



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.33653 OF 2014 (S-RES)

BETWEEN:

SMT. A. ALICE

...PETITIONER

(BY SMT. SUVARNA LAKSHMI M.L, ADVOCATE)

AND:

KARNATAKA TRANSMISSION CORPORATION LIMITED
(A CORPORATION FULLY CONTROLLED BY THE
GOVERNMENT OF KARNATAKA)
ADMINISTRATIVE OFFICE, CAUVERY BHAVAN,
BANGALORE-560 009
REPRESENTED BY ITS DIRECTOR
(ADMINISTRATION & HUMAN RESOURCES)

...RESPONDENT

(BY SRI H.V.DEVARAJ, ADVOCATE)

THIS WP IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH ENDORSEMENT BEARING NO.AH.IM (V/BEMVRU (OOU/ OOULENI/ LE/ SALE/ HISA(C) - 2 9924-26 DT.22.1.14, ISSUED BY THE RESPONDENT VIDE ANN-E TO THE WP BY ISSUE OF A WRIT IN THE NATURE OF CERTIORARI & DIRECT THE RESPONDENT BY ISSUE OF A WRIT IN THE NATURE OF MANDAMUS TO PAY THE PETITIONER 90 DAYS OF ENCASHMENT PRIVILEGE LEAVE FORFEITED BY THE RESPONDENT FORTHWITH ALONG WITH INTEREST AT 18% PER ANNUM FROM 1.5.13 TILL THE DATE OF PAYMENT.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 13.02.2024, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned petition is filed by the petitioner questioning the endorsement dated 22.01.2014 issued by the respondent vide Annexure-E, whereby 90 days of encashment of privileged leave earlier sanctioned by the competent authority is forfeited by the respondent-Corporation from the terminal benefits of the petitioner. The said order is under challenge.

2. Heard learned counsel for the petitioner and learned counsel appearing for the respondent-Corporation.

3. The petitioner, having served the Karnataka Electricity Board for several years, availed maternity leave while in service. Upon reaching the age of superannuation, she was entitled to terminal benefits, including the encashment of privileged leave. However, the respondent quoting Regulation 130 withheld 90 days' worth of leave encashment, citing a technicality regarding the requirement of her husband undergoing vasectomy for the petitioner to be eligible for maternity leave benefits. The petitioner contends that Regulation 130 which was brought into the statute book of the respondent herein on the basis of the Government order dated 29.11.1979 itself categorically stated that tubectomy or vasectomy are one and the same as the net result was to avoid further bearing of children by the

family. It is also contended that petitioner has undergone tubectomy and has also produced certificate in that regard.

4. For better understanding, Regulation 130 and the Government order dated 29.11.1979 are culled out as under:

"Regulation 130: *A competent Authority may grant a married women employee, permanent or temporary maternity leave on fully pay for a period not exceeding 90 days. **Provided that no maternity leave shall be granted to married women employees having 3 or more living children.***

Exception: *A married female employee having 3 or more living children may be granted maternity leave for delivery as admissible under this regulation, subject to **the condition that her husband under goes vasectomy and she produces a certificate to that effect within a period of six week from the date of her confinement.***

Government Order dated 29.11.1979

"Finance Department

Sub: Amendment to Rule 135 of Karnataka Civil services Rules - Sanction of maternity - leave to married Female Govt. Servants having three or more living children regarding.

*Ref: 1. G.O. No. FD 76 BRS 77, dt. 24th Dec. 1977
2.G.O. No. FD 9 SRS 77, dt. 27th May 1978.*

Preamble:-

According to the provisions of rule 135 of the Karnataka Civil Services Rules read with the Govt. orders mentioned above, maternity leave for delivery in admissible to a married female Govt. servant.

*i) Who has not got three or more living children or
ii) Who has got three or more living children, if she undergoes tubectomy operation during puerperium and produces a certificate to that effect.*

The question of extending the benefit of maternity leave to a female government servant who has got three or more living children and whose husband undergoes vasectomy operation has been considered by Government. Vasectomy like tubectomy is equally reliable and is preferred to the latter by some for a comparatively minor operation involved, as well as in cases, where for reasons of health, it might not be desirable for the wife to undergo tubectomy. It is therefore considered reasonable in such cases to grant the benefit of maternity leave to a female Government servant having three or more living children, if she

produces a certificate that her husband has undergone vasectomy within a specified period.

Order No. FD 76 SRS 77, Bangalore,
dated: 29-11-1979

Accordingly, Government are pleased to issue the following orders:-

1. A married female Government Servant having three or more living children may be granted maternity leave for delivery an admissible under rule 135 of the Karnataka Civil Services Rules, read with G.O. No. FD 9 SRS 77 dtd. 27-5-78, subject to the condition that her husband undergoes vasectomy and she produces a certificate to that effect within e period of six weeks from the date of her confinement.

2. These orders shall come into force with immediate effect.

3. Formal amendments to Karnataka Civil Services Rules will be issued in the due course.

By order & in the name of the
Governor of Karnataka
Sd/. G.N. Honavar,
Under Sec. to Govt.,
Finance Department(Expn. -IV)"

(emphasis supplied)

5. Regulation 130, which governs maternity leave for married female government servants, stipulates

conditions for eligibility. It includes an exception for those with three or more living children, subject to the requirement of husband undergoing vasectomy. The Government Order dated 29.11.1979 explicitly states that tubectomy or vasectomy serves the same purpose of preventing further childbirth and provides flexibility in cases where tubectomy may not be desirable for the wife due to health reasons.

6. Indeed, Regulation 130 is introduced through the Government order dated 29.11.1979. The Government Order in the preamble explicitly acknowledges both tubectomy and vasectomy as equivalent means to achieve the objective of preventing further childbirth by the family. This understanding is rooted in the recognition that the ultimate goal is to limit the number of children borne by government servants to four or fewer. The petitioner's decision to undergo tubectomy aligns with this objective, as evidenced by the

certificate confirming her health and ability to undergo the operation. It is important to note that prior to the 1979 amendment, only tubectomy was mentioned in the Rules, indicating that the inclusion of vasectomy was an expansion of options rather than a replacement.

7. When juxtaposing Regulation 130 with the Government Order or the amendment to Rule 135 of the Karnataka Civil Services Rules, it becomes apparent that Regulation 130 does not adequately address the underlying rationale behind the amendment. The amendment, as outlined in the Government Order, introduces the requirement for the husband to undergo vasectomy as an alternative to tubectomy for cases where it may not be desirable or feasible for the wife to undergo tubectomy due to health reasons. However, Regulation 130 merely provides an exception without delving into the reasoning behind this amendment. The Government Order explicitly states that vasectomy is

considered a reasonable alternative to tubectomy in cases where it is not advisable for the wife to undergo tubectomy due to health considerations. This acknowledgment accentuates the importance of flexibility and individual circumstances in the application of maternity leave benefits.

8. Furthermore, by solely focusing on the exception outlined in the Government Order and disregarding the preamble, Regulation 130 overlooks the broader context and purpose of the amendment. The intent behind introducing the requirement for the husband to undergo vasectomy is to provide equitable access to maternity leave benefits while accommodating diverse medical situations and preferences.

9. Given the overarching objective of Regulation 130, which is to restrict the number of children borne by government servants, the technical distinction between

tubectomy and vasectomy becomes less significant. Therefore, any hyper-technical interpretation of the Rule must be tempered with the understanding of its underlying purpose and intent. Moreover, considering the petitioner's extensive service and the fact that the maternity leave in question was sanctioned at the time, withholding terminal benefits, such as the encashment of privileged leave for 90 days, based on this technicality appears unjustifiable.

10. Further the prolonged delay of nearly 30 years in addressing the issue of sanctioned leave in 1983 and the subsequent forfeiture of leave in 2014 has caused significant prejudice to the petitioner. Throughout her service tenure and until her retirement, the petitioner had no reason to believe that there were any unresolved issues related to the leave sanctioned in 1983. The sudden forfeiture of leave after such a lengthy period not only creates uncertainty but also

imposes undue hardship on the petitioner, who had rightfully assumed that the matter had been resolved. Therefore, the respondent - corporation bears responsibility for the delay and subsequent hardship faced by the petitioner. As the employer, the corporation is obligated to ensure fair and equitable treatment of its employees, including timely resolution of administrative matters and adherence to principles of natural justice.

11. Therefore, the respondent-Corporation's decision to withhold terminal benefits of the petitioner after 30 years, especially in light of the sanctioned leave, is unwarranted and unjustifiable. The technicality regarding her husband's vasectomy should not override the substance of petitioner's compliance as the petitioner's action aligns with the spirit and intent of the regulation and should not be penalized based on a hyper-technical reading of the requirement. Therefore, petitioner has rightfully fulfilled the condition stipulated

in the regulation, and as such, the respondent cannot withhold the leave encashment on the ground of non-compliance.

12. For the reasons stated supra, the impugned endorsement is liable to be quashed and hence, I pass the following:

ORDER

(i) The writ petition is allowed;

(ii) The impugned endorsement dated 22.01.2014 issued by the respondent vide Annexure-E is hereby quashed;

(iii) The petitioner is reserved with liberty to make a fresh representation to the Superintendent Engineer, BESCO and seek 90 days encashment of privileged leave forfeited.

(iv) If such representation is made, the concerned authority to take cognizance of the order passed by this Court and shall pay 90 days of encashment of privileged leave which

was forfeited along with interest at the rate of 8% per annum from 01.05.2013 till the date of payment;

(v) The pending interlocutory application, if any, does not survive for consideration and stands disposed of accordingly.

**Sd/-
JUDGE**

CA