



SECRETARIAT BRANCH
N.P.K.R.R. MAALIGAI,
144, ANNA SALAI
CHENNAI-2.

Letter No.50735/A17/A172/2023 -1, dated 23.01.2023.

From
Thiru.A.MANIKKANNAN, M.A., B.L., M.B.A.,
Secretary.

To
All Chief Engineers. (w.e.)
All Chief Financial Controller/TANGEDCO/TANTRANSCO. (w.e.)
The Chief Internal Audit Officer. (w.e.)
All Superintending Engineers. (w.e.)


Sir/Madam,

Sub: Fundamental Rules – Maternity leave – Filing of Counter Affidavit/Writ Appeals in respect of Writ Petitions filed with a prayer for grant of Maternity Leave for third child – Instructions issued by the Government – Copy - Communicated.

Ref: 1. The order of the Hon'ble High Court of Madras in W.A.No.1442/2022, dated 14.09.2022.
2. Government letter (MS) No.3312168/FR-III/2022-2, HRM (FR-III) Department, dated 19.12.2022.

I am to enclose herewith a copy of the reference second cited and its enclosure for strict adherence.

Yours faithfully,


24-01-2023
(S.VIJAYAKUMAR)
SECTION OFFICER
for SECRETARY

Copy to

The Chairman-cum-Managing Director's Table (w.e.).
The Additional Director General of Police/Vigilance/Chennai-2 (w.e.).
All Directors of TANGEDCO & TANTRANSCO (w.e.).

The Secretary/TANGEDCO/Chennai-2 (w.e.).
The Legal Adviser/TANGEDCO/Chennai-2 (w.e.).
All Deputy Secretaries/ Secretariat Branch (w.e.).
All Under Secretaries/Secretariat Branch (w.e.).
All Senior Personnel Officers/Administrative Branch/Chennai-2 (w.e.).
The Asst. Personnel Officer/Tamil Dev. – for publication in the Bulletin (2 copies) (w.e.).
All Sections in Secretariat Branch (w.e.).

The Tamil Nadu Electricity Workers' Federation (w.e.).
The Tamil Nadu Electricity Board Accounts and Executive Staffs' Union (w.e.).
The Tamil Nadu Electricity Board Workers' Progressive Union (w.e.).
The Central Organization of Tamil Nadu Electricity Employees (COTEE) (w.e.).
The Minsara Pirivu Anna Thozhir Sangam (w.e.).
The Tamil Nadu Minvariya Janatha Thozhilalar Sangam (w.e.).
The Tamil Nadu National Electricity Workers' Federation (Xavier Group) (w.e.).
The Tamil Nadu National Electricity Workers' Federation (Swarnaraj Group) (w.e.).
The Tamil Nadu Electricity Board Engineers' Sangam (w.e.).
The Tamil Nadu Electricity Employees' Congress (NLO) (w.e.).
The Tamil Nadu Electricity Board Thozhilalar Poriyalar Aykkia Sangam (w.e.).
The Tamil Nadu Electricity Board Engineers' Association (w.e.).
The Tamil Nadu Electricity Board Finance & Accounts Officers' Association (w.e.).
The Bharathiya Electricity Employees' Federation (w.e.).
The Tamil Nadu Electricity Board Card Billing Staffs' Union (w.e.).
The Tamil Nadu Electricity Board Dr.Ambedkar Employees' Union (w.e.).
The Tamil Nadu Electricity Board Engineers' Union (w.e.).
The Tamil Nadu Electricity Board Employees' Federation (w.e.).
Stock File.



C50735



Human Resources Management
(FR-III) Department,
Secretariat, Chennai-600 009.

Letter (Ms) No.3312168/ FR-III /2022-2, dated 19.12.2022

From
Tmt. Mythili K. Rajendran, IAS.,
Secretary to Government.

To
All Secretaries to Government, Chennai-9.
All Departments of Secretariat, Chennai-9.
All Heads of Departments including District Collector.(w.e)



Sir/Madam,

Sub: Fundamental Rules - Maternity leave – Filing of
Counter Affidavits/Writ Appeals in respect of
Writ Petitions filed with a prayer for grant of
Maternity Leave for 3rd child - Instructions –
Regarding.

Ref: The judgment of the High Court of Madras in
W.A.No.1442/2022, dated 14.09.2022.

I am directed to invite your kind attention to rule 101(a) of the Fundamental Rules of the Tamil Nadu Government which provides for the grant of maternity leave. Instruction 1 of the said Fundamental Rule 101(a) provides as follows:-

“(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

P.T.O

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B { 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 completed one year of continuous service including leave periods, if any, to become eligible for the grant of maternity leave."

2 { 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 married women Government servants with two surviving children born as twins in the first delivery, maternity leave shall be granted for one more delivery.

9 { 2. As per the above said rule provision, maternity leave cannot be granted to a Married Women Government servant for third child except in cases where two surviving children born as twins in the first delivery.

3. It has been brought to the notice of the Government that several writ petitions (viz) W.P.(MD)No.18870/2022, W.P(MD)No.10278/2022 & W.P(MD)No.16015/2022, have been filed with a prayer to extend the maternity leave benefit for the 3rd child citing the Hon'ble High Court of Madras order dated 25.03.2022 in W.P.No.22075 of 2021 filed by one Tmt.K.Umadevi.

F { 4. In this connection, I am directed to state that Writ Appeal has been filed by the Government against the said single judge order dated 25.03.2022 in W.P.No.22075 of 2021 and the Division Bench of the Hon'ble High Court of Madras by judgement dated 14.09.2022 in the said W.A.No.1442 of 2022 relying upon the decision of the Uttarakhand High Court in the case of State of Uttarakhand Vs Smt. Urmila Manish and others (Special Appeal No.736 of 2019 dated 17.09.2019) and the decision of the Supreme Court in

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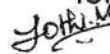
Deepika Singh Vs Central Administrative Tribunal and others (Civil Appeal No.5308 of 2022 arising from S.L.P (c) No.7772 of 2021 dated 16.08.2022) has allowed the appeal and set-aside the order dated 25.03.2022 passed by Single Judge in W.P.No.22075 of 2021 filed by Tmt.K. Umadevi. (Copy enclosed).

5. In view of the above, the Fundamental Rule provisions stated at para 1 above and the above said judgment dated 14.09.2022 in Writ Appeal No.1442 of 2022 may be taken into consideration while filing Counter Affidavit in the Writ Petitions filed with a prayer for grant of maternity leave for 3rd child citing the above said Tmt.K.Umadevi case, and while filing Writ Appeal against such order of the High Court, as the case may be, in consultation with Law Officer concerned, scrupulously.

Yours faithfully,



for Secretary to Government



Copy to:

The Special Personal Assistant to Hon'ble Minister (Finance and Human Resources Management) Department, Chennai-9.

The Principal Private Secretary to Chief Secretary to Government, Chennai-9.

The Principal Private Secretary to Secretary to Government, Human Resources Management Department, Chennai-9.

All Officers in Human Resources Management Department, Chennai-9.

Stock File/Spare Copy.



W.A.No.1442 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.08.2022

DELIVERED ON : 14.09.2022

CORAM :

The Hon'ble Mr. Justice PARESH UPADHYAY
and
The Hon'ble Mrs. Justice V. BHAVANI SUBBAROYAN

W.A.No.1442 of 2022
and C.M.P.No.9312 of 2022

- 1.The Government of Tamil Nadu
Rep by its Chief Secretary to Government,
Fort St.George,
Chennai - 600 009.
- 2.The Principal Secretary to Government
Human Resources Management Department,
(Earlier known as Personnel and Administrative
Reforms Department),
Fort St.George,
Chennai - 600 009.
- 3.The Chief Educational Officer,
School Educational Department,
Dharmapuri District - 636 701.
- 4.The Headmaster
Government Higher Secondary School,
P.Gollapatti,
Pennagaram Taluk,
Dharmapuri District - 636 809.

..Appellants

Vs

K.Umadevi

.. Respondent

Prayer : Appeal filed under Clause 15 of Letters Patent against the
order dated 25.03.2022 made in W.P.No.22075 of 2021.



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For Appellants : Mr.V.Arun
Additional Advocate General
assisted by
Mrs.P.Raja Rajeswari
Government Advocate

For Respondent : Mr.Arun Anbumani

JUDGMENT

Per : PARESH UPADHYAY, J.

1. Challenge in this appeal is made to the order dated 25.03.2022 recorded on W.P.No.22075 of 2021. This appeal is by the State Authorities - respondents in the writ petition.

2. Learned Additional Advocate General for the appellant State Authorities has submitted that, the directions contained in the impugned judgment and order of learned Single Judge is erroneous on more than one counts. It is submitted that the Maternity Benefit Act, 1961 could not be applied qua the government employees and in any case, the policy of the State is much liberal as compared to the provisions of the Maternity Benefit Act, 1961. It is submitted that, any deviation from the policy of the State would create tremendous pressure on the Government exchequer and the human resources and therefore the order of learned Single Judge needs to be interfered with. Reliance is

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placed, inter-alia on the decision of the Uttarakhand High Court in the case of *State of Uttarakhand v Smt.Urmila Manish and others* (Special Appeal No.736 of 2019 dated 17.09.2019) to contend that, the provisions contained in the Maternity Benefit Act, 1961 can not be brought into consideration, while considering the claim of the Government servants under the Service Rules. It is submitted that the impugned order be quashed and set aside.

3. Per contra, learned advocate for the contesting respondent / original writ petitioner has submitted that, though the provisions of the Maternity Benefit Act, 1961 can not be said to be applicable ipso facto, learned Single Judge can not be said to be in error by taking support therefrom since the peculiar facts of the case warranted harmonious reading of the policy of the State keeping in view the Central Legislation. In support of this submission, learned advocate for the writ petitioner has taken this Court through the material on record and the averments made in the writ petition to point out the personal circumstances of the writ petitioner, including her separation from the first wedlock, custody of the two children from the first wedlock being with the father of those children, her re-marriage and the first child from the second wedlock. Reliance is placed on the decision of the Punjab and



Haryana High Court in the case of *Ruksana v State of Haryana and others* (Civil Writ Petition No.4229 of 2022 dated 21.04.2011) reported in 2011 SCC OnLine P&H 4666. Reliance is also placed on the judgment of the Supreme Court of India in the case of *Deepika Singh v Central Administrative Tribunal and Others* (Civil Appeal No.5308 of 2022 arising from S.L.P.(C) No. 7772 of 2021 dated 16.08.2022). It is further submitted that the G.Os. sought to be relied by the State can be said to be in the form of the contemplated decision of the State, which have not been brought in as amendment to the statutory rules and that the writ petitioner was entitled to what is granted by learned Single Judge. It is submitted that this appeal be dismissed.

4. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under:-

4.1 The writ petitioner had married in the year 2006 and from the said wedlock had given birth to two children on two different occasions. In the year 2017, the said marriage stood dissolved. The writ petitioner re-married in the year 2018 and from the said second wedlock, she has given birth to the child, for which



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she claims benefit of maternity leave. She claims that, the custody of two children from the first wedlock are with the father of those children. In this factual background, the claim of the writ petitioner needs to be weighed vis-a-vis her service conditions and any other law which may confer any right to the writ petitioner.

4.2 So far policy of the State is concerned, it restricts the benefit of maternity leave to two deliveries / two children. The writ petitioner therefore could not have asked for and could not have been granted the benefit of maternity leave for the third child, as per the policy of the State.

4.3 Grant of maternity leave is not the fundamental right. It is either a statutory right or the right which flows from the conditions of service. Once the rights of the writ petitioner are governed by the service conditions as applicable to her, as framed by the State, the Maternity Benefit Act, 1961 would be inapplicable. This is the law, going by even the decision of the Supreme Court of India relied on behalf of the the writ petitioner in the case of *Deepika Singh v Central Administrative Tribunal and Others* (Civil Appeal No.5308 of 2022 arising from S.L.P.(C) No. 7772 of 2021 dated 16.08.2022), more particularly para : 17



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thereof. Though learned Additional Advocate General has rightly relied on the decision of the Uttarkhand High Court in the case of State of Uttarakhand v Smt.Urmila Manish and others (Special Appeal No.736 of 2019 dated 17.09.2019), since the subsequent decision of the Supreme Court also stipulates this, further discussion qua the decision of the Uttarkhand High Court is not required. We find that, in the facts of the case, it would neither be necessary nor even open to take aid from the Act of 1961, to explore, whether the writ petitioner was entitled to the benefit as claimed by her, which is inconsistent with the policy of the State, which is neither under challenge nor can be said to be illegal or arbitrary in any manner. If the reasons contained in the order under challenge are weighed keeping this in view, we find that, the order of learned Single Judge is unsustainable. The same therefore needs to be quashed and set aside.

4.4 So far the reliance on behalf of the writ petitioner, on the decision of the Punjab and Haryana High Court in the case of *Ruksana v State of Haryana and others (Civil Writ Petition No.4229 of 2022 dated 21.04.2011)* is concerned, we find that, the issue no.iv framed by the Court in the said case, which may have some bearing, is not answered by it and in any case, we are not in



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agreement with other observations made therein. As against that, according to us, it is the decision of the Uttarakhand High Court in the case of State of Uttarakhand v Smt.Urmila Manish and others (Special Appeal No.736 of 2019 dated 17.09.2019) which sounds to be a good law, more particularly in view of the recent decision of the Supreme Court in the case of *Deepika Singh v Central Administrative Tribunal and Others* (Civil Appeal No.5308 of 2022 arising from S.L.P.(C) No. 7772 of 2021 dated 16.08.2022), more particularly para : 17 thereof. In totality, we find that, the writ petitioner was not entitled to relief as claimed by her and the judgment and order impugned in this appeal is unsustainable, which needs to be quashed and set aside.

5. For the reasons recorded above, the following order is passed:-

5.1 This appeal is allowed.

5.2 The order dated 25.03.2022 recorded on W.P.No.22075 of 2021 is quashed and set aside.

5.3 The writ petition is dismissed.



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5.4 No costs. Connected miscellaneous petition would not survive.

(P.U., J) (V.B.S., J)
14.09.2022

Index:No
ssm
To

- 1.The Government of Tamil Nadu
Rep by its Chief Secretary to Government,
Fort St.George,
Chennai - 600 009.
- 2.The Principal Secretary to Government
Human Resources Management Department,
(Earlier known as Personnel and Administrative
Reforms Department),
Fort St.George, Chennai - 600 009.
- 3.The Chief Educational Officer,
School Educational Department,
Dharmapuri District - 636 701.
- 4.The Headmaster
Government Higher Secondary School,
P.Gollapatti, Pennagaram Taluk,
Dharmapuri District - 636 809.



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W.A.No.1442 of 2022

PARESH UPADHYAY, J.
and
V. BHAVANI SUBBAROYAN, J.

ssm

JUDGMENT IN
W.A.No.1442 of 2022

14.09.2022