

W.P.(MD).No.23455 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :10.01.2025

Pronounced on : 21.01.2025

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.23455 of 2024
and WMP(MD).No.19859 & 19860 of 2024**

C.Kohila

....Petitioner

Vs

1.The Additional Chief Secretary
Health and Family Welfare Department
Secretariat
Fort St.George
Chennai

2.The Director of Medical Education
Office of the Director of Medical Education
E.V.R.Road, Kilpauk
Chennai

3.The Dean
Government Rajaji Hospital
Madurai

4.The Chairman
Regional Medical Board
Government Rajaji Hospital
Madurai



W.P(MD).No.23455 of 2024

5.The Administrative Officer
Government Rajaji Hospital
Madurai

...Respondents

Prayer : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the rejection of maternity leave in Ref.No.14666/E2/2/2024 dated 30.08.2024 passed by the 5th respondent and the medical fitness certificate dated 24.09.2024 issued by the 4th respondent and quash them, consequently directing the respondents to grant the petitioner maternity leave from 24.08.2024 to 23.08.2025.

For Petitioner : Mr.S.Malaikani

For Respondents : Mr.T.Amjadkhan
Government Advocate

ORDER

The present writ petition has been filed by a staff nurse working in Government Rajaji Hospital, Madurai challenging the order passed by the fifth respondent dated 30.08.2024 wherein her request for maternity leave spent has been rejected. The petitioner has also challenged the report of the Medical Board wherein she was found fit to resume duty and the request for maternity certificate was rejected on the ground that it is her third pregnancy.

2.The petitioner herein was initially appointed as a staff nurse on contract basis on 06.10.2008. Later her services were regularised as permanent staff nurse by way of proceedings dated 26.06.2018 with effect



W.P(MD).No.23455 of 2024

from 07.08.2014.

WEB COPY 3. While the petitioner was working on a contract basis, out of wedlock through the first marriage, the petitioner has given birth to two female children on 14.11.2009 and 17.02.2012. For both these deliveries, the petitioner has not claimed any benefit of maternity leave in view of the fact that she was a contract staff.

4. In view of matrimonial dispute, the petitioner had filed HMOP.No. 330 of 2017 before the III Additional Subordinate Court, Madurai for the relief of divorce. After contest, the divorce decree was granted on 16.10.2020. Thereafter, the petitioner got remarried to one R.Raja Sathaiah. Out of the said wedlock through the second marriage, the petitioner got conceived and she applied for maternity leave for a period between 24.08.2024 to 23.08.2025 for a period of 365 days. The said application was rejected by the fifth respondent under the impugned order on the ground that the petitioner is not entitled to seek maternity leave for the third child. In the said order, the petitioner was instructed to submit an application mentioning any other type of leave which she may prefer to avail.

5. In compliance with the above said impugned order dated 30.08.2024, the petitioner had made an application on 04.09.2024 seeking 90 days medical leave, 169 days earned leave on medical certificate and 106 days leave on loss of pay on medical certificate totalling 365 days. However, the



W.P(MD).No.23455 of 2024

said request was not acceded to by the department and she was referred to the medical board in Government Rajaji Hospital, Madurai. Under the second impugned order dated 24.09.2024, the board has passed an order citing that she is fit to resume duty from 24.09.2024 onwards and the maternity certificate requested by her for the period from 24.08.2024 to 23.08.2025 is not justified and it cannot be regularized as a leave on medical grounds since it is her third pregnancy. The order dated 30.08.2024 rejecting maternity leave and report of the medical board dated 24.09.2024 are under challenge in the present writ petition.

6. According to the learned counsel appearing for the writ petitioner, the petitioner is availing maternity leave for the first time and therefore, citing that it is a third pregnancy, such a benefit cannot be rejected. The petitioner has relied upon a judgment of the Hon'ble Division Bench of Bombay High Court in ***WP.No.8744 of 2015(Airports Authority of India workers Union and another vs. The Under Secretary, Ministry of Labour, Government of India and another)***, dated 10.05.2024 to contend that the maternity benefit could be conferred upon an employee twice in her service period.

7. The learned counsel for the petitioner had also relied upon a judgment of the Hon'ble Division Bench of Kerala High Court dated 05.06.2023 in ***O.P(CAT).No.340 of 2017 (The Chairman and Managing***



W.P(MD).No.23455 of 2024

Director, Bharat Sanchar Nigam Limited and others Vs. C.R. Valsalakumari

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and another) to contend that when the maternity benefit has not been availed for the first two children, the benefit claimed for the third child arising out of the second wedlock could be permitted. The petitioner has also relied upon a judgment of the Hon'ble Supreme Court reported in **(2023) 13 SCC 681 (Deepika Singh Vs. Central Administrative Tribunal and others)** dated 16.08.2022 to contend that for the third child born through the second wedlock, an employee would be entitled for maternity leave.

8.Per contra, the learned Government Advocate appearing for the respondents herein relying upon Rule 101 (a) of Fundamental Rules contended that the maternity leave can be granted only to a women Government servant with less than two surviving children. In the present case, the petitioner is already having two surviving children through her first marriage. In such circumstances, the request of the petitioner for 12 months maternity leave is not provided for under service regulation. He had further contended that though the request for leave has been rejected and the medical board had found her fit to resumé duty, so far the petitioner has not joined duty. Hence, he prayed for dismissal of the writ petition.

9.I have considered the submissions made on either side and perused the material records.



W.P(MD).No.23455 of 2024

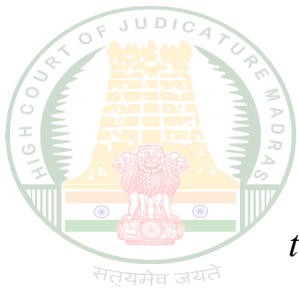
10.The facts captured above will clearly indicate that the petitioner has not availed maternity leave for her first two children born through the first wedlock. She had sought maternity leave for the first time while she was on the family way through the second wedlock. These facts are not in dispute.

“Rule 101 of Fundamental Rules is extracted as follows:

(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. Such leave is not debited against the leave account.

Instructions under Rule 101 (a) -- Maternity leave.

1. A competent authority may grant maternity leave on full pay to permanent married women Government servants for a period not exceeding 90 days which may spread over from the pre-confinement rest to post confinement recuperation at the option of the Government servant. The maternity leave will not be admissible to married women Government servants with more than three children. Non-permanent, married women Government servants, whether appointed in a regular capacity or 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 90 days, maternity leave may be granted for a period not exceeding 90 days or for the period that falls short of 90 days, as the case may be. Non-permanent married women Government servants employed under



WEB COPY



W.P(MD).No.23455 of 2024

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

Provided that on and from the 29th June 1993, maternity leave shall be granted to a woman Government servant with less than two surviving children.

1-A....”

11.As per first proviso to the instruction under Rule 101(a), the maternity leave shall be granted to a married women Government servant with less than two surviving children. However, if twins were born through the first delivery, the maternity leave can be granted to one more child. The women Government servants would be entitled to 365 days of maternity leave.

12.The legislative intent of the said Fundamental Rule is to discourage having more children considering the health condition of the woman and financial constrains involved in bringing up the said children. It is also based upon the population control policy of the concerned Government. Limiting the maternity leave to two children is also based upon the fact that the State exchequer may not be burdened with more financial stress by extending maternity leave for many children. Therefore, a purposive in interpretation has to be given to achieve the object of the above said rules. That apart, limiting the maternity leave to two children is intended to suppress the

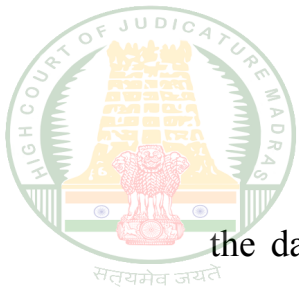


W.P(MD).No.23455 of 2024

mischief of having more children.

WEB COPY 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 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. In such circumstances, the order of the fifth respondent dated 30.08.2024 rejecting the request of the petitioner for maternity leave for her third child is not legally sustainable and the same is liable to be set aside.

14. When the petitioner had accepted the rejection of maternity leave and applied for other available leave, the authorities were harsh enough to refer her to a medical board to avail leave under other eligible category. When



W.P(MD).No.23455 of 2024

the date of delivery of the petitioner was fixed as 30.09.2024, the medical board has strangely found her fit to resume duty on 25.09.2024 and had refused to issue a maternity certificate on the ground that the petitioner is conceived for the third time.

15.The Hon'ble Supreme Court in a judgment reported in **(2023) 13 SCC 681 (Deepika Singh Vs. Central Administrative Tribunal and others)** dated 16.08.2022 has passed orders granting maternity leave in a case where a women employee had already availed child care leave for taking care of two children born to her husband through his first marriage and she claimed maternity leave for third time for her first biological child. Therefore, in such circumstances, this Court is of the considered opinion that the petitioner, having not availed maternity leave for her first two children, would be entitled to seek the maternity leave for the third child.

16.In view of the above said facts, the orders impugned in the writ petition are set aside and the authorities are directed to confer eligible maternity leave to the writ petitioner based upon her application dated 24.08.2024 and pass orders within a period of 12 weeks from the date of receipt of a copy of this order.



W.P(MD).No.23455 of 2024

WEB COPY 17. With the above said directions, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

21.01.2025.

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



W.P(MD).No.23455 of 2024

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W.P(MD).No.23455 of 2024

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