

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 160/2017

Reserved on: 1.05.2017
Pronounced on: 5.05.2017

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)

Ms. Mona Khatri
D/o Shri Mahender Khatri
W/o Shri Hemant Maan
R/o H.No. 698, Vill. & P.O. Bakner
Delhi

...Applicant

(Through Shri Tarun Dabas, Advocate)

Versus

1. Govt. of NCT of Delhi
Through Chief Secretary
5th Floor, Delhi Secretariat
Delhi
2. Director of Education
Govt. of NCT,
Old Secretariat, Near Vidhansabha
Civil Lines, New Delhi-54
3. Dy. Director of Education, East
EDMC Headquarter,
419, Udyog Sadan
Patparganj Industrial Area,
Patparganj, Delhi-110096
4. School Inspector
Office of Dy. Director Education
Shahdara (North Zone)
East MCD, Delhi

....Respondents

(Through Ms. Sangita Rai, Advocate along with Shri Pradeep Singh Tomar and Shri Ashok Kumar Sharma, departmental officers)

ORDER

Mr. P.K. Basu, Member (A)

The applicant joined as a teacher on contractual basis and was posted in Pratibha Vidyalaya, Mandoli, Bal-I, East Delhi Municipal Corporation (EDMC) on 17.09.2010. According to the applicant, she continued as such in that school and on 3.11.2016, made an application for sanctioning six months i.e. 180 days maternity leave with pay, which was forwarded by the Principal of the School to the authorities namely respondent no.3.

2. According to circular dated 27.07.2015 of EDMC regarding grant of maternity leave to women employees engaged on contract basis, it is provided that women employees of EDMC engaged on contract basis, who fulfill the conditions of Section 5 of the Maternity Benefit Act 1961, are entitled for maternity leave subject to the following conditions:

- i) They are engaged for a period of at least six months and after giving mandatory break they are further engaged.
- ii) They have worked in the East DMC for a period of not less than 80 (eighty) days immediately preceding the date of their expected delivery.
- iii) Maternity Leave will be for a period of not more than 12 (twelve) weeks of which not more than 6 (six) weeks shall precede the date of expected delivery.

3. The respondent no.4 allowed maternity leave for 84 days on full pay as she was on contract basis, in accordance with circular dated 27.07.2015. The applicant is aggrieved by this order and has filed the instant OA seeking the following reliefs:

- “8. (i) to direct to respondents to sanction the maternity leave of 180 days to the applicant as prayed by her vide her application which was filed through proper channel.
- (ii) to allow the OA with exemplary costs.”

4. According to the learned counsel for the applicant, following are the grounds based on which the applicant has made her claim:

- (i) That rules/ regulations and judicial verdicts of the Tribunal, Hon’ble High Court and the Hon’ble Supreme Court of India have not been considered while rejecting the applicant’s prayer for grant of 180 days maternity leave. In this regard, the learned counsel drew our attention to Rule 43 of Central Civil Services (Leave) Rules 1972, which reads as follows:

“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

180 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."

5. Further in **Mrs. Bharti Gupta Vs. Rail India Technical and Economical Services Ltd. (RITES) and others**, W.P. (C) No.4798/2003, the Hon'ble High Court while considering the issue of grant of maternity benefits to contract employees allowed the Writ.

6. Again in the case of **Ms. Prerna Vs. Govt. of NCT of Delhi and others**, O.A. 3647/2015, which was on the issue whether contractual employees engaged under Sarva Siksha Abhiyan can be paid maternity leave for 180 days, the OA was allowed. The Tribunal relied on judgment of Hon'ble Punjab and Haryana High Court in **Reena Singla Vs. State of Punjab and others** (CWP No.5142/2013) and order in OA 4212/2012, **Smt. Shweta Tripathi Vs. Govt. of NCT of Delhi and others**.

7. In **Smt. Shweta Tripathi Vs. Govt. of NCT of Delhi and others**, O.A. 4212/2012, the Tribunal after examining the law in this context has held and observed that Rule 43 of the CCS (Leave) Rules, 1972 is applicable on the contract employees and all the benefits as envisaged in Rule 43 were provided to the applicant in the said case. While considering the said case, the Tribunal has even taken judicial notice and cognizance of the law as held in the case of **Municipal Corporation of Delhi Vs. Female Workers (Muster Roll & ors)**, 2000 (3) SLJ 369

wherein the Hon'ble Supreme Court has held and observed that MCD is an Industry and while considering the various laws, judicial verdicts and gazette notifications of Govt. of India, it was held by the Hon'ble Supreme Court that even the maternity benefits are required to be extended to muster roll employees and non-grant of the said maternity benefits amounts to discrimination in view of the Article 15 of the Constitution of India.

8. In the case of **Dr. Shilpa Sharma Vs. The Chairman, NDMC and others**, O.A. 939/2011 the issue again was denial of maternity leave to contract employees. This Tribunal after considering all the laws in context of grant of maternity leave, has held and observed that the maternity leave is to be granted in view of the provision in that context and no case of a deserving candidate could be avoided and the harassment to the candidates must be avoided and the OA was allowed. The Tribunal in para no.15 has held and observed as follows:

"15. The present case is a glaring instance of avoidable litigation. Had the authorities concerned dealt with the matter with due regard to their constitutional duties, this litigation could have been avoided. Instead, they have chosen to proceed in utter disregard of their duties in flagrant violation of the requirements of rules and even disregard to the decisions rendered by the Courts. The application thus deserves to be allowed with costs."

9. The learned counsel for the applicant thus reiterated that in view of the above position in rules as well as different judgments/ orders of the Tribunal/ Hon'ble High Court/ Hon'ble

Supreme Court, the applicant should be granted 180 days maternity leave.

10. The respondents in their counter reply have stated that as per DMC Act 1957, the Corporation is competent to make its own regulation/ policy decision by following due procedure and is not bound by the decision taken by the Govt. of NCT of Delhi on similar subject. It is submitted that the applicant worked from 17.09.2010 to 28.02.2011 only and that she was on contract basis. It is argued that contractual employees are not covered under CCS (Leave) Rules. Moreover, as per office orders dated 24.02.2012 and 27.07.2015, contractual women teachers are entitled to only 12 weeks maternity leave.

11. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited.

12. In Mrs. Bharti Gupta (supra), the applicant was on contractual appointment, initially for a period of six months. Her contractual engagement came to an end on 16.10.2000. She applied for maternity leave on 15.10.2000. Maternity leave was denied as her contract period was over on 16.10.2000. The Hon'ble High Court allowed the Writ. We quote below para 8 to 14 of the judgment passed by the Hon'ble High Court as these discuss various aspects of the matter:

"8. In this view of the matter, and having regard to the fact that the petitioner is not pressing her claim for reinstatement the issue for decision is whether the respondent would

have denied maternity benefits under the 1961 Act.

9. The nature of maternity benefits and the entitlement of employees have been clearly spelt out by provisions of the Act. The provisions of the enactment apply to establishments, which have been defined in an expansive manner. Being a benevolent and social welfare legislation, the term "establishment" has to be construed liberally to include RITES.

10. Sections 4 & 5 of the Act oblige every employer of an establishment to extend maternity benefits under the Act, including leave/pay and maternity bonus. Section 12 underscores the independent and inflexible nature of the liability to mandate that no-one can be dismissed on account of pregnancy. It is a non-discriminatory provision. Section 27 mandates that provisions of the Act would have overriding effect.

11. In the Municipal Corporation of Delhi case (supra) the need for the Act, and its objective being in furtherance to Articles 15(3), 21, 38-39 and 42-43 of the Constitution of India was noticed. The Court also noticed that the Act was in tune with the United Nations' Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), 1979.

12. Articles 14 and 15 of the Constitution guarantee equality, Article 15(3) enables the State to make special provision for women. The Act makes provisions that are in furtherance of two objectives- affirmative action (Sections 4,5 and 27) and non-discrimination (Sections 12,21 and 23). Their universality is undeniable.

13. RITES, in my considered opinion, is an establishment covered under the Act. Equally, it is an instrumentality of State (under Article 12 of the Constitution of India) and therefore bound by Part III of the Constitution. The record shows that the petitioner continued in employment till 11.11.2000, as per the RITES itself. The last order, extending the contract of appointment by 6 months, was issued on May, 2000; the previous period had expired on 17.4.2000. Hence, the period commenced on

17.4.2000, and continued till 16.10.2000. In view of these admitted facts, and the circumstance that the petitioner went on leave with effect from 11.11.2000, after which she delivered a baby on 5.12.2000, the RITES cannot escape its obligation to pay benefits under the Maternity Benefits Act, 1961.

14. I accordingly, partly allow the petition. A direction is issued to the respondent RITES to calculate and release all amounts payable under the Maternity Benefits Act, 1961 (including full salary for the maximum periods of leave permissible under the Act and also the bonus amount admissible) within a period of six weeks from today. No costs."

13. In Ms. Prerna (supra), the issue was whether the contractual employees engaged under Sarva Siksha Abhiyan can be granted 180 days maternity leave. The Tribunal relied on the judgment passed by Hon'ble Punjab and Haryana High Court in **Reena Singla Vs. State of Punjab and others**, CWP No.5142/2013 and order of the Tribunal in Smt. Shweta Tripathi (supra) and allowed the OA.

14. In Female Workers (Muster Roll & ors) (supra), again the question of extending maternity leave benefits to women muster roll employees came up before the Hon'ble Supreme Court and the Hon'ble Supreme Court held that benefits must be extended to women muster roll employees as well.

15. The issue again came up in Dr. Shilpa Sharma (supra) and the Tribunal relying on earlier judgment by Hon'ble Rajasthan High Court and also Female Workers (Muster Roll & ors) (supra) and allowed the OA.

16. In Smt. Shweta Tripathi (supra), once again the issue had come up and relying on the law settled by the Hon'ble High Court and the Hon'ble Supreme Court, the Tribunal allowed the OA.

17. In view of the clear findings of the Tribunal, Hon'ble High Court and the Hon'ble Supreme Court, the OA succeeds. We allow the OA with a direction to the respondents to grant 180 days maternity leave to the applicant within a month from the date of receipt of a certified copy of this order. No costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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