

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.1506/2001

New Delhi, this the 13th day of November, 2001

Dr. Manju Saluja
w/o Dr. Pankaj Khurana
H-65, D.D.A. Flats
Phase-I, Ashok Vihar
New Delhi - 110 052.

... Applicant

(By Advocate: Shri M.K.Singh)

Vs.

1. Government of N.C.T. Delhi
Through Secretary
Ministry of Health
5, Sham Nath Marg
Delhi.
2. Medical Superintendent
Guru Govind Singh Govt. Hospital
Govt. of N.C.T. of Delhi
Raghubir Nagar
New Delhi - 110 027.

.. Respondents

(By Advocate: Ms. Neelam Singh)

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By Shanker Raju, Member (J):

The applicant had sought accord of maternity leave with all benefits and grant of further extension of her tenure as a Senior Resident on ad hoc basis.

2. Briefly stated, the applicant is a Post Graduate in medicines and surgery, in pursuance of the Scheme of the Government of India she had been appointed as Senior Resident on ad hoc basis on 10.4.2000 initially for a period of 44 days. The applicant has been accorded five more extensions of 44 days and the last was found on 11.1.2001 to 30.1.2001 as such the applicant has at least completed more than 160 days of service in a twelve months. The applicant has attended in an interview on 21.1.2001 and was appointed on ad hoc basis for a period of 89 days.

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The applicant had applied for maternity leave on 4.4.2001 and thereafter again on 30.4.2001. The same was rejected by the respondents on 2.5.2001 on the ground that as there was only one vacant post to be filled by reserved quota the applicant has been put on ad hoc basis due to non-availability of the incumbent the term was expired on 30.4.2001 and as the applicant has failed to apply for further extension, the claim of maternity leave cannot be sanctioned and is not in conformity with CCS (Leave) Rules, 1972. The learned counsel for the applicant has contended that the applicant's child was born on 13.4.2001 and as per the provisions of Section 5 (2) of the Maternity Benefit Act, 1961 no woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than 160 days in the twelve months immediately preceding in date of her expected delivery. It is also stated that the employers are liable for imprisonment in case they fail to accord the maternity leave as stated under Section 21 of the Maternity Benefit Act, 1961 (hereinafter called as 'M.B.Act'). It is also stated that by placing reliance on Section 6 of the Act, *ibid* that failure to give notice shall not be disentitled to a woman the maternity benefit if she is otherwise entitled and by placing reliance on Section 12(2) (a) *ibid*, it is contended that the discharge or dismissal of a woman at any time during her pregnancy would not be an impediment for maternity benefits. It is also stated that in the case of Dr. Nutan and Dr. Ravinder Kaur the same benefits have been accorded and as such the applicant cannot be discriminated

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arbitrarily in the matter of maternity leave, which is violation of Articles 14, and 16 of the Constitution of India. It is lastly stated that in case of one Dr. Ravinder Kaur leave was granted despite her services have been dispensed with. The learned counsel for the applicant further placed reliance on a decision of this Court in Dr. (Mrs.) Sangeeta Narang & Others Vs. Delhi Administration and Others, AIR 1988 (1) CAT 556 to contend that even in case of persons working on contractual basis the benefits like leave, etc. cannot be denied.



3. On the other hand, strongly rebutting the claim of the applicant the learned counsel for the respondents, Ms. Neelam Singh contended that the applicant was appointed on ad hoc basis for 44 days in April, 2000 and was terminated w.e.f. 30.1.2001. The applicant was appointed against a reserved category post for a period of 89 days and since the appointment was afresh the applicant having completed only 71 days, had applied for grant of maternity leave and the applicant has not worked beyond 30.4.2001. In this conspectus, she states that having failed to complete 160 days within 12 months in this new assignment the applicant is not entitled for accord of maternity leave. It is also stated that the past service of the applicant on ad hoc basis which has been terminated on 31.1.2001 cannot be taken into consideration for accord of maternity benefits. It is stated that the case of the applicant is distinguishable and the ratio in Dr. Renu Dass and Dr. Ravinder Kaur have no application as therein having completed the requisite period in the appointment have been accorded maternity

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leave. As the applicant has been replaced on expiry of tenure on 30.4.2001 in July, 2001, by a Scheduled Caste candidate the applicant cannot be allowed to complete the tenure or to be reinstated again.

4. I have carefully considered the rival contentions of both the parties and perused the material on record. The applicant in this case is neither assailed her termination on 30.4.2001 and also has not assailed the decision of the Government of India, dated 2.5.2001 to deny her the benefits of the maternity leave. In absence of any challenge to the said order the relief cannot be accord to the applicant in accordance with law.

5. Apart from it, as per the rules on the subject, i.e., Section 5 and 6 of the Maternity Benefit Act, 1961 the entitlement of woman employee for maternity benefits is consequent upon her completion of 160 days in 12 months immediately preceding the date of her expected delivery. The same is also dependent upon the actual work put in by a woman employee. In this case the applicant's previous assignment has come to an end on 31.1.2001 her services have been terminated. The applicant has made a representation to the respondents for maternity benefits on 4.4.2001 and as such at that time had not completed 160 days and had only 71 days, in pursuance of the new assignment against a regular post of reserved quota for 89 days w.e.f. 1.2.2001. As such having not rendered 160 days in service at the time when the claim was made they cannot be accorded the maternity benefit. The period rendered in the past

service cannot be computed for the purpose of reckoning 160 days as the applicant has been appointed afresh against a regular post of Scheduled Caste, the previous service cannot be taken into consideration for the purpose of maternity benefits. As regards the issue that the break was of technical nature the applicant having failed to challenge his termination order cannot be allowed to contend and assail the same. Ratio cited by the learned counsel in Dr. Ravinder Kaur and Dr. Renu Dass has no application in the facts and circumstances of the present case as therein the incumbents have worked for 44 days and the same was extended their services have not been terminated. The applicant, who is not similarly circumstance, cannot claim parity. No two unequals can be treated equally. In this view of the matter the claim of the applicant is not legally sustainable and having failed to establish the case, the present OA is accordingly dismissed. No order as to costs.


(SHANKER RAJU)
MEMBER(J)

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