CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

...

(Reserved on 07.05.2015)

OA No. 060/00922/2014 **Date of decision-** 26.5.2015

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CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)

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Sudha Sharma daughter of Sh. Ajit Kumar Sharma, Lecturer (English) in Post Graduate Government College, Sector 46, Chandigarh.

...APPLICANT

BY ADVOCATE : Sh. Pawan Gaur.

VERSUS

1. Chandigarh Administration through its Finance Secretary-cum-Secretary Education, U.T., Secretariat, Sector 9, Chandigarh.
2. Director Higher Education, Department of Higher Education, Deluxe Building, U.T., Sector 9, Chandigarh.
3. The Principal, Post Graduate Government College, Sector 46, Chandigarh.

...RESPONDENTS

BY ADVOCATE: Sh. Vinay Gupta.

ORDER

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HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

Challenge in this Original Application is to the impugned orders dated 25.08.2014, 11.09.2014 & 23.09.2014 whereby the claim of the applicant for grant of 180 days maternity leave at par with regular female employees, has been rejected. The applicant has also sought issuance of a direction to the respondents to grant her the benefit of maternity leave with pay and other attendant benefits for 180 days. She has further sought quashing of policy decision dated 07.03.2013 issued by the Chandigarh Administration restricting maternity leave to 12 weeks only in respect of the employees working on contract basis with all other departments of Chandigarh Administration.

2. The brief facts which led to the filing of present original Application are that the applicant was appointed as an Assistant Professor on contract basis for the session 2010-2011, vide appointment letter dated 19.08.2010. Being in family way, the applicant applied for grant of maternity leave w.e.f 01.08.2014 for a period of 6 months vide letter dated 30.06.2014. When she did not receive any response, she informed respondent no. 3 vide application dated 31.07.2014 that she would be proceeding on maternity leave for 180 days w.e.f. 01.08.2014. Upon it, vide letter dated 25.08.2014, she was informed that she could not be granted maternity leave for 180

days in terms of the latest instruction dated 07.03.2013 issued by the Chandigarh Administration and that she can only avail 12 weeks maternity leave i.e. from 01.08.2014 to 23.10.2014 and asked her to apply leave on the prescribed proforma. Vide subsequent communication dated 11.09.2014 & 23.09.2014, she was asked to apply for leave within two days failing which the salary for the above said period will be withheld. Again she submitted a letter dated 24.09.2014 repeating her earlier request for grant of 180 days of maternity leave i.e. 01.08.2014 to 27.01.2015. When the respondents did not accept her request, she has approached this court by filing the present O.A.

3. It is the case of the applicant that at earlier point of time, the applicant along with other similarly situated persons had approached this Tribunal by filing number of O.As including O.A No. 36/CH/2011 titled **Shalini Wadhwa Batra & Ors. Vs. Union of India & Ors.**. The said O.As were allowed vide common order dated 31.03.2011 passed in the case of **Vandana Jain & Ors. Vs. U.O.I & Ors.** (O.A No. 33/CH/2011) holding that the applicants were entitled for maternity leave, as allowed to the regular female employees. Thus her claim merits acceptance.

4. Pursuant to notice, the respondents have contested the claim of the applicant by filing a detailed written statement wherein it is

to regular female lecturer as she is a contractual employee. They were granted 12 weeks maternity leave only as per the Maternity Benefit Act, 1961 (in short 'Act, 1961'). With regard to the order relied upon by the applicant, it is submitted that issue is sub-judice before the jurisdictional High Court in a writ petition filed at the hands of the Chandigarh Administration wherein the Hon'ble High Court has stayed the impugned order and allowed to release the benefit of 12 weeks maternity leave to the concerned employees. Therefore, the applicant cannot take advantage of orders which have already been stayed by the Hon'ble High Court and issue is pending for final adjudication.

5. No rejoinder has been filed by the applicant.

6. We have heard learned counsel for the parties and perused the pleadings of the parties available on record, with the able assistance of the counsel for the parties.

7. We have given our thoughtful consideration to the entire matter. Before proceeding further, it may be mentioned over here that there was a suggestion made by learned counsel for the respondents that since the matter in regard to grant of maternity leave to contractual employees at par with regular employees is engaging the attention of the Hon'ble Jurisdictional High Court, which has, as an interim measure, directed grant of only 12 weeks' maternity leave to the employees therein in terms of decision of State of Punjab, as such this

case may be adjourned sine die to await the decision by Hon'ble High Court. However, the aforesaid suggestion was vehemently opposed by the learned counsel for the applicant stating that mere stay on the decision of this Tribunal by the Hon'ble High Court does not mean that the effect of the same has also been taken away and there is no bar in extension of benefit to the applicant of decision rendered by this Tribunal. Thus, in view of the insistence of learned counsel for the applicant, we have proceeded to here and decide the issue. On a consideration of the matter, we are unable to persuade ourselves in accepting the contention raised at the hands of the applicant to invalidate the policy decisions dated 24/1/2013/7.3.2013 (A-2) issued by the Chandigarh Administration whereby grant of maternity leave for employees working on contract basis in various departments of the Chandigarh Administration has been restricted to 84 days only. Concededly, the applicant herein is working on contract basis only. Her service conditions are governed by the terms and conditions of her appointment letter whereas the employees working on regular establishment are governed by separate set of rules framed under Article 309 of the Constitution of India. The applicant was admittedly appointed on contract basis for a limited period and though the same has continued for a considerable time by now as per need of the department but such continuation cannot be taken to mean that she

has acquired status of a regular employee thereby making her eligible to get the benefit of maternity leave at par with regular employees working in the respondent department. The courts have held that contractual employees cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on contractual or daily wages cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. An employer is always well within its power and authority to grant more benefit like maternity leave to a regular incumbent than a contractual employee as both set of employees are governed by different set of rules.

8. It may be noticed here that the Maternity Benefit Act, 1961 (for Brevity, 1961 Act) which was framed to regulate the employment of women in certain establishments for certain periods before and after child-birth and to provide for maternity benefit and certain other benefits. The same talks of grant of maternity leave to the female employees working on contract basis. The same provides that the maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of which not more than six weeks shall

precede the date of her expected delivery. Section 5 (3) of the 1961 Act, being relevant is reproduced as under :-

> "(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks, that is to say, six weeks up to and including the day of her delivery and six weeks immediately following that day:"

So, the decision taken by the respondents qua grant of 84 days of maternity leave to the contractual employees like the applicant is in consonance with the Statutory Act framed in that regard and as such the applicant cannot be granted any benefit nor the policy decision based on a statutory act taken by the respondents can be questioned by the applicant.

9. Another argument advanced profoundly by learned counsel for the applicant that once an issue has already been settled by this Court in the case of **Vandana Jain** (supra), the respondents cannot nullify or take away the fact and effect of such a decision by issuance of executive instructions, has been noticed to be rejected outrightly being mis-placed and factually incorrect. Para-43 of the order in **Vandana Jain's** case (supra) being relevant is reproduced as under:

> "43. The grievance raised by the applicants, for the grant of maternity benefit is the next item requiring consideration. The grievance is fully allowable in view of the law laid down by a learned Division Bench of this Tribunal in SONIKA KOHLI & ANOTHER VS. UNION OF INDIA & OTHERS : 2004(3) AI SLJ

(CAT) 54. That decision by the Tribunal was based upon the Apex Court pronouncement in RATTAN LAL & OTHERS VS. STATE OF HARYANA & OTHERS : 1985(3) SLR 548. The following observations made by the Apex Court therein are extracted hereunder:-

"3. We strongly deprecate the policy of the State Government under which 'ad hoc' teachers are denied the salary and allowances for the period of the summer vacation by resorting to the fictional breaks of the type referred to above. These 'ad hoc' teachers shall be paid salary and allowances for the period summer vacation as long as they hold the office under this order. Those who are entitled to maternity or medical leave, shall also be granted such leave in accordance with the rules."

10. A perusal of the order extracted above does not leave any manner of doubt that the same does not talk of grant of 180 days maternity leave to a contractual employee. This Tribunal had only observed that the applicant therein would be entitled to grant of maternity leave in accordance with the relevant rules. It is reiterated that there is no finding that even contractual persons like her are to be granted the same number of days' maternity leave, as available to regular employees. Therefore, this decision cited by the applicant cannot be of any help to the applicant.

11. Our view is also strengthen by the judgment passed by the Hon'ble jurisdictional High Court in CWP No. 23841/2011 titled **Kiran**

@ Dr. Kiran Bajaj Vs. State of Harayna dated 28.01.2013 wherein the female employees working on contract basis with the university claimed the similar relief as regular employee. After noticing the Section 5(3) of the Act, 1961, and the judgment passed in case of **Raj Bala Vs. State of Haryana**, 2002 (4) SCT 172, the Hon'ble High Court has held that a contractual employee cannot claim maternity benefit at par with the regular employees. The relevant observation contained in paras 4 & 5 read as under:-

> "4. The question is as to whether the petitioner can claim parity with the regular employees since regular employees are entitled to six month's maternity leave, which provision is better than what is provided in the Act. No doubt, in Raj Bala (supra), the Division Bench of this Court held that it was not permissible to draw any line of distinction between regular employees and contractual employees in so far as entitlement of maternity benefit is concerned. However, a close scrutiny of the said judgement would reveal that the entire matter was in the context of provisions contained in the Act taking note of the fact that the contractual employees were not given any maternity leave at all. The ratio of the case has to be read as to what it decides and what it logically follows therein. In this backdrop, it was held that even contractual employees are entitled to grant of maternity leave. As pointed out above, in the instant case, leave as per the Act has been given to the petitioner. She cannot claim parity with the regular employees and the issue in this respect now stands authoritatively settled by seven members Bench of the Supreme Court in Uma Devi (supra), wherein the Court held as under:-
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> > "It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in

comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled."

5. It is clear from the aforesaid principle laid down by the Supreme Court that giving different treatment to the adhoc/contractual employees than what is given to the regular employees does not offend Articles 14 and 16 of the Constitution of India. We, thus, do not find any merit in this appeal which is accordingly dismissed."

12. In the light of the aforesaid discussion, this O.A. turns out to be devoid of any merit and is dismissed accordingly leaving the parties to bear their own respective costs.

13. No costs.

Uday Kumar Varma

(UDAY KUMAR VARMA)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 26.5.2015

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