

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

O.A No.100/2616/2015

New Delhi this the 23rd day of November, 2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)

Hon'ble Mr. P.K. Basu, Member (A)

Pooja Verma, aged about 33 years,
D/o Sh. Rajinder Kumar Verma,
R/o Room No.40, Hostel No.8,
AIIMS, Ansari Nagar,
New Delhi-110029
(Relieved on 27.3.2015). ... Applicant

(Argued by: Ms. Toral Banerjee, Advocate for Mr. S.N. Sharma,
Advocate)

Versus

1. Govt. of NCT of Delhi
Through the Chief Secretary/Secretary,
5th Floor, Delhi Sachivalaya, New Delhi.
2. Director of Education
Old Secretariat,
New Delhi-110054. ... Respondents

(By Advocate : Mrs. Harvinder Oberoi)

ORDER(ORAL)

Justice M.S. Sullar, Member (J)

The epitome of facts & material, which needs a necessary mention, for the limited purpose of deciding the core controversy involved in the instant Original Application (OA), and exposted from the record, is that, applicant, Ms. Pooja Verma, was engaged as a Guest Teacher in the capacity of Lecturer (Hindi) w.e.f. 25.08.2014 upto 10.05.2015 by respondents, vide offer of appointment dated

29.08.2014 (Annexure A-2). She performed her duty very well to the entire satisfaction of her superiors. It was pleaded that during the course of her employment, she became pregnant. Before applying for Maternity Leave, she requested and informed the Vice Principal that her expected date of delivery, as given by the doctor, is 14.03.2015 and she was further advised by the doctors, to be under medical supervision.

2. According to the applicant, thereafter she requested for one month Maternity Leave w.e.f. 11.03.2015 and further requested to permit to rejoin her duties, vide letter (Annexure A-3). The respondents have not considered her genuine request in this regard. She was admitted on 13.03.2015 at AIIMS Hospital, New Delhi and gave birth to a female child on 14.03.2015. She was helpless and could not attend her duties. Her husband informed the school authorities about the delivery and also submitted the leave application, but her request was declined without assigning any cogent reason. She sent a representation for consideration of her case about Maternity Leave and further requested to engage her for the year 2015-16 session in terms of previous contract, vide applications dated 27.03.2015, 30.04.2015, 20.05.2015 and 05.06.2015 (Annexure A-1 Colly).

3. The case of the applicant further proceeds, that she moved an application dated 30.03.2015 (Annexure A-5 Colly) under the RTI Act, 2005, and came to know from the replies

dated 25.04.2015 and 20.04.2015 (Annexure A-5 Colly) of the respondents that similarly situated female Guest Teachers, namely, S/Ms. Monika, Nidhi, Kundan, Shweta, Richa Garg, Jyoti Sharma, Babita, Lalita, Aruna, Monika Rani, Monika Balhari, Sanju Kumari and Sushila Kumari were granted the benefit of Maternity Leave and thereafter, they were allowed to join their duties. It was further informed that no guest teacher was discharged/dismissed during the period of pregnancy or on demand of Maternity Leave, as per letter dated 30.04.2015 (Annexure A-6) by the respondents. It was alleged that although similarly situated indicated female teachers were granted the benefit of Maternity Leave and were allowed to rejoin their duties after expiry of Maternity Leave. But, the same very benefit was illegally denied to the applicant by the respondents, for the reasons best known to them, vide impugned orders dated 27.03.2015, 30.04.2015, 20.05.2015 and 05.06.2015 (Annexure A-1 Colly).

4. Aggrieved thereby, the applicant has preferred the instant OA, challenging the impugned orders, on the following grounds:-

- “5.1. That the respondents have granted the maternity leave to the other similar situated guest teacher and thereafter allowed them to join back but in case of applicant who has been relieved by the impugned order is clearly a discrimination and as such there is clear cut violation of the various Articles such as 14, 16 and 21 of the constitution of India.
- 5.2. That by not granting the maternity leave to the applicant is violation of the fundamental Rights to enshrined under the Constitution of India.

- 5.3. That the respondents failed to consider the facts that the CCS rules 43 which allows even not only contract employees but also on apprentice are also authorize for the maternity leave hence by rejecting the leave application/representation of the applicant is violation of CCS Rules.
- 5.4. That the respondents further failed to consider the DoPT OM No.12016/3/84-Estt. (C) dated 12.04.1985 which is applicable to the contract employees also hence violation of the same.
- 5.5. That the respondents further failed to consider to various judgments of the Hon'ble Supreme Court of India and Hon'ble High Court of Delhi on this issue hence it is violation of the judgments."

5. On the strength of the aforesaid grounds, the applicant seeks to quash of the impugned orders, in the manner indicated hereinabove.

6. Sequelly, the contesting respondents refuted the claim of the applicant and filed the reply, wherein it was pleaded as under:-

"That the Applicant, Pooja Verma, was engaged as Guest Teacher, In the capacity of Lecturer Hindi, in Govt. Co-Ed. Sr. Sec. School, Bhati Mines, w.e.f. 25/08/2014 and was relieved from her service on 10/03/2015, although the contract was upto 10/05/2015, On account of her admission in AIIMS for the Delivery of child, as stated by her. She was not granted maternity leave as the Engagement of Guest Teachers is a stop gap arrangement in the academic interest of students. Guest Teachers are appointed on daily basis and, NO PAID leave is allowed under this scheme. This is made clear at the beginning of the Engagement of letters, to avoid any confusion."

7. However, on merits, the respondents have not specifically denied the grant of similar treatment/benefit of Maternity Leave and reengagement to similarly situated abovementioned female teachers. Virtually acknowledging the factual matrix & reiterating the validity of the impugned orders, the respondents have stoutly denied all other allegations and grounds contained in the OA and prayed for its dismissal. That is how we are seized of the matter.

8. Having heard the learned counsel for the parties, having gone through the record with their valuable assistance and after considering the entire matter, we are of the firm view that the instant OA deserves to be partly allowed, in the manner mentioned hereinbelow.

9. At the very outset, learned counsels for the parties are at *ad idem* that subsequently the applicant was reengaged on the same post by the respondents. Thus, it would be seen that the facts of the case are neither intricate, nor much disputed and falls within a very narrow compass. Such this being the position on record, now the short and significant question that arises for our consideration in this case is as to whether the applicant is entitled to Maternity Leave w.e.f. from 13.03.2015 to 12.04.2015 or not?

10. Having regard to the rival contentions of the learned counsel for the parties, to our mind, the answer must obviously be in the affirmative in the peculiar background and in the special circumstances of this case.

11. As is evident from the record that the applicant was initially engaged as Guest Teacher in the capacity of Lecturer (Hindi) w.e.f. 25.08.2014. The respondents have admitted in their reply that the contract was upto 10.05.2015. Admittedly, she became pregnant during the course of her employment. Subsequently, she was admitted in AIIMS Hospital, New Delhi on 13.03.2015. She gave birth to a female child on

14.03.2015. She was stated to have been relieved from her services on 10.03.2015, much before the expiry of her engagement period on account of her admission in AIIMS Hospital, New Delhi, for delivery as she was not granted Maternity Leave although her contract was upto 10.05.2015. Now it is not a matter of dispute that the applicant was subsequently reengaged on the same post by the respondents.

12. Therefore, once it is proved on record that the applicant was engaged on 25.08.2014 and her period of contract was upto 10.05.2015, she became pregnant during the course of her employment and gave birth to a female child on 14.03.2015 in AIIMS Hospital, New Delhi. In that eventuality, she is entitled to the benefit of Maternity Leave w.e.f. 13.03.2015 to 12.04.2015 under the provisions of CCS (Leave) Rules, as has already been granted to similarly situated indicated female teachers by the respondents. The respondents cannot legally be permitted to deny the same benefit of Maternity Leave to the applicant.

13. There is yet another aspect of the matter, which can be viewed entirely from a different angle. As indicated hereinabove, the respondents have granted the benefit of Maternity Leave to other indicated similarly situated female guest teachers. Hence it cannot possibly be saith and the respondents cannot be heard to say that the applicant is not entitled to the same benefit of Maternity Leave. Thus, she is

also entitled to the benefit of Maternity Leave under the similar set of circumstances on the principle of parity in view of law laid down by Hon'ble Apex Court in cases ***Man Singh Vs. State of Haryana and others AIR 2008 SC 2481*** and ***Rajendra Yadav Vs. State of M.P. and Others 2013 (2) AISLJ 120*** wherein, it was ruled that the concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the Doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. It was also held that the administrative action should be just on the test of 'fair play' and reasonableness.

14. Thus, seen from any angle, the applicant is also entitled to the benefit of Maternity Leave w.e.f. 13.03.2015 to 12.04.2015. At the same time, it is held that the respondents are liable to pay her the salary and allowances of the said period, in the obtaining circumstances of the case.

15. In the light of the aforesaid reasons, the instant OA is partly accepted. The impugned orders/letters dated 27.03.2015, 30.04.2015, 20.05.2015 and 05.06.2015

(Annexure A-1 Colly) are hereby set aside. As a consequence thereof, the respondents are directed to make the payment of salary and other allowances to the applicant for the period 13.03.2015 to 12.04.2015 forthwith. However, the parties are left to bear their own costs.

(P.K. BASU)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
23.11.2016

Rakesh