



W.P.(MD).No.21816 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.21816 of 2021

T.Nandhini

... Petitioner

Vs.

- 1.The Principal Secretary to Government,
Personnel and Administrative
Reforms Department,
Secretariat, Chennai-600 009.
- 2.The Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai-600 009.
- 3.The Director,
Directorate of Medical and Rural
Health Services (DMS),
No.359, Anna Salai,
DMS Complex, Teynampet,
Chennai-600 006.
- 4.The Director,
Directorate of Public Health and
Preventive Medicine (DPHS),
No.359, Anna Salai, DMS Complex,
Teynampet, Chennai-600 006.



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5.The Deputy Director Health Service,
Office of Deputy Directorate of Health
Service, Race course Road,
Kajamalai colony,
Trichy-620 020.

6.The Block Medical Officer,
Upgraded Primary Health Centre,
Uppiliyapuram, Thuraiyur (T.K),
Trichy District-621 011.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent Nos. 3 to 6 to pay the petitioner's arrear salary benefits for her Maternity Leave from 10.08.2020 to 07.02.2021 (6 months) as per the 1st respondent's G.O.(Ms).No. 91, Personnel and Administrative Reforms (FR.II) Department, dated 28.07.2020 and the 3rd respondent's order in Ref.No.71528/N1/2/2021, dated 08.02.2021, based on her application and representation dated 10.08.2020 and 23.09.2021.

For Petitioner : M/s.Sathya,
For Mr.C.Rajaguru

For Respondents : Mr.D.Gandhiraj,
Special Government Pleader



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ORDER

The prayer of the writ petition is as follows:

This writ petition has been filed seeking direction to the respondents 3 to 6 to pay the petitioner's arrear salary benefits for her Maternity Leave from 10.08.2020 to 07.02.2021 (6 months) as per the 1st respondent's G.O.(Ms).No. 91, Personnel and Administrative Reforms (FR.II) Department, dated 28.07.2020 and the 3rd respondent's order in Ref.No.71528/N1/2/2021, dated 08.02.2021, based on her application and representation dated 10.08.2020 and 23.09.2021.

2. The facts which led to the filing of this writ petition are as follows:

2.1. The plight of the petitioner is that she was not sanctioned with salary benefits for her maternity leave during the period from 10.08.2020 to 07.02.2021. The petitioner is presently working as a contract based staff nurse in Urban Primary Health Center, Melur, Madurai District. Having completed her B.Sc., Nursing, she was originally selected through Medical Service Recruitment Board and was appointed as a contract based staff nurse in 2018 at Government Primary Health Centre, Uppiliyapuram, Trichy District HUD,



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Trichy District. During her service at Uppiliyapuram Government Primary Health Centre, she availed Maternity Leave from 10.08.2020 to 07.02.2021, for the purpose of delivery of her second child. Though she is entitled for 270 days of Maternity Leave with full pay benefits, she was not provided with her salary benefits and hence, she made a detailed representation on 10.08.2020 seeking maternity leave with full pay benefits. However, she was only allowed to avail maternity leave but her salary during the said period was not sanctioned in terms of G.O.Ms.No.91, Personnel and Administrative Reforms, FR-II Department, dated 28.07.2020 and her request seeking to sanction her maternity leave with full pay benefits were not considered by the respondents.

2.2. In the meanwhile, the 3rd respondent also issued an order dated 08.02.2021 directing all the subordinate officers including the respondents 4 and 5 to sanction the maternity leave with full salary benefits to all the contract basis nurses. Even after the issuance of the aforesaid order, to the shock and surprise of the petitioner, she was not paid with her salary arrear benefits for the period of maternity leave, i.e., 10.08.2020 to 07.02.2021. Hence, the petitioner filed a writ petition in W.P.No.17425 of 2021 before the Principal Bench of this



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Court and the Hon'ble Division Bench of the Principal Bench has categorically recorded in the interim order, that there cannot be any discrimination between the regularized and non regularized married women Government servants with respect to granting of maternity leave and on that basis, directed the State Counsel to get appropriate direction from the State Government, granting maternity leave uniformly to the regularized, contractual and non regularized married women Government servants. Even after the said order no positive steps were taken by the respondents with regard to grant of maternity leave benefits to the petitioner. Hence, on 23.09.2021, she submitted yet another detailed representation to all the respondents, requesting to sanction her maternity leave benefit during her maternity leave from 10.08.2020 to 07.02.2021. Since the same was not considered by the respondents, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner, M/s.Sathya, drew my attention to the mandates of G.O.Ms.No.91 dated 28.07.2020 of the Personnel and Administrative Reforms (FR-II) Department, by which, the Government has extended maternity leave benefits to non permanent married women



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Government servants appointed in a regular capacity under Fundamental Rule 101 (a). She further vehemently submitted that she had made an application at the first instance on 10.08.2020. She further insisted on 23.09.2021, despite the 3rd respondent issuing an order directing all the subordinate officers including the respondents 4 and 5 to sanction maternity leave with full salary benefits to all the contract basis nurses, her case was not considered positively and pressed for allowing the writ petition.

4. Per Contra, Mr.D.Gandhi Raj, the learned Special Government Pleader appearing for the respondents relied upon his counter affidavit filed by the 3rd respondent submitted that the petitioner is not a permanent government servants and that she was appointed on contract basis on consolidated pay. Hence, she would be entitled to the benefit of G.O.Ms.No.91 only if she is a permanent government employee and non-permanent government employees serving on contract basis would not be covered under the class of non permanent government servants. Hence, the petitioner cannot claim the extension of maternity benefits. However, she is entitled for maternity leave without pay and pressed for dismissal of the writ petition.



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5. Heard, the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents. Carefully perused the materials available on record.

6. Grant of maternity benefits along with maternity leave for two pregnancies is a fundamental right ensured to every working married woman under Article 15(3) of the Constitution of India and it is pertinent to mention here that the petitioner was recruited as a staff nurse on contract basis in the Government Primary Health Centre through Medical Services Recruitment Board. She has been continuously working without break in service and hence, though her appointment is under a contract basis, the contention of the learned Special Government Pleader that, the same cannot be considered under the class of non permanent government servants is not sustainable. It is pertinent to mention that the petitioner was recruited directly through the Medical Services Recruitment Board.

7. That apart, the learned counsel appearing for the petitioner also drew my attention to the proceedings of the Rural and Health Services Department,



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dated 08.02.2021, in which, the Government has taken a decision accepting to sanction maternity leave with salary benefits to all the nurses serving under contract basis, appointed after regular recruitment through the Medical Service Recruitment Board. When a woman absents herself from work in accordance with the provisions of Maternity Benefit Act, 1961, it shall be unlawful for her employer to deny her with maternity benefit for the period of maternity leave availed by her. This Court has dealt with a similar issue in ***W.P.No.19426 of 2016*** and the relevant portion of the same is extracted as follows:

“On 18th of December, 1979, the United Nations adopted the "Convention on the Elimination of all forms of discrimination against women".

"Article 11 (2) (b) of the said convention provides as under:

To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;"

8. The Hon'ble Supreme Court has dealt with a similar issue in the case of ***Municipal Corporation of Delhi .vs. Female Workers (Muster Roll) and***



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Ors. reported in MANU/SC/0164/2000 and the relevant portion which is applicable to the facts and circumstances of this case is extracted as follows:

“6.It is in this background that we have to look to our Constitution which, in its Preamble, promises social and economic justice. We may first look at the Fundamental Rights contained in Chapter III of the Constitution. Article 14 provides that the State shall not deny to any person equality before law or the equal protection of the laws within the territory of India. Dealing with this Article vis-a-vis the Labour Laws, this Court in Hindustan Antibiotics Ltd. v. Workmen MANU/SC/0187/1966 : (1967)ILLJ114SC, has held that labour to whichever sector it may belong in a particular region and in a particular industry will be treated on equal basis. Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Clause (3) of this Article provides as under:

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

7. In Yusuf Abdul Aziz v. State of Bombay AIR MANU/SC/0124/1954 : [1954]1SCR930 , it was held that Article 15(3) applies both to existing and future laws.

8. From Part III, we may shift to Part IV of the Constitution containing Directive Principles of State Policy. Article 38 provides that the State shall strive to promote the welfare of the people by securing and



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protecting, as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life. Sub-clause (2) of this Article mandates that the State shall strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities.

Article 39 provides, inter alia, as under:

39. Certain principles of policy to be followed by the State - The State shall, in particular, direct its policy towards securing -

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) & (c)...

(d) that there is equal pay for equal work for both men and women:

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f)...

Articles 42 and 43 provides as under : "42, Provision for just and



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humane conditions of work and maternity relief - The State shall make provision for securing Just and humane conditions of work and for maternity relief.

43. Living wage, etc., for workers - The State shall endeavour to secure, by suitable legislation or economic organisation or In any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

9. It is in the background of the provisions contained in Article 39, specially in Articles 42 and 43, that the claim of the respondents for maternity benefit and the action' of the petitioner in denying that benefit to its women employees has to be scrutinised so as to determine whether the denial of maternity benefit by the petitioner is justified In law or not."

9. In yet another case, the Hon'ble Supreme Court has dealt with a similar issue in the case of Dr.Kavita Yadav .vs. The Secretary, Ministry of Health and Family Welfare Department & Ors. and the relevant portion of the same is extracted as follows:



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“4. once the Appellant fulfilled the pre-requisite for availing maternity benefits, as contemplated in Section 5(2) of the 1961 Act, even as a contractual employee, she would be entitled to the full benefits as envisaged therein. The entitlement of a contractual employee to obtain such benefits is not in dispute in this case as the employer had extended such benefits to the Appellant during her first pregnancy. The Appellant also fulfilled the requirement of having worked for a period exceeding 80 days in the 12 months immediately preceding the date of her expected delivery, in terms of Section 5(2) of the 1961 Act.

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



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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. 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 co-terminus with the employment tenure. A two Judge Bench of this Court in the case of *Municipal Corporation of Delhi v. Female Workers (Muster Roll) and 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 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



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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 daily-wage basis.”

7. Broadly, a similar view is reflected in a more recent judgment of this Court in the case of Deepika Singh v. Central Administrative Tribunal and Ors. [(2022) 7 SCR 557]. Though this decision dealt with Central Civil Services (Leave) Rules, 1972, in relation to maternity leave and the 1961 Act was not directly applicable in that case, this Court analysed certain provisions of this Act to derive some guidance on a cognate legislation. This Court observed in the case of Deepika Singh (supra):-

“19. Sub-section (1) of Section 5 confers an entitlement on a woman to the payment of maternity benefits at a stipulated rate for the period of her actual absence beginning from the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day. Sub-section (3) specifies the maximum period for which any woman shall be entitled to maternity benefit. These provisions have been made by Parliament to ensure that the absence of a woman away from the place of work occasioned by the delivery of a child does not hinder her entitlement to receive wages for that period or for that



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matter for the period during which she should be granted leave in order to look after her child after the birth takes place.

20. The Act of 1961 was enacted to secure women's right to pregnancy and maternity leave and to afford women with as much flexibility as possible to live an autonomous life, both as a mother and as a worker, if they so desire. In *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, a two-judge Bench of this Court placed reliance on the obligations Under Articles 14, 15, 39, 42 and 43 of the Constitution, and India's international obligations under the Universal Declaration of Human Rights 1948 and Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women to extend benefits under the Act of 1961 to workers engaged on a casual basis or on muster roll on daily wages by the Municipal Corporation of Delhi. The Central Civil Services (Leave) Rules 1972, it is well to bear in mind, are also formulated to entrench and enhance the objects of Article 15 of the Constitution and other relevant constitutional rights and protections.”

In the light of the ratio laid down in the aforesaid two authorities and having regard to Section 27 of the 1961 Act, which gives overriding effect to the statute on any award, agreement or contract of service, in our opinion, the High Court erred in law in holding that the Appellant was not entitled to maternity benefits beyond 11th June 2017.

8. The Respondents sought to distinguish the present dispute from the case of *Female Workers (Muster Roll)* (supra) on the ground that the said



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case arose from an award of the Industrial Tribunal and that there was a finding by the Tribunal that the muster roll lady workers were working for a long period of time. But the fact remains that in law, daily-wage workers cannot be said to have continuity of service for an unlimited period. The effect of that judgment was that their tenure also stood notionally extended so far as application of maternity benefits under the 1961 Act was concerned.

9. Our independent analysis of the provisions of the 1961 Act does not lead to an interpretation that the maternity benefits cannot survive or go beyond the duration of employment of the applicant thereof. The expression employed in the legislation is maternity benefits [in Section 2(h)] and not leave. Section 5(2) of the statute, which we have quoted above, stipulates the conditions on the fulfilment of which such benefits would accrue. Section 5(3) lays down the maximum period for which such benefits could be granted. The last proviso to Section 5(3) makes the benefits applicable even in a case where the applicant woman dies after delivery of the child, for the entire period she would have been otherwise entitled to. Further, there is an embargo on the employer from dismissing or discharging a woman who absents herself from work in accordance with the provisions of the Act during her absence. This embargo has been imposed Under Section 12(2)(a) of the Act. The expression "discharge" is of wide import, and it would include "discharge on conclusion of the contractual period". Further, by virtue of operation of Section 27, the Act overrides any agreement or contract of service found inconsistent with the 1961 Act.



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10. In our opinion, a combined reading of these provisions in the factual context of this case would lead to the conclusion that once the Appellant fulfilled the entitlement criteria specified in Section 5(2) of the Act, she would be eligible for full maternity benefits even if such benefits exceed the duration of her contract. Any attempt to enforce the contract duration term within such period by the employer would constitute "discharge" and attract the embargo specified in Section 12(2)(a) of the 1961 Act. The law creates a fiction in such a case by treating her to be in employment for the sole purpose of availing maternity benefits under the 1961 Act.”

10. In view of the same, I have no hesitation to hold that the petitioner is entitled for maternity benefits during her maternity leave period from 10.08.2020 to 07.02.2021 even though she is serving on contract basis and consequently the respondents 3 to 6 are directed to pay the complete arrears of salary to the petitioner during her maternity leave period for the purpose mentioned supra within a period of twelve (12) weeks from the date of receipt of a copy of this order.



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11. Accordingly, this writ petition stands allowed. There shall be no order as to costs.

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