Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.3647/2015

Tuesday, this the 2nd day of February 2016

Hon'ble Mr. A.K. Bhardwaj, Member (J)

Ms. Prerna
w/o Arvind Kumar
r/o H.No.593, Vill. Khurd
Near Punjab National Bank
Delhi-82
(Age 26 years)
Contract Teacher

..Applicant

(Mr. Ajesh Luthra, Advocate)

Versus

1. Govt. of NCT of Delhi & others
   Govt. of NCT of Delhi through
   the Chief Secretary
   5th Floor, Delhi Sachivalaya,
   New Delhi

2. Director of Education
   Directorate of Education
   GNCT of Delhi
   Old Secretariat, Delhi

3. The Deputy Director /DPO SSA
   Distt. North West B
   FU Block, Pitampura, Delhi

4. The Principal
   Govt. Sarvodaya Co. Ed.
   Sr. Sec. Vidayala
   Sector-7, Rohini, Delhi-85

..Respondents

(Mr. Vijay K. Pandita, Advocate)

O R D E R (ORAL)

The short issue arises to be determined in the instant Original Application is "whether the contractual employees engaged under Sarva Siksha Abhiyan (SSA) can be paid the maternity leave for 180 days". The

issue is, in all fours, of the judgment dated 16.05.2013 passed by the Hon'ble Punjab and Haryana High Court in **Reena Singla** v. **State of Punjab & others** (CWP No.5142/2013). Relevant excerpt of the judgment reads thus:-

> "Further, the provisions, as contained in Chapter -III of the Manual on Financial Management and Procurement, were not brought to the notice of the Court and, therefore, the Court had no occasion to consider the same. The regulations, as framed by the SSA Society cannot, thus, be inconsistent with the mandate of manual, which clearly lays down that the service conditions should be similar to that of the Government school teachers. It has further been clarified that it would be similar to the teachers of the State Government concerned where the SSA Society has been formulated as per the procedure laid down in the manual. Accordingly, the Rules, as applicable to the regular Government employees viz-a-viz the service conditions having similarity with regard to the claims would be applicable.
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> In the present case, the claim of the petitioner is limited to the extent of grant of maternity leave of 180 days. It is true that under the Maternity Benefit Act, 1961, a woman is entitled to maternity leave of six weeks. However, there is no bar to the grant of benefits over and above the said period, as specified in Section 5 of the 1961 Act. The State of Punjab as well as the Central Government having adopted the norm of 180 days to be the maternity leave, the employees, who are working in the State of Punjab under the SSA Society, would be entitled to the same benefit of 180 days. As per Rule 8.137-A of the Punjab Civil Services Rules Volume-I Part-I and the circular dated 19.10.2012 (Annexure P-5) issued by the Director Education Department (Secondary Education) Punjab, petitioner would be entitled to the grant of 180 days of maternity leave. Even under Rule 43(1) of Central Civil Services (Leave) Rules, 1972, maternity benefit has been now enhanced to 180 days from 135 days, which is in consonance with recommendations of the Sixth Central Pay Commission relating to maternity and child care leave. Government of India has itself, in its report submitted before the United Nations in its combined fourth and fifth periodic reports relating to Convention on the Elimination of All Forms of Discrimination against Women, in para 27 stated that maternity leave for Government and public sector employees has been increased from 135 days to 180 days. In its Children's Alternative Report to UNCRC, again the Government of India has stated that the maternity leave for Government employees has been increased from 135 to 180 days. By the Government of West Bengal, Andhra Pradesh, Maharashtra, Tamil Nadu and Jharkhand, where the SSA Scheme is being run, 180 days of maternity leave is being granted to its employees. The scheme admittedly being a Central Government sponsored scheme, the

employees covered under the said scheme would be entitled to the same benefits as the employees of the Government of India as far as the maternity leave is concerned because the said benefit to an employee is a beneficial scheme, which is relatable to the public policy of the Government and in consonance with the Articles 39 and 42, Part-IV of the Constitution of India containing the directive principles of State Policy. There can be no discrimination on this score with regard to the grant of maternity benefits to a female employee especially when the conditions of the scheme clearly lays down that the service conditions should be similar to that of Government school teachers. The judgments relied upon by the counsel for the respondents only deal with a situation where no maternity leave was granted at all there the Court proceeded to grant of benefit under the Maternity Benefit Act, 1961 where six weeks of maternity leave stands provided and accordingly, the said benefit was granted by the Courts.

In view of the above, the present writ petition is allowed. The impugned order dated 01.03.2013 (Annexure P-7) passed by the Director General School Education-cum-State Project Director, Sarav Sikhiya Abhiyan Authority, Punjab-respondent No. 2 is hereby quashed. Petitioner is held entitled to the grant of 180 days of maternity leave."

2. The aforementioned judgment of Hon'ble Punjab and Haryana High Court is binding on this Tribunal. Besides also in **Smt. Shweta Tripathi & another** v. **Govt. of NCT of Delhi & others** (O.A. No.4212/2012) decided on 17.09.2013, this Tribunal could take a view that even the contractual employees should be entitled to maternity leave to the extent of 180 days. Paragraphs 9 to 11 of the aforementioned Order read thus:-

"9. In Dr. Shilpi Sharmas case (supra), this Tribunal has already dealt with this issue in detail. In the said OA, this Tribunal has also considered the judgment of the High Court of Rajasthan in Municipal Corporation of Delhi vs. Female Workers (Muster Roll) & Anr., 2000(3) SLJ 369 wherein it has been held as under:-

> "Merely because the respondents would chose to put her on consolidated salary and state it to be a contractual appointment, the fact that she is a women employee cannot be lost sight of and the essential benefits fundamentally dealing with the very basis of human rights of allowing maternity benefit to the woman cannot be and ought not to have been ignored; and the petitioner ought to have been allowed maternity leave as applied for. It may be pointed out that there had not been any

other reason of denying maternity leave to the petitioner except that she was working on consolidated salary on contract basis. Such being a proposition already declared unacceptable, the action of the respondents is not only illegal but mala fide too.

10. In the above facts and circumstances of the case, I allow this OA with the direction to the Respondents to treat the period of absence of both the Applicants for duty to the extent of 180 days as maternity leave with consequential benefits, in terms of Rule 43 of the CCS (Leave) Rules, 1972. They shall also comply with the aforesaid direction issuing appropriate orders and giving the monetary benefits to the Applicant within a period of 2 months from the date of receipt of a copy of this order.

11. We also notice, while dealing with the request of the Applicant No.1, Mrs. Shweta Tripathi, the Superintendent, Children Home for Girls, Nirmal Chaya Complex, Jail Road, New Delhi was totally arbitrary and unconcerned. She has not even forwarded the application of the Applicant to the competent authority but returned her application in original scribbling on it and finding fault with the officer who forwarded her request. As a result, the said Applicant was forced to approach the Tribunal incurring financial loss. In the case of the second Applicant, the Respondents have allowed only 12 weeks Maternity Leave whereas she was entitled for 180 days. In the above circumstances, I also allow cost of litigation quantified at Rs.5000/- to Applicant No.1 and Rs.2500/- to Applicant No.2 which shall be paid to them within the aforesaid period of 2 months."

3. As has been held by the Hon'ble Supreme Court in **Sub Inspector Rooplal & another** v. **Lt. Governor through Chief Secretary, Delhi & others**, (2000) 1 SCC 644, a Bench of this Tribunal should give due regard to the Order of coordinate Bench of equal strength and in case of there being any difference of opinion, the matter should be referred to the Larger Bench. Relevant portion of the said judgment reads as under:-

"12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier

Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate Court is bound by the enunciation of law made by the superior Courts. A coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. This Court in the case of Tribhuivandas Purshottamdas Thakur v. Ratilal Motilal Patel, (1968) 1 SCR 455 : (AIR 1968 SC 372) while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same Court observed thus (para 11 of AIR) :-

> "The judgment of the Full Bench of the Gujarat High Court was bidning upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J. in Pinjare Karimbhai's case (1962 (3) Guj LR 529) and of Macleod, C.J., in Haridas's case (AIR 1922 Bom 149) did not lay down the correct law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by Courts of coordinate authority or of superior authority. Gajendragadkar, C. J. observed in Lala Bhagwan v. Ram Chand, (AIR 1965 SC 1767).
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> "It is hardly necessary to emphasis that considerations of judicial propriety and decorum require that if a learned single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a single Judge, need to be re-considered, he should not embark upon that enquiry sitting as a single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety."

13. We are indeed sorry to note the attitude of the tribunal in this case which, after noticing the earlier judgment of a coordinate Bench and after noticing the judgment of this Court, has still thought it fit to proceed to take a view totally contrary to the view taken in the earlier judgment thereby creating a judicial uncertainty in regard to the declaration of law involved in this case. Because of this approach of

the latter Bench of the tribunal in this case, a lot of valuable time of the Court is wasted and the parties to this case have been put to considerable hardship.

4. In view of the aforementioned, the Original Application is allowed. Respondents are directed to grant fully paid maternity leave of 180 days to the applicant. Needful may be done within three months from the date of receipt of a copy of this Order. No costs.

(A.K. Bhardwaj)
Member (J)

February 2, 2016
/sunil/