourth respondent in Na.Ka.No.3351/A10/2023, dated 08.05.2023 and the fifth respondent's recovery proceedings in Na.Ka.No. 707/A5/2023, dated 19.05.2023 and quash the same and consequently direct the respondents to pay arrears of benefits of the Maternity Leave salary from the month of April 2022 to November 2022 to the petitioner herein.

For Petitioner : Mr.K.Vamanan

For Respondents : Mr.T.Amjadkhan
Government Advocate

ORDER

The present Writ Petition has been filed by the contract Nurses working under the National Rural Health Mission Scheme, challenging the order of



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recovery which was paid towards the Maternity Leave availed by the petitioner.

2. The petitioner herein had availed maternity leave for the period between 01.12.2021 and 30.11.2022. The petitioner was also granted all the monetary benefits for the said period. The said benefits were conferred upon the writ petitioner based upon the proceedings of the third respondent dated 08.02.2021. However, the first respondent by his proceedings dated 04.11.2022 had clarified that the maternity leave benefits are not applicable to the nurses appointed on consolidated pay especially, under National Rural Health Mission Scheme. Pursuant to the above said orders, the impugned order was passed on 19.05.2023, by the fifth respondent herein directing the writ petitioner to repay a sum of Rs.78,000/-. This order is under challenge in the present writ petition.

3. The issue whether the nurses appointed on contractual basis under the National Rural Health Mission Scheme are entitled to the benefits of maternity leave or not is no longer *integra*. The judgment of the Hon'ble First Bench of our High Court in W.P.No.27556 of 2018, dated 18.10.2024 (**MRB**



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Nurses Empowerment Association Vs. the Principal Secretary, Department of Health and Family Welfare Government of Tamil Nadu in paragraph

No.7 has held as follows:

“7. Therefore, by virtue of Section 27, the provisions of the 1961 Act will prevail over contractual conditions denying or offering less favourable maternity benefits. Consequently, the reliance by the respondents on condition 6 of the Appointment and Posting Order to deny maternity benefits is untenable.

All pending and fresh applications for maternity benefits from NRHM nurses employed on contractual basis shall be considered and disposed of in terms of Section 5 of the 1961 Act within 3 months from the date of receipt of a copy of this order (as regards pending applications) or 3 months from the date of receipt of fresh applications, as the case may be, after making adjustments, if any, towards payments made earlier”.



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4. In view of the above said categorical finding of the Hon'ble Division Bench, the orders impugned in the writ petition are set aside and this Writ Petition stands allowed. If any excess amount has already been recovered, the same shall be refunded to the writ petitioner, within a period of twelve weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently connected Miscellaneous Petitions stand closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

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R.VIJAYAKUMAR,J.

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