

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 245/2003

Monday, this the 7th day of November, 2005.

CORAM:

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Jalathakumari.S.
Gramin Dak Sevak Stamp Vendor,
Kollam Civil Station.P.O.
Kollam. Applicant

By Advocate Mr PC Sebastian

vs

1. The Senior superintendent of
Post Offices,
Kollam Division,
Kollam.
2. The Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram.
3. The Union of India
represented by its Secretary,
Ministry of Communications,
Department of Post,
New Delhi. Respondents

By Advocate Mrs Mariam Mathai, ACGSC

The application having been heard on 7.11.2005, the Tribunal on the same day delivered the following:

O_R_D_E_R

HON'BLE MR KV.SACHIDANANDAN, JUDICIAL MEMBER

The applicant is aggrieved by the impugned letter 22.3.2003 rejecting her claim dated 22.3.2002 rejecting her claim for Time Related Continuity Allowance (TRCA) during the period of her maternity leave. The applicant's claim that she is a regular incumbent of the post of

Gramin Dak Sevak Stamp Vendor (GDS SV) at Kollam Civil Station and continuously working since 14.7.94. For the delivery of her second child, the applicant was confined to the Government Hospital, Kollam on 30.4.2001. Under cesarian operation and she was inpatient during the said period. She has produced the relevant documents to prove her case in the O.A. She made further averment that she is unable to attend her official work during the said period and nominated her husband as her substitute. As per the new rules, the GD Sevaks are entitled to such leave as may be determined from time to time. The Government has not so far taken any steps for the extension of maternity leave to female GDS, though Justice Talwar Commission appointed by the Government of India had strongly recommended the case of the GDS. The Commission further recommended the applicability of the maternity leave in the case of ED Agents on par with the full time female employees of the Government of India as per CCS(Leave) Rules, 1972. Kerala Postal Circle Welfare Board has a scheme to pay cash equivalent to one month TRCA to GDS Female employee during maternity leave. But the applicant was paid only a sum of Rs.1,200/-. Applicant made a representation which was rejected by the impugned order A-4 dated 22.3.2002. Aggrieved by the said in action, she has filed this application praying for the following reliefs:

- i) to call for the files leading to the issue of A-4 and quash the same.
- ii) To declare that the non-extension of maternity benefit by the respondents to GDS on par with the regular departmental employees is unjust and discriminatory.
- iii) To declare that applicant is entitled to maternity leave as applicable to the regular employees in the department.
- iv) To direct the respondents to grant TRCA to the applicant during her maternity leave from 23.4.2001 to 21.7.2001.

2. The respondents have filed a detailed reply statement contending that the ED Agents are governed by the terms and conditions of P&T EDAs(Conduct & Service) Rules 1964 which was super ceded by GDS (Conduct & Employment) Rules, 2001, GDS are not eligible for maternity leave with TRCA. The recommendations of Justice Talwar Commission were not accepted by the Government of India. Kerala Postal Circle welfare Board constituted under the Staff Contributory Welfare Fund Rules, 2000, for giving assistance to Postal employees including GDS/contingent employees and their family members in case of accident/major surgery/prolonged illness. The board decided to pay cash equivalent to one month's TRCA to all GDS female employees during maternity leave. Since a decision was taken, the applicant could not be given the benefit. TRCA was not paid during the period of maternity as the GDS was not eligible for maternity leave with TRCA as per GDS (Conduct & Employment) Rules 2001. Now they are governed by the GDS(Conduct & Employment) Rules 2001, prior to that P&T EDA (Conduct & Service) Rules, 1964. GDS are not eligible for maternity leave with TRCA as in the case of officials who are governed by CCS (Leave) Rules 1972. The regular employees and GDS are governed by separate sets of rules. The applicant claim the benefit. Since there is no rule granting the same benefit, the claim of the applicant is not sustainable. Therefore, the O.A will not stand in its legs.

3. We have heard Shri PC Sebastian, learned counsel for applicant and Smt.Mariam Mathai, ACGSC for respondents and given due consideration and the material and pleadings placed on record. Learned counsel for the applicant submitted that as per the Directive Principles of the Constitution, the employees who come under the civil servants should be granted the benefit extended that has been granted to the regular employees, if not, that is obviously a discrimination and violation of



Articles 14 and 16 of the Constitution. Learned counsel for the respondents on the other hand, strenuously argued that respondents cannot grant the benefit to the applicant or similarly placed persons since there is no rule regarding grant of the same nor any statutory provisions. The Government has given due consideration to the Talwar Committee recommendations after deliberations found that it is not feasible to grant the the said benefit to the GDS. Since as per Rule 3 of the GDS(Conduct & Employment) Rules 2001, a GDS shall be outside the civil service of the Union and they cannot be in par with the servant of the Government.

4. The issue involved is a very larger one which will affect more than 3.5 lakhs of people in general and absolutely this is a policy matter of the Government. However, it is a fact that the GDS are government employees and held civil post is no longer a dispute. In *Superintendent of Post Offices v. P.K.Rajamma* [(1997) 3 SCC, 94] the Hon'ble Supreme Court held that thus:

*"4. It is thus clear that an extra departmental agent is not a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra departmental agent is in a post which exists "apart from" the person who happens to fill it at any particular time. Though such a post is outside the regular civil services, there is no doubt it is a post under the State. The tests of a civil post laid down by this Court in *Kanak Chandra Dutta's* case are clearly satisfied in the case of the extra departmental agents."*

5. For the appellants it is contended that the relationship between the postal authorities and the extra departmental agents is not of master and servant, but really of principal and agent. The difference between the relations of master and servant and principal and agent was pointed out by this court in *Lakshminarayan Ram Gopal and Son Ltd. v. Government of Hyderabad*...".

The rules make it clear that these extra departmental agents work under the direct control and supervision of the

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authorities who obviously have the right to control the manner in which they must carry out their duties. There can be no doubt therefore that the relationship between the postal authorities and the extra departmental agents is one of master and servant."

In view of the Apex Court judgment, it is clear that the relationship between the DGS and the Government is that of the master and servant and not the principal and agent. But it has made beyond doubt that the post of GDS are under the state even if their service conditions are not... even statutory rule. Learned counsel for the applicant brought to our notice a decision in Municipal Corporation of Delhi v. Female Workers (Muster Roll) and another [2000 SCC(L&S) 331] and canvassed for the proposition that the female workers should be permitted to take maternity leave which is on the basis of directive principles of the Constitution. For a better elucidation para 27 and 33 are quoted below:

"27. The provisions of the Act which have been set out above would indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other articles, specially Article 42. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental for her health and also to the health of the foetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery.. We have scanned the different provisions of the Act, but we 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.

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33. 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

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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 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 workplace 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."

Further, learned counsel has submitted that a temporary employee must be granted all benefits that of a regular civil servant. He also submitted that the maternities leave provision that is enunciated in the CCS(Leave) Rules which is quoted below:

"43. Maternity Leave

(1) A female Government servant (including an apprentice) with less than two surviving children may be granted maternity leave by an authority competent to grant leave for a period of 90 days from the date of its commencement.

(2) During such period she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

Note: In the case of a person whom the Employees' State Insurance Act, 1948 (3 of 1948) applies, the amount of leave salary payable under this rule shall be reduced by the amount of benefit payable under the said Act for the corresponding period.

(3) Maternity leave not exceeding 45 days may also be granted to a female Government servant (irrespective of the number of surviving children) during the entire service of that female Government servant in case of miscarriage including abortion on production of medical certificate as laid down in Rule 19:

Provided that the maternity leave granted and availed of before the commencement of the CCS(Leave) Amendment Rules, 1995, shall not be taken into account for the purpose of this sub rule."

5. It is also profitable to note that the Maternity Benefit Act 1961 promulgated on 12.12.1961 has been enacted by Parliament in the Twelfth Year of the Republic of India to regulate the employment of women in certain establishments for certain period before and after child birth and to provide for maternity benefit and certain other benefits, which could be applicable to such establishment belonging to Government and other establishments were 10 or more persons were employed. Though it is mainly intended for factories, plantations etc. this could be extended to any other establishment by notification in the official gazette. This is specifically provided in Rule 1 (2)(1) of the Act. As per Section 4 also prohibits certain periods to employ women in any establishment during six weeks immediately following the day of her delivery or her miscarriage. It further made clear that no pregnant women shall be required to work for long hours of standing likely to interfere with pregnancy or the normal development of the foetus or is likely to cause her miscarriage or otherwise to adversely affect her health. Section 5 declares that every such woman shall be entitled, and her employer shall be liable for the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence. The intention of this enactment is to protect the women workers and grant the benefit during the maternity period which has been now constitutionally accepted by our country. Since the Government has not extended the benefit of the enactment to ED Agents, this court will not be justified to direct the respondents to grant the benefit as per such enactment but it is a case that the respondents can take up the matter before the Government and persuade them to adopt the policy and extend the benefit of the enactment to the ED Agents as well. Though the restriction in granting



the maternity leave to women employees as envisaged to Rule 43 of CCS(Leave) Rules with those who have two or more living children are not entitled for the same, such classification is not constitutional provisions. But denying the benefit totally to any of such employees like ED Agents (nor Gramin Dak Sevaks) is a total discrimination. Therefore, we are of the opinion that a woman who is psychologically and biologically need rest during such period is entitled for maternity benefit. This is also in consonance with the provisions of Article 21 of the Constitution. The right to live guaranteed in the Constitution means not merely animal existence but a living with dignity. Gramin Dak Sevaks being the life blood of the Postal system in the country consist of nearly half of the employees are discriminated in the matter of maternity leave as well, which is not justified. [emphasis supplied].

6. Learned counsel for the applicant would argue that since it has been settled by the decisions of the Apex Court, they are entitled to get the benefit. Counsel for respondents on the other hand submitted that after due consideration only this was not granted to the applicants since they will not be eligible for the same. It is an admitted fact that Justice Talwar Committee has recommended various kinds of leave to the GDS with TRCA including maternity leave but the Government of India did not accept the recommendations of the Committee. In the reply statement why the Government has not accepted Talwar Committee report not granting this benefit is not explained. However, it may be for their own reasons such as financial constrains etc. That is no reason to deny the benefit. But it is a very pathetic state of affairs that a woman who has been undergoing treatment for maternity matters are not being granted this benefit. Since this being a policy matter of the Government and the interference of the judicial powers by the Courts is very much limited, we are of the view that undoubtedly, the relief that has been sought by the applicant requires reconsideration at the hands of the Government.



7. In the interest of justice, this court directs the third respondent to take up the matter for granting the benefit of maternity leave to GDS with the Government by extending the benefit of Maternity Benefit Act, 1961 or framing any other beneficial schemes in order to protect the interest of such employees in consultation with the concerned departments and pass appropriate orders as the Government deemed fit in the circumstances of the case. The second respondent is also directed to ensure that the matter will be taken at the Government level with all its fairness and report to the Registry the progress made thereon within a period of four months from the date of receipt of copy of this order.

8. The O.A is disposed of as above. No costs.

Dated, the 7th day of November, 2005.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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