



W.A(MD)No.1869 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 11.07.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**W.A(MD)No.1869 of 2025
and
C.M.P(MD)No.10645 of 2025**

V.Divya

... Appellant /
Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by the Principal Secretary,
Home Department,
Fort St.George,
Chennai – 600 009.

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai – 600 004.

3.The Superintendent of Police,
Office of the Superintendent of Police,
Sivaganga District.

... Respondents /
Respondents



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Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 18.06.2025 in W.P(MD)No.16101 of 2025 on the file of this Court and allow the Writ Appeal as prayed for.

For Appellant : Mr.S.Atham Ali

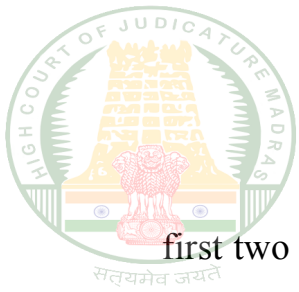
For Respondents : Mr.N.Ramesh Arumugam
Government Advocate

JUDGMENT

(By G.R.SWAMINATHAN, J.)

Heard both sides.

2.The appellant was appointed as Junior Assistant in the Police Department on 18.10.2023. She is presently serving in Sivagangai District. She got married to one Vigneshwaran and through the said wedlock, she was blessed with 2 female children. Both the children were born before the appellant joined government service. The appellant conceived for the third time and applied for maternity leave from 01.04.2025 to 31.03.2026. Her request was rejected. The appellant gave birth to a male child on 05.05.2025. The appellant challenged the rejection order by filing W.P(MD)No.16101 of 2025. The Writ Petition was dismissed by the learned single Judge vide order dated 18.06.2025 on the ground that maternity leave can be granted only for the



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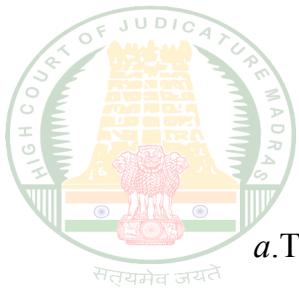
first two children and that one is not entitled to grant of maternity leave for the third child. Challenging the order of the learned Single Judge, this Writ Appeal has been filed.

3.The learned counsel appearing for the appellant submitted that this writ appeal has to be allowed in view of the decision of the Hon'ble Supreme Court reported in **2025 SCC OnLine SC 1204 (K.Umadevi Vs Government of Tamil Nadu & Others)**.

4.We are not swayed by this submission. It is true that the Hon'ble Supreme Court reversed the decision of the Division Bench of this Court and directed the Government to grant maternity leave for the third child in that case. The relevant paragraph reads as follows:

“34.Insofar the present case is concerned it is true that appellant has two biological children out of her first wedlock. But that was before entry into her service. Post entry into service and from her subsisting marriage, this is her first child. It has come on record that the two children out of her first wedlock are not residing with her but with their father, who is having their custody.”

The said decision has to be seen in its own factual context. The following factors were taken into account by the Hon'ble Supreme Court :



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- a. The first two children were begotten by the appellant through her first marriage and before she joined service.
- b. The two children born through the first wedlock were in the custody of their father (ex-husband of the appellant).
- c. Her first marriage was dissolved and she married again. Through the second marriage, she gave birth to a third child which was the first child from the subsisting marriage.

Considering these aspects, the Hon'ble Supreme Court chose to grant relief in favour of the appellant therein. In the same decision, the Hon'ble Supreme Court reiterated the need to harmonize the Policy of the State to arrest population growth and the right of women to avail maternity leave in the following terms:

“35. Policy of the State to arrest population growth by resorting to various population control measures is certainly a laudable objective. So is the objective of granting maternity benefit to women employees. The object of having two child norm as part of the measures to control population growth in the country and the object of providing maternity benefit to women employees including maternity leave in circumstances such as in the present case are not mutually exclusive. The two must be harmonized in a purposive and rationale manner to achieve the social objective.”

The case on hand is clearly distinguishable. The appellant has already begotten two children. One is compelled to presume that due to societal or family pressure, in order to have a male child, the appellant conceived again. We do not want to speculate on this further as it would not be fair to the appellant. All



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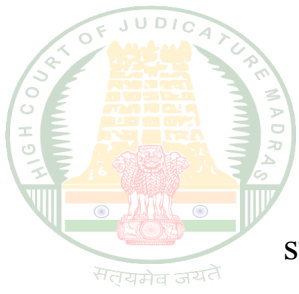
that we would observe is that the appellant cannot compare herself to K.Uma

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Devi.

5.We also notice that a learned Judge of this Court in ***C.Kohila vs. Additional Chief Secretary*** (WP(MD)No.23455 of 2024 dated 21.01.2025) had taken a similar view even prior to ***K.Uma Devi***. C.Kohila also had begotten her third child through her second marriage. The learned Judge was of the view that so long as the employee has not exhausted her quota of availing maternity leave twice, the Government cannot complain. In other words, a woman employee can avail maternity leave twice. The principle of purposive interpretation was invoked by the learned Judge in the following terms :

“13.In the light of the above said proposition, the intention of the legislature has to be understood and applied. In the present case, the petitioner has not availed any maternity leave for her first two children born through the first wedlock. For the first time, the petitioner is availing the maternity leave for her child born through the second wedlock. In such circumstances, the right of a women employee to have a child through her second wedlock cannot be curtailed invoking the Maternity Leave Rules. That apart, when they are going to extend the maternity leave to the petitioner for the first time, the State exchequer is not put to any



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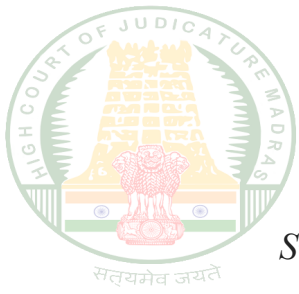
strain. The Rule has to be interpreted in such a manner that a women Government employee would be entitled to seek maternity leave only twice during her service period and it cannot be interpreted in such a manner that the State would be entitled to deny the maternity leave, even if it is claimed for the first time, citing third pregnancy.....”

Again, the appellant cannot compare herself to C.Kohila because Kohila also had begotten her third child through her second marriage.

6.We are conscious that maternity leave is a facet of Article 21. On this proposition, there cannot be any quarrel. But the appellant is seeking leave for one year with salary with attendant benefits. Therefore, the court has to necessarily go by the statutory rule. FR 101(a) of the Fundamental Rules of the Tamil Nadu Government reads as follows :

“F.R. 101. Rules regulating the grant of

- (a) maternity leave to female Government servants, and*
- (b) leave on account of ill-health to members of subordinate services whose duties expose them to special risk of accident or illness are given in the following instructions.*



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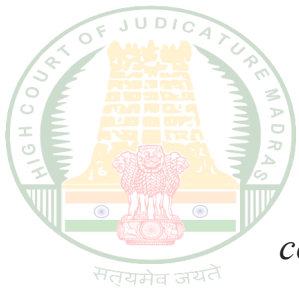
Such leave is not debited against the leave account.

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Instructions under Rule 101 (a) - Maternity leave.

**[1. (i) A competent authority may grant maternity leave on full pay to permanent married women Government servants and to non-permanent married women Government servants, who are appointed on regular capacity, for a period not exceeding 365 days, which may spread over from the pre-confinement rest to post confinement recuperation at the option of the Government servant. Non-permanent married women Government servants, who are appointed on regular capacity and join duty after delivery shall also be granted maternity leave for the remaining period of 365 days after deducting the number of days from the date of delivery to the date of joining in Government service (both days inclusive) for the post confinement recuperation.*

ii) Non-permanent married women Government servants, who are appointed under the emergency provisions of the relevant service rules should take for maternity purposes, the earned leave for which they may be eligible. If however, such a Government servant is not eligible for earned leave or if the leave to her credit is less than 365 days, maternity leave may be granted for a period not exceeding 365 days or for the period that falls short of 365 days, as the case may be. Non-permanent married women Government servants employed under the emergency provisions should have



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completed one year of continuous service including leave periods, if any, to become eligible for the grant of maternity leave:

Provided that the maternity leave referred in (i) or (ii) above shall be granted to a married woman Government servant with less than two surviving children:

Provided further that in the case of a woman Government servant with two surviving children born as twins in the first delivery, maternity leave shall be granted for one more delivery. ”

The rule categorically states that the maternity leave shall be granted to a married woman government servant with less than two surviving children. In other words, if a woman government employee is not having any child, she can apply for maternity leave. If she has only one child, then also she can apply for maternity leave. But if she has two children already, she cannot apply for maternity leave. From ***K.Uma Devi***, we can cull out one more proposition. If the first two surviving children are through an earlier marriage which has been dissolved and the third pregnancy is on account of a second marriage, then also, the woman government employee is entitled to apply for maternity leave. As the legal position remains at present, there is no scope for further liberal interpretation. Any other interpretation would defeat the object underlying the



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rule ie., population control. When the plain meaning of the rule is evident, there

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is no need to invoke the principle of purposive interpretation. That the appellant is applying for maternity leave for the first time is not really relevant. What matters is the number of children she is already having. The FR speaks of less than two surviving children as the entitlement for seeking maternity leave. The question to be posed is whether the woman employee is having two children. If the answer is in the affirmative, unless the first marriage has been dissolved and the pregnancy is on account of second marriage, the request of the appellant has to be rejected.

7.In the case on hand, the third child was also born through the first marriage of the appellant herein. The fact that both the first two children were born prior to the appellant joining service is not a relevant fact. In this view of the matter, we sustain the order of the learned single Judge. However, we direct the employer to grant the leave sought for by the petitioner herein which will be adjusted against the leave standing to her credit. We make it clear that the appellant can even seek leave for 365 days but then it will be leave on loss of pay.



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WEB COPY 8. With the aforesaid direction to the employer, this Writ Appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] [K.R.S., J.]
11.07.2025

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
MGA/SKM

To

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2. The Director General of Police,
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