

**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**

DATED THIS THE 2ND DAY OF AUGUST, 2021

BEFORE

THE HON'BLE MR.JUSTICE NATARAJ RANGASWAMY

W. P. No.202702 OF 2019 (S-RES)

BETWEEN:

DR.SWETHA

...PETITIONER

(BY SRI AMEET KUMAR DESHPANDE, ADVOCATE)

AND :

- 1 . UNION OF INDIA
REPRESENTED BY ITS PRINCIPAL SECRETARY
MINISTRY OF LABOUR AND EMPLOYMENT
SHRAM SHAKTI BHAWAN RAFI MARG
NEW DELHI-110001.
2. PRINCIPAL SECRETARY
MINISTRY OF HEALTH AND FAMILY WELFARE
ROOM NO. 348, 'A' WING NIRMAN BHAVAN
NEW DELHI-110011.
3. THE DIRECTOR GENERAL
MEDICAL EDUCATION

EMPLOYEES' STATE INSURANCE CORPORATION
PANCHDEEP BHAWAN
COMRADE INDRAJEET GUPTA (CIG) MARG
NEW DELHI-110002

- 4 . DEPUTY DIRECTOR
ESIC, MEDICAL COLLEGE & HOSPITAL
SEDAM ROAD, KALABURAGI-585105
- 5 . JOINT DIRECTOR
ESIC, MEDICAL COLLEGE & HOSPITAL
SEDAM ROAD, KALABURAGI-585105
- 6 . THE DEAN
ESIC MEDICAL COLLEGE
SEDAM ROAD,
KALABURAGI-585105
- 7 . PROFESSOR & HEAD OF THE DEPARTMENT
DEPARTMENT OF GENERAL MEDICINE
ESIC MEDICAL COLLEGE
SEDAM ROAD,
KALABURAGI-585105.

...RESPONDENTS

(BY SRI SUDHIRSINGH R. VIJAPUR, ASGI FOR R1 & R2;
SRI SANJEEV KUMAR C. PATIL, ADVOCATE FOR R5 & R6;
R3, R4 & R7 - SERVED THROUGH HAND SUMMONS)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE LETTER/ORDER DATED 08.04.2019 PASSED BY THE RESPONDENT NO.5 IN FILE NO.532/GLBMC/A/20/15/SRL/ESTT-2018 THE COPY OF WHICH IS AT ANNEXURE-J AND ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT PASSED THE FOLLOWING:-

ORDER

Aggrieved by the refusal to grant Maternity Leave to the petitioner, the present writ petition is filed.

2. The petitioner was employed as a Senior Resident in the Department of Medicine, ESIC College & Hospital, Kalaburgi on contract basis. The petitioner joined services on 24.07.2018. After 125 days of service, she submitted a leave application on 20.11.2018 seeking for grant of Maternity Leave from 26.11.2018 to 19.05.2019. The petitioner thereafter delivered on 24.12.2018. The respondent No.5 rejected the application in terms of a letter dated 08.04.2019 which reads as follows :

"With reference to your letter dated 20.11.2018, you are informed that you are not eligible for Maternity Leave as per ESIC Hqrs. Letter No.Z-11/11/2/2017-Med,IV(CPGRAM) dated 11.01.2018."

3. The Office Memorandum dated 11.01.2018 (Annexure-F) reads as follows :

"HEADQUARTERS
EMPLOYEES' STATE INSURANCE CORPORATION
PANCHDEEP BHAWAN, C.I.G. MARG, NEW DELHI-
110002
E-mail : med4-hq@esic.in
No.Z-11/11/2/2017-Med,IV(CPGRAM) Dated.11.01.2018

OFFICE MEMORANDUM

Subject : Grant of Maternity Leave to all teaching & non-teaching medical staff engaged on contractual basis in ESIC run health institutions - regarding.

It is informed that the issue on the captioned subject has been under examination for quite some time at Hqrs. office and the competent authority has accorded approval for grant of maternity leave to eligible incumbents engaged on contractual basis in the various teaching and non-teaching medical posts viz., Dean, Professor, Associate Professor, Assistant Professor, Senior Resident, Junior Resident, Tutors, Specialists & GDMO in ESIC Hospitals/Medical colleges/Dental Colleges/Nursing Colleges for 26 weeks subject to the condition that the incumbent must have rendered at least 80 days of service in the past 12 months preceding the date of expected delivery as envisaged in the Maternity Benefit (Amendment) Act, 2017. This supercedes all previous guidelines issued in this regard.

Sd/-
(Reena Hira)
Asstt. Director (Med.IV)"

4. A reading of Annexure-F discloses that in respect of Teaching and Non-Teaching Staff they are entitled to 26 weeks of Maternity Leave, subject to the condition that such person must have rendered atleast 80 days of service in the past 12 months preceding the date

of expected delivery, as envisaged in the Maternal Benefit (Amendment) Act, 2017.

5. In the present case, the application was submitted on 20.11.2018 seeking for Maternity Leave for 26 weeks which terminated on 19.05.2019 and the petitioner delivered on 24.12.2018. Therefore, the petitioner was entitled to the benefit of Maternity Leave even as per the Office Memorandum dated 11.01.2018 as by the time she had sought for Maternity Leave, she had put in 80 days of service.

6. In that view of the matter, this Writ Petition is allowed and the impugned order passed by respondent No.5 is quashed. The leave sought for by the petitioner for the period 26.11.2018 to 19.05.2019 is granted and the same shall be considered as "on duty". The petitioner is also entitled to claim all bonus that she is entitled to.

**Sd/-
JUDGE**

hnm