

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.3734/2015

M.A.No.1596/2016

Order Reserved on :05.09.2017
Order Pronounced on:12.10.2017

HON'BLE MS. PRAVEEN MAHAJAN, MEMBER (A)

Anuradha Arya
Applicant ID:2014253731
TGT Sanskrit
GGSSS, West Patel Nagar
New Delhi -08.

.... Applicant

(By Advocate : Shri Amit K.Pateria)

Versus

1. The Principal
Govt. Girl Sr. School
West Patel Nagar
New Delhi-08.
2. Govt. of NCT of Delhi
Through Chief Secretary
Delhi Secretariat, Player's Building
IP Estate, New Delhi.
3. Director, Directorate of Education
Old Secretariat, 5 Alipur Road,
Delhi.

.... Respondents

(By Advocate : Shri K.M.Singh and Deptt.representative Shri Ganesh Prasad)

ORDER

By Hon'ble Ms. Praveen Mahajan, Member(A):

The short grievance of the applicant is that she has been denied grant of maternity leave & benefits as per the maternity benefit Act, 1961 by the Respondents. She has therefore moved this application under Section 19 of Administrative Tribunals Act 1985, seeking the following reliefs :-

"a. Direct the respondents to allow the applications of the applicant filed on 25.07.2015 for seeking 6 (six) months maternity leaves and other benefits.

b. Pass any other or further order(s), in favour of the Applicant, which this Hon'ble Tribunal may deem fit, just & proper in the above-mentioned facts & circumstances."

3. The brief facts of the case are that the applicant joined the services of the respondents on 20.08.2010 as a guest teacher in the capacity of Trained Graduate Teacher (TGT) Sanskrit. Her engagement was renewed from time to time. The applicant is posted at Govt. Girls Senior Secondary School, West Patel Nagar w.e.f. 15.09.2014 where her engagement has been renewed vide engagement letter dated 07.07.2015. It is stated that the applicant had duly informed the respondent No.1 about the advance stage of her pregnancy and expected date of delivery vide her application dated 25.07.2015 and sought maternity

leave. However, respondent No.1 verbally informed the applicant that being an ad hoc/contract employee, she is not entitled for such benefits. The applicant made various representations to the concerned authorities. Subsequently, she was advised complete bed rest by the consulting Gynaecologist. Under the circumstances, while awaiting response from the respondents, the applicant was left with no other option than taking maternity leave. This fact was duly informed by the applicant to the respondent No.1 vide her application dated 21.08.2015. The applicant was informed by the respondents vide letter dated 31.08.2015 that her request for maternity leave as comparable with regular teachers, did not fall within the terms and conditions of the offer letter, nor was it admissible under the CCS (Leave Rules) 1972.

4. Being aggrieved by the denial of maternity leave, the applicant has approached this Tribunal. It is averred that the applicant has been refused permission to join the service, despite several representations to the respondents to allow her to join. She states that the academic session was about to come to end and respondents will start engaging ad hoc TGTs for the next academic session of 2016-17. Therefore, the respondents may be directed to consider her claim and reinstate her to the post of TGT (guest teacher) Sanskrit with all consequential benefits.

5. She has also filed an MA-1596/2016, requesting to :-

"a. Allow the instant Application thereby directing the Respondents to allow the Applicant to resume her services as a Guest Teacher, in the capacity of TGT Sanskrit, in the Government Girls Senior Secondary School, West Patel Nagar, New Delhi in terms of the engagement letter dated 07.07.2015.

b. Direct the Respondents to give back wages to the Applicant with effect from 01.12.2015 till the disposal of this Application along with all consequential benefits for the Academic year 2015-16.

c. Direct the Respondents to not to treat the pendency of the O.A.No.3734 of 2015 as well as of the instant Application for her engagement as Guest Teacher, TGT-Sanskrit, for the upcoming new academic session of 2016-17.

If not then alternatively,

Direct the Respondents to reinstate the Applicant and continue with her services till disposal of instant Applicant as during the pendency of the applicant was engaged, will come to an end and this Application will become infructuous."

6. The respondents in counter to the OA, have stated that at the time of her initial appointment on 07.07.2015, the applicant was duly informed that her engagement was subject to terms and conditions applicable to temporary/ad hoc employees. It was clearly mentioned that no claim for salary, allowances, facilities and "other benefits" accruing to the regular teachers shall be entertained and that she shall not file any court case regarding salary and regularization etc. Accordingly Vide Annexure A/5

letter dated 31.08.2015, the applicant was duly informed that her request for grant of maternity leave was not covered within the terms and conditions of offer letter. Hence the respondents were well within their right to deny her maternity leave applied for, by her.

7. Heard both the counsels and perused the records.

8. Learned counsel for the applicant reiterated the submissions already made in the OA. He emphasized that the applicant is entitled to the maternity benefit upto 2nd pregnancy as per the statutory law on the subject. This was the first issue of the applicant and she had applied for maternity leave for the first time. The ad hoc employees, he argued are not precluded from availing maternity leave and thus action of the respondents is discriminatory under Article 42 of Constitution of India. He also placed reliance on the judgment of Hon'ble Apex Court in the case of **Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) And Another** reported in (2000) 3 SCC 224 wherein it has been held that:

"The provisions of the Act entitle maternity leave even to women engaged on casual basis or on muster roll basis on daily wages and not only those in regular employment, the provisions of the Act in this regard, held, are wholly in consonance with the Directive Principles of State Policy contained in Arts 39 specially in Articles 42 and 43.

9. Per contra learned counsel for the respondents submitted

that the applicant is working for the respondents w.e.f. 20.08.2010 as a guest teacher on ad hoc terms and conditions. The appointment letter issued to her, categorically states that benefit accruing to regular teachers shall not be given to her. Accordingly, application dated 31.08.2015 is in accordance with law and the prayer of the applicant needs to be dismissed.

10. In view of the pleadings of the parts & submissions made, the only issue which requires to be addressed is whether the applicant, an ad hoc employee, is eligible & entitled to get maternity leave under the rules or provisions governing such leave.

11. It would be apt at this stage to reproduce Section 5 of the Maternity Benefit Act, 1961, "Right to payment of maternity benefit"

"5. Right to payment of maternity benefit-

[(1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.]

Explanation- For the purpose of this subsection, the average daily wage means the average of the woman's wage payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents her

self on account of maternity, {the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 or ten rupees, whichever is the highest.}

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than (eighty days) in the twelve months immediately preceding the date of her expected delivery.

Provided that the qualifying period of (eighty days) aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

Explanation.—For the purpose of calculating under this sub-section the day on which a woman has actually worked in the establishment, [the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages] during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

(3) [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:]

Provided that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

[Provided further that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving

behind in either case the child, the employer shall be liable for the maternity benefit for the entire period but if the child also dies during the said 3 period, then, for the days up to and including the date of death of the child.]"

12. The 44th Session of Indian Labour Conference (ILC) has also recommended for enhancing maternity leave under Maternity Benefit Act, 1961. This recommendation was reiterated in 45th and 46th Session of ILC.

13. A female govt. employee is also entitled to Child Care Leave (CCL) as per the recommendation of the 6th Central Pay Commission of 730 days' during the entire service, with certain conditions.

14. The International Labour Organization (ILO) has conducted the survey for maternity and paternity at work (Law and practice across the world) in 2014. The survey has covered the period w.e.f. 1994-2013 for duration of maternity leave across the world, maternity cash benefits, finance of maternity cash benefits, scope and eligibility requirements. The survey has also been undertaken for paternity, parental and adoption leave as well as protection of employment during maternity and non-discrimination in employment in relation to maternity and non-discrimination in employment in relation to maternity, health arrangement of working time and arrangement of nursing breaks.

15. According to the Article 42 of the Constitution of India, “the State is required to make provision for securing just and humane conditions of work and for maternity relief.”

16. It would be relevant at this stage to reproduce the observations of the Hon. Apex Court in (1987) 2 SCC 165 in the case of '**Vincent Panikurlangara v. Union of India & others**', who held that in a welfare State, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health. Their Lordships observed that, a healthy body is the very foundation for all human activities. That is why the adage “Sariramadyam Khaludharma Sadhanam”. In a welfare State, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health.

17. Before I adjudicate the matter finally, it is important to record that a consistent view has been taken by the courts, and rightly so, that contractual employees cannot be equated with regular employees. The benefits accruing to an adhoc employee, are necessarily different than those admissible to a regular employee. The contention of the respondents, and their rejection

order dated 31.08.2015 of maternity leave to the applicant is based on this very premise. While this may be true in all other cases of ad hoc employees, the nature of the "benefit" being claimed by the applicant in the instant OA, cannot be routinely clubbed, or, equated to any "other benefit" being claimed by an ad hoc employee. Grant of the benefit of maternity leave to a woman employee, whether ad hoc or regular, has to be dealt with on a different footing.

18. Their Lordships of Hon. Apex Court in **(1996) 4 SCC Page 37** in the case of 'Paschim Banga Khet Mazdoor Society & others v. State of W.B. & another', have held that the Constitution envisages the establishment of a welfare State at the federal level as well as at the State level. In a welfare State, the primary duty of the Government is to secure the welfare of the people.

19. Their Lordships of Hon. Apex Court in **2000 (3) SCC 224** in the case of '**Municipal Corporation of Delhi Vs. Female Workers(Muster Roll)** and another', have held that:

" a just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of the society have to be honoured and treated with dignity at cases where they work to earn their livelihood. To become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who

is in service, the employer has to be considerate and sympathetic towards her and must realize the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in a womb or while rearing up the child after birth.”

33. A just social order can be achieved only when inequalities are obliterated and everyone is provided what, is legally due. When who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear, of being victimized for forced absence during the pre or post-natal period.”

20. The legislation by way of Maternity Leave Benefit Act, 1961 shows the gravity and seriousness which the Govt. of India has accorded to this extremely sensitive issue.

21. In view of the discussions above, I am of the view that benefits of maternity leave with full salary cannot be denied to a female employee appointed on contractual basis. This view finds support in various judgments of the Hon'ble Apex Court cited above. The applicant is entitled to maternity leave as per provision of Section 5 of the maternity benefit Act, 1961. I, accordingly allow this OA with the following direction to the respondents:

"The applicant may be allowed to resume service as a guest teacher in terms of her original engagement letter dated 07.07.2015. The respondents shall give the back wages to the applicant w.e.f. 01.12.2015 till the disposal of this application with all consequential benefits for the academic year 2015-2016."

22. The above directions shall be implemented within a period of three months from the date of receipt of a certified copy of the order. No order as to costs.

(Praveen Mahajan)
Member(A)

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