

Central Administrative Tribunal: Principal Bench

O.A. No.2520/99

New Delhi this the 31st day of October, 2000

Hon'ble Mr. V.K. Majotra, Member (A)

1. Smt. Sunita Chopra,
W/o Shri Mukesh Chopra,
R/o V-723, Gali No.9,
Vijay Park, Mauzpur,
Delhi.

2. Smt. Neelam Sahani,
W/o Shri Pradip Kumar Sharma,
R/o D-585/4, Gali No. 3,
Ashok Nagar, Delhi-53.

-Applicants

(By Advocate: Shri S.K. Sinha)

Versus

1. Government of NCT of Delhi,
through the Director of Education,
Old Secretariat, Delhi.

2. The Principal,
Rajkiya Uchcha Madhyamik Vidyalaya,
B-1, Yamuna Vihar, Delhi-53.

-Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R

By Mr. V.K. Majotra, Member (A)

The applicants have challenged denial of maternity leave and earned leave being ad hoc Trained Graduate Teachers (for short, TGT) with the respondents. They joined as T.G.Ts on 31.8.98 and 4.9.98 respectively. These applicants applied for maternity leave. Applicant Smt. Neelam Sahni remained on maternity such leave upto 16.12.99 i.e. for 46 days and Smt. Chopra remained on such leave upto 2.1.2000 for 63 days. The respondents have not sanctioned their maternity leave stating that they are not entitled for any kind of leave except Casual Leave and normal school holidays. I have heard the learned



counsel of both sides and considered the material available on record.

2. The learned counsel of the applicants relied on *Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) & Anr.* 2000 (2) Scale 269 in which it was held as follows:-

"Any woman deprived of maternity benefit or medical bonus, or both, or discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Act, may, within sixty days from the date on which order of such deprivation or discharge or dismissal is communicated to her, appeal to such authority as may be prescribed.

A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of a child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably undeterred by the fear of being victimised for forced absence during the pre or post-natal period".

3. The learned counsel of the applicants



contended that the action of the respondents is contrary to the directives contained in Article-39 (e) of the Constitution of India, which states:

"the state shall, in particular, direct its policy towards securing that the health and strength of workers, man and women, and the tender age of children are not abused and that citizens are not forced by economics necessity to enter avocations unsuited to their age or strength".

He also referred to Article-42 which reads:-
"The state shall make provision for securing just and humane conditions of work and for maternity relief".

4. He relied on the ratio of (1984) 3 SCC 161 in which the Hon'ble Supreme Court had observed:-

"It is the fundamental right of everyone in this country to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) & (f) of Art. 39 and Articles 41 & 42. These are the minimum requirements which must exist in order to enable a person to live with human dignity, and no state has the right to take any action which will deprive a person of the enjoyment of these basic essentials".

5. Learned counsel of the applicants also alleged that the respondents are denying the applicants' Earned Leave @ 2-1/2 days per month as ad hoc teachers which is admissible under DOPT Instructions dated 24.7.1986 (Annexure A-6).

6. Learned counsel of the respondents submitted that the applicants are contract employees. They had accepted the terms and conditions of the offer



letters and they cannot be extended any benefits beyond the terms and conditions contained in the offer letters. Such contract employees are not entitled for any kind of leave except casual leave and normal school holidays. He further argued that whereas these applicants completed only one year of their service, ad hoc employees who continued beyond a period of three years without break can be extended benefit of all kinds of leave as admissible to temporary employees under the CCS (Leave) Rules, 1972 from the date of their initial employment. According to the learned counsel of the respondents, the applicants are not entitled to benefits claimed by them.

7. In the matter of Dr. (Mrs.) Sangita Narang and Others Vs. Delhi Administration (1986) 6 ATC 405, this Tribunal had held, benefits like leave, continuity in service, House Rent Allowance, etc. cannot be denied to ad hoc appointees. In the matter of M.C.D. Vs. Female Workers (Muster Roll) and Another (supra) after scanning the different provisions of the maternity benefit Act, the Hon'ble Supreme Court held that they do not find anything contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis or on muster roll on daily wage basis. Although the applicants were initially appointed as T.G.T. (Social Study) on contractual basis for a period of six months, their status was changed to ad hoc T.G.Ts in May 1999 in pursuance of the Court orders and the applicants remained on

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maternity leave for 46 days and 63 days respectively from 1.11.99. Learned counsel of the respondents took plea that the provisions of the Maternity Benefit Act 1961 are not applicable to a department unless a Notification for the application of those provisions is issued by the Department. This argument cannot be countenanced. The application of the provisions of this Act will not be applicable to different Departments, separately. Departments are not expected to issue separate Notifications for application of the provisions of the Act. If at all, the Govt. of NCT of Delhi must have issued one Notification which would be universally applicable to all Departments of the Government. In any case, the respondents were not able to show any Notification regarding application of the provisions of the Maternity Act.

8. On acquiring the status of ad hoc TGTs, the contention of the respondents' counsel that the applicants cannot be provided any benefits beyond the terms and conditions of the contract is not acceptable. In the light of the ratio in the case of Dr. (Mrs.) Sangeeta Narang (supra) and MCD Vs. Female Workers (Muster Roll) and another, the applicants are certainly entitled to the benefit of maternity leave.

9. The next issue for consideration is regarding grant of Earned Leave to the applicants as ad hoc employees though they have completed more than one year of continuous service. The applicants drew attention to Annexure A-6 which is Govt. of India decision dated 24.7.1986 and reads as follows:-

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"Taking all factors into account the President is now pleased to decide that employees whose appointment is treated as ad hoc for purely technical reasons may be extended the benefit admissible to temporary employees under the CCS (Leave) Rules, 1972. In all other cases of ad hoc appointments, which are for brief periods the ad hoc employees may be allowed earned leave at the rate of 2-1/2 days per month of completed service. While granting the leave, the leave should be for full days and not half a day. They will also not be entitled to the benefit of encashment of earned leave on termination of their service. If ad hoc appointments continue beyond a period of three years without break, such ad hoc employees may be extended the benefit of all kinds of leave as admissible to temporary employees under the CCS (Leave) Rules, 1972, from the date of their initial employment".

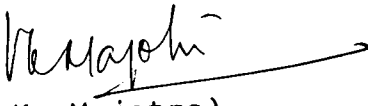
10. Since the applicants have not yet completed three years of ad hoc appointment under the above instructions, they cannot be extended the benefit of all kinds of leave under the present instructions as admissible to temporary employees. However, as per D.P. & A.R. O.M. dated 3.9.1981, the teachers working under the Central Government have been allowed 10 days earned leave on full pay during a year, in lieu of 20 days' half pay leave, as admissible. The applicants who are ad hoc Teachers and have put in more than one year in service are certainly entitled under these instructions to 10 days earned leave on full pay during a year instead of 20 days half pay leave.

11. Having regard to what is stated above, the OA is allowed with a direction to the respondents to accord full maternity relief and other benefits to



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the applicants as admissible to other regular female teachers in the schools run by the respondents and pass detailed speaking orders in respect of applicants' period of absence on maternity for 46 days and 63 days respectively. The respondents are also directed to grant Earned Leave to the applicants @ 10 days on full pay during a year instead of 20 days Half Pay Leave as per OM dated 3.9.1981. No costs.


(V.K. Majotra)
Member (A)

cc.