

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2732/2014

Reserved on : 12.08.2015
Pronounced on: 07.10.2015

Hon'ble Mr. Justice Syed Rafat Alam, Chairman

Dr. Rohini Garg W/o Shri Gaurav Aggarwal,
R/o 719, Modern Apartment,
Sector 15, Rohini,
New Delhi.

... Applicant

(By Advocate : Shri Sunil Kumar Tiwari)

Versus

1. Dada Dev Matri Shishu Chikitsalaya,
Dabri, New Delhi
through its D.M.S./HOO.

2. Government of NCT of Delhi
through its Secretary of Health Dept.,
The Deputy Health Secretary,
9th Level, I.P. Extension,
Delhi Secretariat, Delhi.

... Respondents

(By Advocate: Ms. Ritika Chawla)

O R D E R

In the instant Application, the short grievance of the applicant is that her request for grant of maternity leave and benefits as per the Maternity Benefit Act, 1961 (hereinafter referred to as the Act, 1961) is not given by the respondents, and, therefore, she has moved this Application under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs::

- “A) To call for the relevant records/files concerning the applicant;
- B) to issue appropriate directions to the respondents to forthwith grant maternity leave and also to grant all maternity benefits to the applicant as per the Maternity Benefit Act, 1961;
- C) to pass any other order as this Hon’ble tribunal deems fit and proper.

INTERIM ORDER, IF ANY PRAYED FOR:

No interim order is sought for.”

2. The applicant in the Application has claimed that she worked with the respondents as Senior Resident on *ad hoc* basis since 25.08.2011 till 10.11.2013 against a vacant post, and since she has worked for more than 240 days, she is entitled to get maternity leave and other benefits as per the provisions of the Act, 1961, and, therefore, denial of the same is violative of Articles 14 and 16 of the Constitution. It appears that the applicant applied for grant of maternity leave vide application dated 04.10.2013 w.e.f. 04.10.2013, copy whereof is enclosed as Annexure A-2. However, the respondent No.1 declined to grant the leave vide order dated 17.10.2013, and further provided that her absence would be treated as leave without pay. It further appears that the respondent No.1 also informed the Deputy Health Secretary, Government of NCT of Delhi that the applicant’s request for grant of maternity leave is rejected for the reason that she has not completed 160 days in 12 months immediately preceding the date of her expected date of delivery, as required under the provisions of the Act, 1961, and as such the leave cannot be granted. As per the applicant’s version, she ultimately proceeded on leave without pay and also blessed

with a baby on 23.10.2013. The birth certificate of the child is enclosed as Annexure A-5.

3. On the other hand, the respondents have filed counter affidavit denying the admissibility of maternity leave to the applicant on the ground *inter alia* that her appointment was purely on *ad hoc* basis for 89 days, on expiry whereof the same was renewed from time to time up to 10.11.2013, and thus the applicant not having worked for 160 days during the preceding 12 months, she is not entitled to the benefit. It has also been stated in the counter affidavit that her appointment from 14.08.2013 to 10.11.2013 was a fresh appointment on *ad hoc* basis and, therefore, she is not entitled to claim the relief sought in this Application.

4. I have heard Shri Sunil Kumar Tiwari, learned counsel for the applicant and Ms. Ritika Chawla, learned counsel appearing on behalf of the respondents.

5. Learned counsel for the applicant vehemently contended that the applicant was appointed on *ad hoc* basis w.e.f. 25.08.2011 and continuously worked up to 04.10.2013 when she proceeded on leave though her extended tenure was to expire on 10.11.2013. He further submitted that the rejection of her application for grant of maternity leave benefit on the ground that she has not completed 160 days of service in one calendar year is misconceived and cannot be accepted in the facts of the case. It is submitted that there is no dispute that the applicant was given appointment w.e.f. 25.08.2011 on *ad hoc* basis for 89 days which was time to time extended with artificial break of one day, and continued up to

10.11.2013, and, therefore, she has completed 60 days in one calendar year as required under the Act, 1961. In support of the applicant's claim, he has relied on the judgments of the Apex Court in *Rattan Lal and others v State of Haryana and others* [(1985) 4 SCC 43]; *Sri Rabinarayan Mohapatra v State of Orissa and others* [(1991) 2 SCC 599]; *Municipal Corporation of Delhi v Female Workers (Muster Roll) and another* [(2000) 3 SCC 224]; judgment of the High Court of Allahabad in *Mrs. Pramila Rawat v District Judge, Lucknow and another* [2000 (87) FLR 134]; *Rama Pandey v Union of India & others* [WP(C) N0.844/2014, decided on 17.07.2015 – Delhi High Court]; and a judgment of Chandigarh Bench of the Tribunal in *Ms. Sonika Kohli and another v Union of India and others* [2004 (3) SLJ 54 9CAT)].

6. On the other hand, learned counsel for the respondents opposed the prayer and submitted that the appointment of the applicant being purely on *ad hoc* basis for a limited period and, therefore, every renewal of appointment is to be treated as a fresh appointment and as such she has not completed the statutory period of service for claiming the benefit of maternity leave. Hence her request has been rightly rejected.

7. In view of the pleadings of the parties and the submissions made, the only issue which requires to be addressed is as to whether the applicant is eligible and entitled to get maternity leave under the rules or the provisions governing such leave or not.

8. In order to appreciate the controversy involved and the issue arising therefrom, it would be appropriate to examine as to whether the

maternity leave claimed by the applicant would be governed or granted under the Act, 1961 or under the CCS (Leave) Rules, 1972. Significantly, both the applicant as well as the respondents proceeded on the assumption that the Act, 1961 would apply in the facts of the case, and relying on Section 5 of the aforesaid Act, the argument advanced on behalf of the applicant is that since the applicant has worked for more than 80 days in the 12 months immediately preceding the date of her expected delivery, and, therefore, she is eligible to claim maternity leave, whereas the respondents' stand is that as per Section 5 unless an employee has worked for not less than 160 days in the 12 months immediately preceding the date of her expected delivery, maternity leave cannot be granted. The Act, 1961 was enacted in the year 1961 and came into force w.e.f. 12th September, 1961. From a reading of the statement of objects and reasons of the Act, it would appear that prior to enactment of the Act, maternity protection was provided under different State Acts and three Central Acts, viz., the Mines Maternity Benefit Act, 1941, the Employees' State Insurance Act, 1948 and the Plantations Labour Act, 1951. However, taking note of the fact that there was a considerable diversity in the provisions of the aforesaid Acts relating to qualifying conditions, period and rate of benefit, etc., the Act, 1961 was enacted to reduce, as far as possible, the existing disparities in this respect. The statement of objects and reasons further provides that it would apply to all establishments, including mines, factories and plantations, except those to which the Employees' State Insurance Act, 1948 applies and its provisions approximate as nearly as possible to those

of that Act. Section 2 of the Act, 1961 provides its application. It reads as under:

“2. Application of Act.- (1) It applies, in the first instance,--

- (a) to every establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;
- (b) to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months:

Provided that the State Government may, with the approval of the Central Government, after giving not less than two months’ notice of its intention of so doing, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply also to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

(2) Save as otherwise provided in sections 5A and 5B, nothing contained in this Act] shall apply to any factory or other establishment to which the provisions of the Employees’ State Insurance Act, 1948 (34 of 1948), apply for the time being.”

It would appear from a careful reading of the aforesaid provision that it applies to the establishments being a factory, mine or plantation, including such establishments belonging to Government, and where persons are employed for the exhibition of equestrian, acrobatic and other performances. “Establishment” is defined in Section 3(e) as under:

“(e) “establishment” means —

- (i) a factory;
- (ii) a mine;
- (iii) a plantation;
- (iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;
- (iva) a shop or establishment; or

- (v) an establishment to which the provisions of this Act have been declared under sub-section (1) of section 2 to be applicable;"

Therefore, from a reading of the two provisions, namely, Section 2 and definition of "establishment" given in Section 3, it is clear that it would not be applicable in the matter of maternity leave sought by the applicant as she was working as Senior Resident Doctor under the Government of NCT of Delhi pursuant to the offer of appointment dated 25.08.2011. It was clearly provided in the letter of appointment that *ad hoc* appointment is given for 89 days or till regular Senior Resident (Medicine) is appointed, whichever is earlier, subject to the terms and conditions enclosed with the offer of appointment. Clause 15 of the terms and conditions provides that other conditions of service would be governed by the relevant rules and orders in force from time to time and leave will be given as per CCS (Leave) Rules, 1972. The applicant having accepted the offer of appointment with the aforesaid condition joined the post. The claim of the applicant for grant of maternity leave, therefore, would be governed as per CCS (Leave) Rules, 1972, rule 43 whereof provides grant of maternity leave.

9. Rule 43 of the CCS (Leave) Rules, 1972 provides grant of maternity leave to female government servants. It reads as under:

"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 (135 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 to whom Employees' State Insurance Act, 1948 (34 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 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.

(4) (a) Maternity leave may be combined with leave of any other kind.

(b) Notwithstanding the requirement of production of medical certificate contained in sub-rule (1) of Rule 30 or sub-rule (1) of Rule 31, leave of the kind due and admissible (including commuted leave for a period not exceeding 60 days and leave not due) up to a maximum of one year may, if applied for, be granted in continuation of maternity leave granted under sub-rule (1).

(5) Maternity leave shall not be debited against the leave account."

Sub-rule (1) of rule 43 provides for grant of maternity leave to all female government servants, including an apprentice, with less than two surviving children, to the extent of 135 days from the date of commencement of the leave. Sub-rule (2) provides that during such period, she would be entitled to leave salary equal to the pay drawn immediately before proceeding on leave. The applicant is accordingly entitled for grant of maternity leave from the date she proceeded on such leave, i.e., 04.10.2013 up to 10.11.2013 when her extended tenure expired.

10. Reliance placed on the judgments in *Rattan Lal and others v State of Haryana* (supra); *Sri Rabi Narayan Mohapatra v State of Orissa* (supra); *Municipal corporation of Delhi v Female Workers (Muster Roll)* (supra); *Mrs. Pramila Rawat v District Judge, Lucknow* (supra), *Rama Pandey v Union of India* (supra) of Delhi High Court; and that of the Chandigarh Bench of this Tribunal in *Ms. Sonika Kohli v Union of India* (supra), is misplaced in the facts of the present case. However, as noted above, the applicant is entitled to get maternity leave under rule 43 of the CCS (Leave) Rules, 1972.

11. The Application is, therefore, disposed of with the direction to the respondents to grant maternity leave to the applicant from 04.10.2013 up to 10.11.2013, along with salary equal to the pay drawn by her immediately prior to proceeding on such leave expeditiously, preferably within a period of three months from the date of receipt of this order. There shall, however, be no order as to costs.

(Syed Rafat Alam)
Chairman

/as/