



GOVERNMENT OF KERALA

Abstract

Health and Family Welfare Department -Medical Education Service- Judgment dated, 20.01.2023 in WP(C)No.20698/2022 filed by Dr.Kavitha K - complied with- Orders issued.

HEALTH & FAMILY WELFARE (S) DEPARTMENT

G.O.(Rt)No.1600/2023/H&FWD Dated,Thiruvananthapuram, 04-07-2023

1. GO(Ms)No.380/09/H&FWD dated 31.10.2009
- Read:-
2. GO(Ms) No.38/2018/H&FWD dated 03.03.2018
3. GO(P) No.2/2021/Fin dated 04.01.2021
4. Letter No.B9/2767/2022/MED dated 12.06.2022 issued by the Director of Medical Education
5. Judgment dated, 20.01.2023 in WP(C) 20698/2022 filed by Dr. Kavitha K before the Hon'ble High Court of Kerala.
6. Representation dated, 20.02.2023 submitted by Dr.Kavitha K.

ORDER

Dr.Kavitha.K, while working as Senior Resident(bonded obligation), in the Department of Anasthesia, GMC Alappuzha applied for Maternity leave as per Rule 100 Part I KSRs w.e.f 01.12.2021. As per the letter read as 4th paper above, the Director of Medical Education had declined her request on the ground that the petitioner who was working on contract basis is not entitled for Maternity Leave, as she was not worked for a period of not less than eighty days as stipulated in the GO read as 3rd paper above.

2. Subsequently, Dr. Kavitha.K filed WP(C) No.20698/2022 before the Hon'ble High Court of Kerala with a prayer to declare that the service of the petitioner as Senior Resident under bonded obligation after completing her three year MD Course (2018-2021) in Anesthesiology in Government T.D Medical College, Alappuzha as per

the Prospectus 2018-19 for Medical PG is not a contractual appointment in Government Service and orders/circulars to contract appointment is not applicable in such cases. The petitioner also prayed to issue order or direction declaring to get maternity leave and consequential monetary benefits on the basis of Residency manual and direct the respondents to sanction maternity leave and consequential monetary benefits expeditiously without any further delay.

3. In the Judgment read as 5th paper above the Hon'ble High Court quashed the letter 4th cited (Exhibit P7) issued by the Director of Medical Education and directed to sanction the maternity leave applied by the petitioner and disburse the monetary benefits due to the petitioner expeditiously, and at any rate within one month from the date of receipt of a copy of the judgment.

4. Government have examined the matter in detail as per the existing orders and as per the provisions contained in the Residency manual 2009. As per the Residency Manual, Maternity leave upto four month with full stipend would be allowable to the women Residents. It is clearly mentioned in the Residency Manual that Residents shall be considered as temporary employees of the institution and the post graduate students will have to sign a contract with the Government before commencing their course to be counted as a Resident.

5. Dr.Kavitha after completing her three year MD in Anesthesiology, was serving as Senior Resident (bonded obligation) at the GMC Alappuzha. While serving as SR, the petitioner had applied for leave from 01.12.2021 onwards. In the absence of response to her leave application she had filed WP(C) No.16524/2022 before the Hon'ble High Court. As per the Order dated, 16.06.2022, the Hon'ble Court disposed the WP reserving the right of the petitioner's liberty to challenge the order rejecting her request for maternity leave afresh. Subsequently, as per the letter No.B9/2761/2022/DME dated 12.06.2022, the Director of Medical Education had rejected the maternity leave application of the petitioner on the ground that being a contract employee the petitioner was bond to work for not less than 80 continuous days before seeking maternity leave as stipulated in GO read as 3rd paper above.

6. In the judgment dated, 20.01.2023 in WP(C) No.20698/2022, the Hon'ble Court observed that as per Clause 16.4 of the prospectus, (Ext.P.10) female post graduate students are entitled to avail stipend during maternity leave once during the entire course of study, including Senior Residency ship. The Residency Manual (Ext P.9) issued by the Government clarified that residents are temporary employees of the institution and are hence eligible for benefits allowed for temporary employees. As per GO (P)No.2/2021/Fin dated 04.01.2021(Ext P.11), Government have extended the benefit of maternity leave on full pay in accordance with Rules 100 Part I of the Kerala Service Rules, up to a period of 180 or till the expiry of the contract which ever is earlier ,to female officers appointed on contract basis, irrespective of the

tenure of contract subject to the condition that leave will not be admissible from a date before three weeks from the expected date of confinement certified by the Medical Officer. A conjoint reading of Ext P9,P10 and P11 leaves no room for doubt that a Senior Resident like the petitioner is entitled from 120 days maternity leave.,The Hon'ble Court also clarified that the contractual employment is one where the employee voluntarily enters into a contract for a specified period, whereas bonded service is one where the employee has no choice but to serve the employer by virtue of the bonded obligation. (Clause 12-1 (b) of the Prospectus) the benefit of maternity leave due to the petitioner in her capacity as a temporary employee cannot be denied by terming her as a contract employee.

7. In the circumstances, Government are pleased to accord sanction to extent the benefit of maternity leave from 01.12.2021 as per Rule 100 Part 1 KSRs with all monitory benefits to Dr.Kavitha.K, who had undergone senior residency under bonded obligation from 01.10.2021 in the Anasthesiology Department in Government T.D Medical College. The Director of Medical Education will take further necessary action in the matter.

8. The judgment dated, 20.01.2023 of the Hon'ble High Court of Kerala read as 5th paper above is thus complied with.

(By order of the Governor)
MANOJ K
DEPUTY SECRETARY

The Advocate General, Kerala, Ernakulam (With C/L)
The Director of Medical Education, Thiruvananthapuram
The Principal ,Government Medical College,Alappuzha
Dr. Kavitha K. Senior Resident, Government Medical College,
Alappuzha (Through DME)
The Information Officer, Web and New Medica, I&PRD, Government
Secretariat, Thiruvananthapuram
Stock File/Office Copy

Forwarded /By order

Section Officer