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## **K. UMADEVI VS GOVERNMENT OF TAMIL NADU: A WAY AHEAD MATERNITY BENEFIT**

AUTHORED BY - YOMA KATHANE

### **Abstract**

Fundamental rights are given in part 3 of the Indian constitution. By the interpretation of article 21 “right to life” supreme court declared various fundamental rights. In this case supreme court declared maternity leave as the fundamental right. Supreme court also highlights the need of maternity leave in society, how much it is essential for a women to recover their self and taking care of her child. It helps the working women by ensuring their job as well as income and no need to terminate their job due to their pregnancy journey. This case also clear that the maternity leave is the reproductive right of every women, it also given for the first child even from the second marriage. It doesn’t make any difference to this that how many children dose the lady already have from her previous marriage.

### **Introduction**

This case plays a very role in the context of maternity benefit for public servants. The supreme court of India held that the maternity leave is a constitutional right for every working women. A women has complete right to take maternity benefit for her first biological child from second marriage even through she already had child from her previous marriage. The maternity relief also define in article 42 of constitution of India. The maternity benefit act, 1961 provides maternity leave to women up to 26 weeks for the first two children and 12 weeks for subsequent children. This act ensure that they receive maternity leave and other benefit before and after child birth.

### **Background**

K. Umadevi was the appellant, she married A. Suresh in 2006 after her marriage she had two children born in 2007 and 2011. But after that her marriage ended in 2017. The custody of the children was given to the father. K. Umadevi entered in government service in December 2012 as an English teacher in a government higher secondary school in Dharampuri District, Tamil Nadu. In 2018 she remarried M. Rajkumar. From her second marriage she was pregnant and dur to her pregnancy she applied for maternity leave from August 17, 2021 to may 13, 2022.

However, her request for maternity leave was rejected by district chief educational officer of Dharampuri said that the maternity leave is available only to government employees in fewer of two surviving children not for the third child, citing rule 101(a) of the Tamil Nadu fundamental rule.

### **Decision of Madras High court**

Umadevi filled her writ petition in the Madras high court on 25.04.2022 the court held that the Umadevi have right to maternity benefit. The judge says that the custody of the children from her first marriage was given to the father, they should not be counted against her eligibility for maternity leave. The judge also refers to the various treaties as well as the international convention and maternity benefit act, 1961.

The government of Tamil Nadu was not satisfied by this judgement and appealed this judgement and appealed this decision in the high court. The division bench on 14.09.22 over ruled the single judge's judgement. The division bench held that Umadevi have no right to maternity leave because she had more than two surviving children. The bench said that maternity leave is not fundamental right but a statutory benefit in a service condition.

### **Argument**

The appellant (K. Umadevi) argued the child from her first marriage should not disqualified her from the maternity leave for the first from her second marriage. They were not satisfied with the division bench judgement and also said that maternity leave is the reproductive right of every women, it is very essential for the child as well as mother health which are also protected under article 21 "right to life" of the constitution.

On the other hand, the responded argued that the policy of giving maternity leave is social responsibility and also as the maintenance of the human resource. They also said that the rejection of maternity leave for the third child also help in control the population and also promote the policy of small family. Also argued that the extending of maternity leave for more than two children also effects the administrative finance of the state government.

### **Judgement of The Supreme Court**

Supreme court of India announced the maternity leave is the fundamental right of every women. The supreme court held that the maternity leave is the faced reproductive right of every

women also protected under the article 21 of the constitution. The court also high-light the relevant cases, international convention shaping domestic law, treaties, statutory books as well as the constitution. The court disagree with the decision of the division bench and held that Umadevi have complete right for the maternity leave under Rule 101(a). The court ensure that the maternity leave released to her within two month and she should enjoy all maternity benefit.

### **Why maternity leave is necessary?**

Maternity leave is very essential for the mental as well as the physical health of the mother as well as the child. When the child was in the mother's womb the lady have to take rest and stress free and after the child birth, child wants their mother presence and the mother want rest to recover herself. This is the question of someone's life that's why it is the reproductive right under right to life. It also ensures the financial security that the mother continue receive the regular salary. It guarantees the job protection from facing the discrimination as well as the termination of the job dur to pregnancy. It helps so much for the carrying of the child.

### **Maternity leave as the fundamental right**

It plays a very important role in women's health, dignity, ensuring working equality and working opportunity for the working women. Sometime in private institutes, women's terminate their job due to pregnancy because they can't enjoy their maternity benefits but due to maternity leave becomes the fundamental right the women's in every job sector can enjoy their right as well as they have their job protection. Even how much children do the women have she get the maternity leave. If the right to maternity leave is infringe so they have right to directly went to the supreme court as well as the high court under article 32 and article 226 of the constitution.

### **Conclusion**

This case played a very important role in protecting one more right for the women, also explain the benefit of the maternity leave for the women to regain energy, child case and ensure for job and source of income. It played a very sensitive role in women health and the dignity of the working women. The court address that the pregnancy effect both mother and the chid, they need more attention and care. It encourage the working women to manage her work as well their chid, no need to terminate her job.