

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 26TH DAY OF JULY 2021 / 4TH SRAVANA, 1943

WP(C) NO. 10206 OF 2021

PETITIONER:

VANDANA SREEMEDHA J. AGED 28 YEARS,
W/O. JOBIN JAMES, COUNSELOR, DISTRICT CHILD PROTECTION
OFFICE, WOMEN AND CHILD DEVELOPMENT DEPARTMENT,
COLLECTORATE, CUTCHERY P.O., KOLLAM-691 013,
RESIDING AT J.J.VIHAR, MAMPALLIKUNNAM,
CHATHANNOOR P.O., KOLLAM-691 572.

BY ADV.SRU.B.MOHANLAL

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
WOMEN AND CHILD DEVELOPMENT DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 2 THE DIRECTOR,
WOMEN AND CHILD DEVELOPMENT DEPARTMENT,
GOVERNMENT OF KERALA, POOJAPPURA P.O.,
THIRUVANANTHAPURAM-695 011.
- 3 THE DISTRICT CHILD PROTECTION OFFICER,
WOMEN AND CHILD DEVELOPMENT DEPARTMENT, COLLECTORATE,
CUTCHERY P.O., KOLLAM-691 013.

BY ADV.SRI. SUNIL KUMAR KURIAKOSE - GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
26.07.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

JUDGMENT

Only a woman knows how acutely difficult it is to balance between motherhood and her career.

2. Life as a new mother is like being on a roller-coaster and being a working mother is tougher. The minutiae of motherhood can never be properly contemplated and it involves navigation through myriad daily issues, which ultimately determine the health and future of the child. The mother's constant proximity to the child is scientifically proven to be absolutely unexpendable and this, primarily and *inter alia*, is why the provisions for maternity leave are now internationally accepted.

3. I am beginning exordially as afore because the petitioner in this case has reached this Court after her request for maternity leave

was turned down; and to then exacerbate the agony, she was terminated from service, accusing her of having been on unauthorised absence.

4. The petitioner says that she has been striving very hard to make her livelihood and that, being without other option, was forced to work on contract as a Counsellor in the Office of the 3rd respondent - District Child Protection Officer, awaiting better opportunities in life. It is stated that she was initially selected for an one-year spell, after a process of selection, and appointed on contract from 16.12.2016 till 21.08.2017; which was subsequently extended for one year at a time, till 21.08.2020. She says that, thereafter, consequent to a fresh process of selection, she was further appointed with effect from 23.08.2020 till 17.01.2021, albeit, on daily wage basis; and that during this period, she gave birth to her child on 28.11.2020, thus

constraining her to avail maternity leave from 26.11.2020 to 17.01.2021.

5. She alleges that her afore request for leave has not yet been acceded to; and then goes on to say that, in the next process of selection, she again topped the list, thus directed to join the post of Counsellor in the office of the 3rd respondent on 18.01.2021. She says that since her child was only 51 days old then, and since the doctors had advised her to breastfeed him regularly, she had no other option but to seek leave between 19.01.2021 and 26.03.2021, through Ext.P7 request, dated 19.01.2021.

6. The petitioner submits that this request of hers was recommended by the 3rd respondent - District Child Protection Officer, vide Exts.P8 and P9; but that the 2nd respondent - Director, Women And Child Development Department,

rejected it through Ext.P10, on 23.03.2021, a mere three days before the period of the requested leave expired, however, without assigning any cogent reason for doing so.

7. The petitioner submits that, being appalled on receiving Ext.P10, she approached the 3rd respondent through Ext.P11 representation; but that Ext.P12 order was abruptly issued by the 2nd respondent - Director, terminating her services on the allegation that she was on unauthorized absence from 19.01.2021 till 23.03.2021; thus consequently, directing the 3rd respondent to appoint the next rank holder from the selection list, with a threat to the said officer of disciplinary action in having not taken into account that petitioner had delivered a child just prior to her being offered employment, and recording that this was contrary to the minimum diligence and caution required of the said

officer.

8. The petitioner vehemently alleges that Ext.P12 has been issued thoughtlessly and with an insensitive tenor, thus being illegal and consequently prays that Exts.P10 and P12 be set aside; with a adscititious prayer that she be immediately directed to be reinstated in service, with all eligible benefits.

9. I have heard Sri.B.Mohanlal, learned counsel appearing for the petitioner and Sri.Sunil Kumar Kuriakose, learned Government Pleader appearing on behalf of the official respondents.

10. The learned Government Pleader argued in defence of the impugned orders, submitting that petitioner was not entitled to have sought maternity leave one day after she joined service on contract and he relied on Note 4 to Rule 100 of Part I of the Kerala Services Rules ('KSR' for short) in support. He argued that, as has been

declared by a learned Division Bench of this Court in **Jisha P.Jayan v. Sree Sankaracharya University of Sanskrit, Kalady and Others** [2013(3) KLT 533], only a contract employee who has been in service for at least one year or more is entitled to maternity leave and thus contended that the Authorities were justified in having issued Exts.P10 and P12 orders terminating her service. He predicated that the law is well settled that no employee can ask for leave as a matter of right and then refuse to discharge his/her duties; and accused the petitioner of having done precisely that in having submitted a leave application a day after she joined service on 18.01.2021 and in withdrawing from discharge of her duties unilaterally from 19.01.2021. He, therefore, prayed that this writ petition be dismissed.

11. The afore contentions of the learned Government Pleader, even after deep and careful

scrutiny, does not, obtain my approval for various reasons, as I will presently record.

12. The unopposed facts involved in this case render it apodictic that petitioner had been working as a Counsellor on contract ever since 16.12.2016, albeit, with a day or two break and every time her contract was extended annually. It is also without doubt that she was engaged in such capacity between 23.08.2020 and 17.01.2021 only on daily wage basis. Therefore, going by the rigour of Note 4 to Rule 100 of Part I of the KSR, a woman employee, who is on provisional service, would be entitled to maternity leave, provided she was continuing beyond one year and when she would continue in service, but for proceeding on such leave. In this case, there can be little doubt that petitioner was serving the 3rd respondent as a Counsellor on contract for several years, though, as I have seen above, with a day or two

break and every time her contract was extended.

13. Axiomatically, therefore, the competent Authorities had a duty cast upon them to verify whether, in such circumstances, petitioner was entitled to the benefit of maternity leave, but shockingly, instead of doing so, the 2nd respondent has held prosaically that petitioner's request cannot be acceded to; and, as if to blow most unkindest cut, to hold that her absence between 19.01.2021 and 23.03.2021 is unauthorised, thus ordering termination of her contract employment. This stand of the 2nd respondent, prima facie, reflects as being insensitive because it is without contest that petitioner gave birth on 28.11.2020; and since she asserts that she was under medical advice to nurse her child - he being only 50 days old on 18.01.2021 when she accepted the latest contract.

14. That said, I am cognizant that a

corollary query can be posed whether she was entitled to seek maternity leave when she worked on daily wage basis between 23.08.2020 and 17.01.2021. As per her request, petitioner's first spell for leave was between 26.11.2020 and 17.01.2021; while the second spell was from 19.01.2021 to 26.03.2021. *Ex arguendo*, even if it is taken that she was not entitled to avail leave when engaged on daily wages, I fail to understand how the 2nd respondent could have, without any effective evaluation, concluded that she would not obtain the benefit of Rule 100 of Part I of the KSR, solely because she was working on a contract, and to thus direct termination of her employment forthwith.

15. Furthermore, going by Ext.P10, the 2nd respondent transpires to have acted on incorrect factual assumptions because he has recorded therein that there was no "valid

contract" entered into with the petitioner and therefore, that she is not entitled to claim or avail maternity leave. This understanding of the said respondent certainly is in error because it is without dispute in this case that petitioner was offered contract on 18.01.2021 and that she resultantly was engaged on its terms on 19.01.2021, when she applied for maternity leave through Ext.P7 until 26.03.2021.

16. Apodictically, therefore, Ext.P10 order can only be construed to have been issued without necessary application of mind and the same vice has, unfortunately, been carried on in Ext.P12 order, wherein, the 2nd respondent goes one step forward and holds the petitioner guilty of unauthorized absence, but without having conducted any enquiry; and then ordering that her contract be terminated, so as to appoint the next rank holder in the select list.

17. To exacerbate the situation, the 2nd respondent has, in Ext.P12, even threatened action against the 3rd respondent for having selected and appointed the petitioner "without proper care", thus insinuating that he ought not to have offered employment to her solely because she had recently delivered, thus being in need for leave to care her child.

18. Without requirement for any elaboration, this attitude is not one which this Court can countenance in this century, when women essay several roles, take on variegated responsibilities and require to be adept multitaskers, to survive and find wings to achieve their legitimate ambitions. It is certainly my hortative hope that the endeavors of such industrious women ought to obtain unstinted support and encouragement, but the orders impugned in this writ petition can only serve to undermine

the confidence and morale of persons like the petitioner, who bravely face the challenges of life every day, with the steely resolve to balance their personal and official life to the best of their capacity.

19. This Court can only find this to be rather unfortunate, but I propose to say nothing further because am certain that petitioner's request for leave from 19.01.2021, namely Ext.P7, will require to be reconsidered by the competent Authorities, adverting to the afore observations.

20. That having been so said, I must also record the submissions of the learned Government Pleader - Sri.Sunil Kumar Kuriakose, that on account of the various interim orders already issued in this case, petitioner has not been substituted and that the post remains vacant. In fact, he offered that if the petitioner is willing to join, she can be allowed to do so, provided she

does not stake claim for monetary benefits during the period when she did not work.

21. The offer of the learned Government Pleader to reinstate the petitioner is certainly welcome; but whether she is entitled to be paid during the period when she has been kept out of service resultant to Exts.P10 and P12 orders, is not something that I propose to say affirmatively at this stage because, as has been already indited above, it is for the Authorities to take a proper call on this when her leave application is considered.

In the afore circumstances, I allow this writ petition and set aside Exts.P10 and P12 and the consequential Ext.P13 order, with a direction to the respondents to reinstate the petitioner in service forthwith as offered by them; and to the competent among respondents 2 and 3 to reconsider the petitioner's Ext.P7 application for leave,

after affording her an opportunity of being heard - either physically or through video conferencing, thus leading to an appropriate order thereon, as expeditiously as is possible, but not later than two weeks from the date of receipt of a copy of this judgment.

Needless to say, during the exercise as ordered above, the Authorities will also consider how her period of service from 23.03.2021 will require to be regularized; and the order resultant to these directions will also contain specific provisions regarding the same.

Sd/-

DEVAN RAMACHANDRAN
JUDGE

akv

APPENDIX OF WP(C) 10206/2021

PETITIONER'S EXHIBITS:

- EXHIBIT P1 THE TRUE COPY OF THE DEGREE CERTIFICATE
OF THE PETITIONER ISSUED BY THE VICE
CHANCELLOR, KERALA UNIVERSITY DATED
18.05.2019
- EXHIBIT P2 THE TRUE COPY OF THE BIRTH CERTIFICATE
OF THE PETITIONERS FEMALE CHILD ISSUED
BY THE REGISTRAR OF BIRTH AND DEATH,
KOLLAM CORPORATION DATED 15.12.2020
- EXHIBIT P3 THE TRUE COPY OF THE RANK LIST IN
NOTIFICATION NO.9/2019 IN KOLLAM
DISTRICT ISSUED BY THE 3RD RESPONDENT
- EXHIBIT P4 THE TRUE COPY OF THE ORDER JUDGMENT
DATED 14.12.2020 IN W.P(C)
NO.26424/2020 OF THIS HON'BLE COURT
- EXHIBIT P5 THE TRUE COPY OF THE ORDER G.O(P)
NO.2/2021/FIN.DATED 04.01.2021 ISSUED
BY THE GOVERNMENT
- EXHIBIT P6 THE TRUE COPY OF THE ORDER
NO.DCPU/KLM/489/20 DATED 11.01.2021
ISSUED BY THE 3RD RESPONDENT
- EXHIBIT P7 THE TRUE COPY OF THE APPLICATION DATED
19.01.2021 SUBMITTED BY THE PETITIONER
TO THE 3RD RESPONDENT
- EXHIBIT P8 THE TRUE COPY OF THE ORDER
NO.DCPU/KLM/147/2021 DATED 27.01.2021
ISSUED BY THE 3RD RESPONDENT TO THE 2ND
RESPONDENT
- EXHIBIT P9 THE TRUE COPY OF THE ORDER
NO.DCPU/KLM/147/2021 DATED 04.02.2021

ISSUED BY THE 3RD RESPONDENT TO THE 2ND
RESPONDENT

EXHIBIT P10 THE TRUE COPY OF THE ORDER NO.ICPS-
5/492/2021 DATED 23.0.3.2021 ISSUED BY
THE 2ND RESPONDENT TO THE 3RD
RESPONDENT

EXHIBIT P11 THE TRUE COPY OF THE REPRESENTATION
DATED 27.03.2021 SENT BY THE PETITIONER
TO THE 3RD RESPONDENT

EXHIBIT P12 THE TRUE COPY OF THE ORDER NO.ICPS-
5/0492/2021 DATED 16.04.2021 ISSUED BY
THE 2ND RESPONDENT TO THE 3RD
RESPONDENT

EXHIBIT P13 THE TRUE COPY OF THE ORDER
NO.DCPU/KLM/489/20 DATED 17.04.2021
ISSUED BY THE 3RD RESPONDENT.

RESPONDENT'S/S EXHIBITS : NIL.

//TRUE COPY//
P.A. TO JUDGE