

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2442/98

199

T.A. No.

DATE OF DECISION 8.10.99

Dr. Renu Dass

....Petitioner

Sh. M. K. Singh

....Advocate for the
Petitioner(s)

VERSUS

Govt. of NCT Delhi through
Principal Secretary & Ors.

....Respondent

Sh. Vijay Pandita

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri

1. To be referred to the Reporter or not
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi S.
(Smt. Lakshmi Swaminathan)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH
NEW DELHI.

OA 2442/1998

(14)

New Delhi this the 8th day of October, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Dr. Renu Dass,
w/o Dr. Ajay Kumar Gupta,
R/o C-127, Kirpal Apartments,
Patparganj, New Delhi.

.. Applicant

(By Advocate Shri M.K. Singh)

Versus

1. Government of N.C.T. Delhi
through Principal Secretary,
5-Sham Nath Marg, Delhi.

2. Dean
Maulana Azad Medical College,
New Delhi.

3. Deputy Director (Administration)
Maulana Azad Medical College,
New Delhi.

.. Respondents

(By Advocate Shri Vijay Pandita)

ORDER (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

The applicant is aggrieved by the action of the respondents in not giving her Maternity leave. Applicant has submitted that she had submitted a representation to the respondents on 17.3.98 praying for grant of Maternity leave on the birth of her child on 3.3.1998.

2. Admittedly, the applicant was working on ad hoc basis as Senior Resident in the department of Pathology at Maulana Azad Medical College (MAMC) New Delhi. The applicant was initially appointed by O.M. dated 31.7.1997 for a period of 44 days on ad hoc and emergent basis. The order itself has stated that the appointment is for a period of 44 days until such time a regular selected candidate is made available by TRC, whichever is earlier. The ad hoc appointment can be extended for another 44 days after giving three days break.

Learned counsel for the applicant has submitted that in terms of this order, the applicant ^{had} continued on ad hoc basis initially

for a period of 44 days and thereafter she was given another extension of time as Senior Resident by order dated 18.2.1998 w.e.f. 17.2.1998. On the same date, the applicant had applied for Maternity leave which was rejected and this is the subject matter in this case. Shri M.K.Singh, learned counsel for the applicant further submits that the applicant has been later regularised as Senior Resident by O.M.dated 22.8.1998 on the recommendations of the Selection Committee. Applicant's counsel has relied on the provisions of the Maternity Benefit Act., 1961 as well as on a number of judgements, that is Mrs.Savita Ahuja Vs.The State of Haryana and Others (1988(1)SLR 735 (Punjab and Haryana High Court); Asha Mehta, Hindi Teacher and Others Vs.The State of Haryana and Others (1991(5)SLR 186(Punjab and Haryana High Court) and the judgement of this Tribunal in Dr. (Mrs.) Ranvinder Kaur Vs. Govt.of NCT of Delhi through Principal Secretary and others (OA 2441/98) decided on 10.5.1999. (Copy placed on record). Learned counsel has contended that following these judgements, the applicant would be entitled to maternity leave benefits as available to regular employees, which benefit has been illegally denied to her by the respondents. He has further clarified that in OA 2441/98, in which he was also the counsel for the applicant, in pursuance of the Tribunal's order the respondents had favourably disposed of the applicant's representation in that case, by granting her maternity leave benefits as due to her under law. He has, therefore, submitted that there is no reason why the similar benefit should not be granted by the respondents in the case of the applicant who is also similarly situated, the only difference being that the applicant in OA 2441/98 was working in Lok Nayak Jaiprakash Hospital, whereas the present applicant is working in MAMC, but both the hospitals are under the administrative control of the NCT of Delhi.

3. The respondents have filed their reply and controverted

the above. The main contention of the respondents on the basis of which they have denied the Maternity leave to the applicant is that she was merely working with them on ad hoc basis for a period of 44 days at the particular time. They have, therefore, submitted that the applicant is not entitled to maternity leave and other benefits on this account.

4. I have carefully considered the pleadings and submissions made by the learned counsel for the parties.

5. The contention of the respondents that the applicant is not entitled to maternity leave because she was only appointed on ad hoc basis for a period of 44 days w.e.f. 17.2.1998 is rejected. From the facts mentioned above, it is clear that the applicant had, in fact, been appointed on ad hoc and emergent basis earlier, each time for a period of 44 days with artificial breaks of three days. The judgement of the Punjab and Haryana High Court in Mrs Savita Ahuja's case (supra), relied upon by the learned counsel for the applicant, is applicable to the facts of the case. In that case, the High Court held that "the mere fact that her appointment was on ad hoc basis should not disentitle her to this privilege because such a disentitlement results in one and the only consequence that the services of ad hoc female employee who is pregnant and has reached the stage of confinement are to be terminated. This would be highly unjust and virtually a discrimination against female ad hoc employees on the ground of sex which is violative of articles 14,15 and 16 of the Constitution."

6. I respectfully agree with the above observations of the Punjab and Haryana High Court. Besides, it is also noted that the applicant has submitted that in another similar case of Dr. (Mrs) Ranvinder Kaur (supra), the respondents had also decided in favour of that applicant. The applicant's counsel has categorically submitted at the Bar that the applicant in that case (Dr. Ranvinder Kaur) was also initially appointed as Senior Resident in the Lok

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Nayak Jaiprakash Hospital, New Delhi w.e.f. 21.7.97 on ad hoc basis and later regularised by order dated 19.9.98. There is, therefore, no reason why the respondents should take a different stand in the case of the present applicant who is similarly situated.

7. In the result for the reasons given above, the application succeeds and is allowed to the following extent:-

- (i) The impugned rejection letter passed by the respondents dated 2.5.98 is quashed and set aside;
- (ii) Respondents are directed to consider the applicant's representation dated 17.3.1998 afresh, taking into account their decision in Dr. (Mrs.) Ranvinder Kaur's case (supra) and the observations made above;
- (iii) This shall be done within two months from the date of receipt of a copy of this order.

Parties to bear their own costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

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