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WP No. 26280 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31-07-2025

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

WP No. 26280 of 2025

Dr.Fathima Shahin M
w/o.SHAIK ABDUL CADER RIYAZ,
61/28 AMBALA MARICAYER STREET,
KAYALPATTINAM,
THOOTHUKUDI 628 204.

Petitioner(s)

Vs

The State Of Tamil nadu
Represented By Secretary,
Health And Family Welfare
Department, Fort St, George,
Chennai 60 009.

Respondent(s)

Prayer:

Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 1 to 4 authorities to forthwith return the original certificates of the Petitioner that were submitted by her at the time of her admission to course of Post Graduation Diploma in Child Health in the 5th Respondent College.

For Petitioner(s): Mr.C.Vidhusan

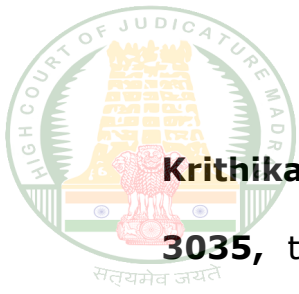
For Respondent(s): M/s.K.Tippu Sulthan
GA for respondents

**ORDER**

These writ petitions have been filed seeking direction to the respondents 1 to 4 authorities to forthwith return the original certificates of the Petitioner that were submitted by her at the time of her admission to course of Post Graduation Diploma in Child Health in the 5th Respondent College.

2. Heard Mr.C.Vidhusan, learned counsel for the petitioner and Mr.K.Tippu Sultan, learned Government Advocate, appearing for the respondents.

3. The learned counsel for the petitioner would submit that the petitioner got admitted in Post Graduate Diploma in Child Health Course in the Government Stanley Medical College through NEET PG 2018. When she joined the Post Graduate degree, she executed bond for a period of two years and that her Post Graduation course ended in May 2020. No posting order was given to the petitioner until June, 2021. The learned counsel for the petitioner would further submit that the petitioner received a posting order on 15.07.2021 on the date of receiving of posting order almost 14 months have been lapsed in the bond period, as she completed her course in May 2020 and the bond period would end in May 2022. In the meanwhile, the petitioner gave birth to a male baby on 28.07.2021. Therefore, she is entitled for a 12 months maternity leave and as per the judgment of the Hon'ble Division Bench of this Court in **E.**



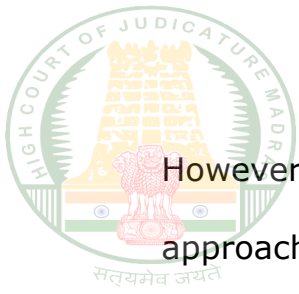
Krithikaa (Dr.) v. State of T.N., reported in **2025 SCC OnLine Mad 3035**, the maternity leave period must be counted within the bond

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4. The said contention was strongly objected by the learned Government Advocate and would submit that according to the bond condition, still the petitioner has to complete the remaining period of her bond service and that on mere serving the 10 months bond period, the petitioner cannot claim for return of certificates. Hence, prayed to dismiss the writ petition.

5. I have given my anxious consideration to either side submissions.

6. It is well settled principle of law that the posting order must coextensive with that of the bond period. In this connection, it is appropriate to refer the Division Bench judgment in **State of Tamil Nadu Vs. P.S.Sairam and others** reported in **2020 SCC OnLine Mad 2742**, In the case in hand, though the petitioner completed her Post Graduate degree in May 2021, she was served with the posting order only on 15.07.2022 viz., after 14 months. Therefore, as per the judgment of **P.S.Sairam's case** [cited supra], the remaining service to be performed by the petitioner is only 10 months. But, on the date of posting order, the petitioner was admitted in the hospital for delivery and entitled for the maternity benefits in accordance with the Maternity Benefit Act, 1961.



However, it is the submission of the petitioner that even in spite of approaching the respondent in the month of April, immediately after delivery, within five months, the respondent did not give the posting order.

7. The above facts are not in serious dispute. But, the only point urged by the learned Government Advocate is that the petitioner is not entitled to count the maternity leave within the bond period. But, the entitlement of maternity leave could not be denied citing the bond period and the same must be counted along with the bond period. This issue is no longer *res integra* in view of the recent Division Bench judgment in **E.Krithikaa (Dr)**'s case [cited supra]. For ready reference, this Court deems it appropriate to extract paragraph 7 to 9 of the above cited judgment:-

"7. The Hon'ble Supreme Court in *K. Uma Devi v. Government of Tamil Nadu*, (2025 SCC OnLine SC 1204) held that the concept of maternity leave is a matter of not just fair play and social justice but is also a constitutional guarantee to the women employees of this country towards fulfilment whereof the State is bound to act. In *Devika Biswas v. UOI*, (2016) 10 SCC 726, it was held that reproductive right is an aspect of personal liberty under Article 21 of the Constitution. In *Suchitha Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1, a three judges Bench of the Hon'ble Supreme Court held that the right of a woman to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution. In *X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi*, (2023) 9 SCC 433, it was held that the ambit of reproductive rights is not restricted to the right of women to have or not to have children and that it also includes the constellation of freedoms and entitlements that enable a woman to decide freely on all matters relating to her sexual and reproductive health.



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8. As per the conditions set out in the prospectus, the appellant has to serve the Government of Tamil Nadu in one of their hospitals for a period of two years. **This condition has to give way to the rights conferred on the women under the provisions of the Maternity Benefit Act, 1961.** This is all the more so because the Hon'ble Supreme Court had declared that any woman has a fundamental right to the benefits arising out of her situation of maternity. Maternity leave is integral to maternity benefit and forms a facet of Article 21. **The appellant no doubt is not a government employee. She is only obliged to render bond service to the Government of Tamil Nadu for a period of two years. But a regular State government employee is entitled to avail maternity leave for twelve months as per the amended Service Rules. We are of the view that the appellant is also entitled to the very same treatment applicable to any government employee.** The fact that the appellant was only in the service of the government without being a regular employee is irrelevant. When the fundamental right of the appellant is involved, she is entitled to the protective umbrella of not only Article 21 but also Article 14.

9. John Milton in "Paradise Lost" sang "They also serve who only stand and wait". **The second half of the bond service turned out to be maternity period for the appellant. Applying the legal fiction laid down in *Kavita Yadav*, the appellant must be taken to have served the Government of Tamil Nadu even during her maternity period. In other words, the maternity period of twelve months has to be counted as part of the bond period."**

[Emphasis supplied by this Court]

8. Accordingly, the maternity period has to be counted within the bond period. In the case in hand, the remaining service to be done by the petitioner is 10 months. But, during the relevant time, admittedly the petitioner is entitled for maternity leave of 12 months. Therefore, if we count the maternity leave period within the bond period, the petitioner's bond service become completed. Therefore, this Court is of the firm view that the petitioner is entitled for return of original certificates.



9. In the result, this writ petition stands allowed and the respondents are directed to return the original certificates of the petitioner within a period of two(2) weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

**31-07-2025
(2/2)**

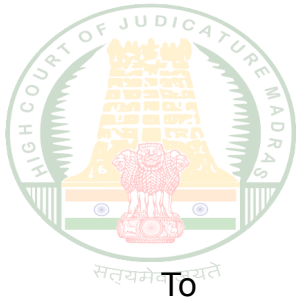
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Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No



To
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- 1.The State Of Tamilnadu
Rep Resented By Secretary, Health
And Family Welfare Department,
Fort St, George, Chennai 60 009.
- 2.Director Of Medical Education
Kilpauk, Chennai
- 3.The Director Of Medical And Rural
Health Services
Anna Salai, Teynampet, Chennai
- 4.The Dean
Government Stanley Medical College,
Chennai
- 5.CHIERF
Government Hospital Sankarankoil,
Sankarankil, Tirunelveli District



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C.KUMARAPPAN J.

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