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W.A.(MD)NO.860 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2025

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

W.A.(MD)No.860 of 2023

AND

C.M.P.(MD)No.6922 of 2023

Dr.E.Krithikaa

... Appellant / Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary,
Health and Family Department,
Secretariat, Chennai – 600 009.
 2. The Directorate of Medical Education,
Rep. By its Director,
Kilpauk, Chennai – 600 010.
 3. The Vice Chancellor,
Tamil Nadu Dr.M.G.R.Medical University,
Chennai.
 4. The Dean,
Thanjavur Medical College,
Thanjavur.
- ... Respondents / Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 28.11.2022 passed in WP(MD)No. 24272 of 2022 and consequently direct the fourth respondent herein to return the Under Graduation and Post-Graduation Education Certificates of the petitioner.



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For Appellant : Mr.U.Venkatesh

For R-1 & R-2 : Mr.C.Venkatesh Kumar,
Additional Government Pleader.

For R-3 : Mr.A.S.Vaigunth, Standing counsel.

* * *

JUDGMENT

(By G.R.SWAMINATHAN, J.)

Heard both sides.

2.The writ petitioner herein obtained her MBBS degree in the year 2014. She was allotted a seat in MS (General Surgery) course in the fourth respondent college in the academic year 2016-17. It was a three years' course. As per the prospectus for the admission of post graduate degree in Tamil Nadu Government Medical Colleges 2016-19 session, the candidate must sign a bond for a sum of Rs.40.00 lakhs with an undertaking that he/she would serve the Government of Tamil Nadu for a period not less than two years. In addition, the candidate was required to submit her original educational certificates to the concerned Medical College. In terms of the said conditions in the prospectus, the appellant had signed the bond and also submitted her original certificates.



3.After the appellant obtained her P.G degree, she was appointed as Assistant Surgeon at Thittakudi Government Hospital vide order dated 20.08.2019. The appellant reported for duty and served in the said hospital for twelve months. Following her pregnancy, she went on maternity leave. Since she had served the government only for twelve months and not for twenty four months of bond service, the respondents declined to return her original certificates.

4.In this background, the appellant filed WP(MD)No.24272 of 2022 for directing the fourth respondent to return her educational certificates. The learned Single Judge dismissed the writ petition vide order dated 28.11.2022 in the following terms :

““5.Admittedly, as per the bond that was executed by the petitioner at the time of admission, the petitioner has to work in the Government services for a period of two years. But the petitioner has not completed the same, as she was on maternity leave at that time and hence, the original certificates of the petitioner has been withheld by the respondent College. The petitioner had only completed 12 months of service in the Thittagudi Medical College and 12 more months of service is remaining to be completed as per the undertaking.”



Challenging the said dismissal order, this writ appeal has been filed.

5. One of us (G.R.S, J.) has taken the view that the power of lien can be exercised only over marketable commodities. An educational certificate is not a marketable commodity and hence cannot be retained or withheld for whatever reason. However, the case on hand can be decided on another ground.

6. The respondents concede that the appellant had served the government for twelve months and during the remaining period of bond service, the appellant was on maternity leave. The question as to whether the period of maternity leave can be construed as bond service is no longer *res integra*. It has been authoritatively settled by the Hon'ble Supreme Court in **Kavita Yadav v. State (NCT of Delhi) (2024) 1 SCC 421**, the Hon'ble Supreme Court referred to the relevant provisions of the Maternity Benefit Act, 1961. Section 5 of the said Act holds that every woman shall be entitled to the payment of maternity benefit. Section 12 forbids the employer from dismissing or discharging an employee when she absents herself from work in accordance with the provisions of the Act. Section 27 of the Act



states that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or agreement or contract of service. In **Deepika Singh vs. PGIMER, Chandigarh (2023) 13 SCC 681**, the Supreme Court though dealing with Central Civil Services (Leave) Rules, 1972 derived guidance from the provisions of the 1961 Act. Paragraph 14 and 15 of **Kavita Yadav** read as follows :

“**14.**Our independent analysis of the provisions of the 1961 Act does not lead to an interpretation that the maternity benefits cannot survive or go beyond the duration of employment of the applicant thereof. The expression employed in the legislation is “maternity benefits” [in Section 3(h)] and not “leave”. Section 5(2) of the statute, which we have quoted above, stipulates the conditions on the fulfilment of which such benefits would accrue. Section 5(3) lays down the maximum period for which such benefits could be granted. The last proviso to Section 5(3) makes the benefits applicable even in a case where the applicant woman dies after delivery of the child, for the entire period she would have been otherwise entitled to. Further, there is an embargo on the employer from dismissing or discharging a woman who absents herself from work in accordance with the provisions of the Act during her absence. This



embargo has been imposed under Section 12(2)(a) of the Act. The expression “discharge” is of wide import, and it would include “discharge on conclusion of the contractual period”. Further, by virtue of operation of Section 27, the Act overrides any agreement or contract of service found inconsistent with the 1961 Act.

15. In our opinion, a combined reading of these provisions in the factual context of this case would lead to the conclusion that once the appellant fulfilled the entitlement criteria specified in Section 5(2) of the Act, she would be eligible for full maternity benefits even if such benefits exceed the duration of her contract. Any attempt to enforce the contract duration term within such period by the employer would constitute “discharge” and attract the embargo specified in Section 12(2)(a) of the 1961 Act. The law creates a fiction in such a case by treating her to be in employment for the sole purpose of availing maternity benefits under the 1961 Act.”

7.The Hon'ble Supreme Court in ***K.Uma Devi vs. 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 vs. 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.

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.



10. In this view of the matter, the order passed in the writ petition is set aside. This writ appeal stands allowed. The respondents are directed to return the petitioner's original certificates within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (K.RAJASEKAR, J.)
19th June 2025

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

To:

1. The Principal Secretary,
Health and Family Department,
Secretariat, Chennai – 600 009.
2. The Directorate of Medical Education,
Rep. by its Director,
Kilpauk, Chennai – 600 010.



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W.A.(MD)NO.860 of 2023

G.R.SWAMINATHAN,J.

AND

K.RAJASEKAR, J.

SKM

W.A.(MD)No. 860 of 2023

19.06.2025