

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 428 of 1991
~~T. A. No.~~

DATE OF DECISION 30-6-1992

Mrs PV Gracy & 3 others Applicant (s)

Mr K Ramakumar Advocate for the Applicant (s)

Versus

General Manager, S. Railway, Respondent (s)
Madras & 2 others

Mr MC Cherian Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The applicants are women Mazdoors who had ^{been} conferred temporary status in 1983 and 1984. They had applied for and were granted maternity leave for varied periods during 1986 to 1988 and during the said period they were paid leave salary. Now the second respondent has issued impugned order dated 1.3.1991 Annexure-A directing recovery of the leave salary paid to the applicants during the period when they were on maternity leave on the ground that Casual Labourers even though they have attained temporary status are not entitled to maternity leave and that the leave ^{was} granted to them and payment of leave salary ^{made} to them by mistake. Apprehending the recovery of the leave salary paid to

them, the applicants have filed this application under Section 19 of the A.T. Act praying that the impugned order at Annexure-A may be quashed and that it may be declared that the applicants are entitled to the benefits of maternity leave and the leave salary for such period as is available to temporary Railway servants. It is averred in the application that the Casual Labourers on attaining temporary status ~~xxxxx~~ according to paragraph 2511 of the Indian Railways Establishment Manual, ^{are} entitled to all the rights and privileges admissible to temporary Railway servants as laid down in ~~xxx~~ Rule 2307, Chapter-XXIII of the Indian Railways Establishment Manual and that the impugned order at Annexure-A is therefore unsustainable.

2. The respondents have in their reply statement contended that the entitlement of temporary status attained Casual Labourer according to the provisions of paragraph 2511 of the Indian Railways Establishment Manual is only for the benefits available to temporary railway servants under Chapter XXIII of the Indian Railways Establishment Manual and that as maternity leave is not something provided under Chapter XXIII of the Indian Railways Establishment Manual, the claim of the applicants that they are entitled to maternity leave during 1986-1988 has no basis. It has further been contended that the Railway Board has on 25.6.1991 issued an order Annexure-R3, extending the provisions of maternity leave to female casual labourers who have attained temporary status which has only prospective effect and that the applicants are not entitled to get maternity leave benefits prior to

25.6.1991. Therefore the respondents contend that the impugned order at Annexure-A is perfectly legal and that the applicants have no legitimate grievance.

3. We have heard the arguments of the learned counsel on either side and have also perused the documents on record. That the applicants had attained temporary status in 1983 and 1984 and that they had availed maternity leave and were granted leave salary for different periods during 1986 to 1988 are facts beyond dispute. The respondents have taken steps to recover the payments made to the applicant during the period 1986 to 1988 on the ground that during the said period the applicants were not really entitled to maternity leave. The identical question as involved in this case came up for consideration before this Tribunal in OA-396/91. The order impugned in this case was challenged by another set of women Casual Mazdoors similarly situated as the applicants. On a consideration of the rival contentions and interpretation of paragraph 2511 of Chapter XXIII, Rule 2307 of the Indian Railways Establishment Manual, this Bench came to the conclusion that the rules do not provide for granting maternity leave to the temporary status attained Casual Mazdoors. On that basis, the Bench found that the contentions of the applicants against the impugned order was unsustainable. However, taking into account of the fact that Casual Labourers are very poorly paid and that they ^{would} already have spent the leave salary paid to them, the Bench observed that the recovery of the leave salary paid should not be effected. Therefore, the application OA-396/91 was disposed of declaring

that the Casual Labourers having attained temporary status prior to the Railway Board's order dated 25.6.1991 Annexure-R3 in this case are not entitled to maternity leave but directing that only 50% of the maternity leave availed of by the applicants shall be adjusted against the Earned Leave standing to their credit. We are in respectful agreement with the view taken by the Bench in that case. As maternity leave was granted to them and leave salary was paid to them by the administration, recovering the whole amount from their salary on a later date, would undoubtedly cause great hardship to the applicants who are in the lowest rung of the Railway service.

4. In the result, while holding that the Casual Labourers who had attained temporary status were not entitled to maternity leave prior to 25.6.1991, we order that the amount of leave salary paid to them shall not be recovered from their wages. We direct that 50% of the maternity leave availed of by the applicants as is detailed in Annexure-A shall be adjusted to the Earned Leave standing to their credit at present and if it cannot be done for want of sufficient Earned Leave, the Earned Leave which will accrue to their credit in future will be so adjusted.

5. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

30-6-1992

trs