

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.2217/2017

Reserved on:20.08.2018
Pronounced on:23.08.2018

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

Dr. Pallavi
Ashirwad Apartment
Flat No.40, Sector 12
Dwarka, New Delhi.

... Applicant

(By Advocate: Shri Gaurav Mahajan for Shri Keshav Ray Chaudhauri)

VERSUS

1. Govt. of NCT of Delhi
(Through Secretary, Department of Health and
Family Welfare)
Health and Family Welfare Department
9th Level, A-Wing, IP Extension
Delhi Secretariat, Delhi – 110 002.

2. The Medical Superintendent
Shri Dada Dev Matri Avum Shishu Chikitsalaya
Govt. of NCT of Delhi
Dabri
New Delhi – 110 045.

...Respondents

(By Advocate: Shri Pradeep Kumar with Shri Parveen Kumar Nagpal)

O R D E R

The OA has been filed praying the following reliefs :-

- “(a) Direct the Respondents to continue with the services of the Applicant as the Senior Resident (Pediatrics) until the said post is filled with a regular employee and further grant her the benefits under Maternity Benefit Act 1961 (as amended in 2017); and
- (b) Pass any other order it may deemed fit and proper in the facts and circumstances of the case.”

2. The facts of the case are that the applicant was appointed as Senior Resident (Pediatrics) on adhoc basis w.e.f. 18th January, 2016 with the respondent hospital. She was appointed on adhoc basis for 89 days or until

a regular Senior Resident (Pediatrics) was appointed, whichever is earlier. It is stated that the appointment of the applicant was extended by the respondent hospital on a number of occasions, the last one being from 12.04.2017 to 09.07.2017 wherein it was stated that the appointment of the applicant has been extended as per the same terms and conditions as set out in the offer of appointment.

3. On 03.05.2017, the applicant sought maternity leave w.e.f.16.05.2017 as per the rules and regulations applicable under the Maternity Benefits Act. The respondent hospital granted maternity leave to the Applicant w.e.f.16.05.2017 to 09.07.2017 or until such time the post gets filled up on a regular basis, whichever is earlier.

4. On 03.07.2017, the applicant requested the respondent hospital for an extension of her maternity leave, alongwith her tenure of appointment, to which she received no response. The applicant states that since no regular appointment has been made by the hospital in her place, hence there is no valid ground for the respondents to deny extension of her tenure and maternity leave.

5. The applicant has cited sub-section 3 of section 5 of the amended Maternity Benefits Act which reads as under :-

“The maximum period for which any woman shall be entitled to maternity benefit shall be [twenty-six weeks of which not more than eight weeks] shall precede the date of her expected delivery”

She submits that she has been granted maternity leave only for the period commencing 16th May, 2017 until 9th July 2017 (7weeks and 5 days), whereas she ought to have been granted maternity leave until 14 November 2017 (26 weeks from 16 May 2017).

6. Contesting this stand, the respondents in their counter state that the applicant does not have any legal right to continue in service since her

initial appointment was purely adhoc and was a stop gap arrangement. They aver that as per law laid down by the Hon'ble Apex Court in "**State of Karnataka Vs. Uma Devi**" the Court cannot direct continuation of adhoc/temporary employee in service contrary to rules and substitute the power of executive to appoint as per rules.

7. It is contended that each tenure of 89 days is a fresh tenure having no relation to the previous tenure as far as service matters are concerned. Maternity leave was sanctioned to the applicant upto the date for which the applicant was appointed by the Hospital, on adhoc basis, and, there is no provision to consider maternity leave in piecemeal. Though the applicant was an adhoc employee she was sanctioned maternity leave – but the period was synonymous with her date of employment/extension of tenure.

8. During the course of hearing, the learned counsel for both the parties reiterated the points already mentioned in the OA.

9. The learned counsel for the applicant relied upon the following judgments in support of his contentions :-

- "1. Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) and Another (2000) 3 Supreme Court Cases 224.
2. Bharti Gupta Vs. Rail India Technical and Economical Services Ltd. (Rites) & Ors. 2005 (84) DRJ 53.
3. Dr. Chanchal Goyal (Mrs.) Vs. State of Rajasthan (2003) 3 Supreme Court Cases 485.
4. OA No.3734/2015 and MA No.1596/2016 decided on 12.10.2017.
5. Dr. Meenu Sehgal Vs. Delhi Administration decided on 05.03.2009.
6. Lovely Rani Arora and ors. Vs. GNCTD (2005 SCC online CAT 9)."

10. Learned counsel for the applicant, argued that the respondents have appointed another Senior Resident, in place of the applicant on adhoc basis. He stated that the respondents could not have done so since in terms of the appointment order of the applicant, the post can only be filled up on regular basis and the same can not be filled by another adhoc employee.

11. Per contra, the learned counsel for the respondents emphasized that the Hospital is dealing with human lives who have to be attended to on urgent basis. It is not possible to keep a post vacant for such a long stretch which may have very serious repercussion on the well being of their patients.

12. I have gone through the facts of the case and the rival contentions. The facts of the citations relied upon by the applicant are distinguishable from the current case and hence do not come to her aid.

13. It is not the case of the applicant that maternity leave, per se, has been denied to her. Admittedly, the maternity leave was sanctioned to her from 16.05.2017 till 19.07.2017 (seven weeks and five days) (Annexure A-4) vide order dated 15.05.2017, which reads as under :-

“Sanction of the competent authority for the grant of Maternity Leaves in r/o Dr. Pallavi, SR (Peds) Ad-hoc basis w.e.f.16.05.2017 to 09.07.2017 or till such time when the post gets filled on regular basis, whichever is earlier.”

14. The right of the applicant for maternity leave is undisputed. Accordingly, the respondents too have duly considered her request and granted her maternity leave, till the last date of her tenure i.e. till 19.07.2017. However, since her tenure ended thereafter and she was no longer in the service of the respondent hospital, the question of continuance of her maternity leave does not arise. Her request for grant of Maternity Leave etc. would have relevance only if her tenure as Senior Resident (Pediatrics) had been extended by the respondents (after 19.07.2017) and maternity leave was to be denied, which is not the case here.

15. The action of the respondents in employing another Senior Resident, in place of the applicant, though on adhoc basis is to ensure that proper treatment is administered to the patients, A sensitive post like that of

Senior Resident (Pediatrics) cannot be kept vacant for a long spell for obvious reasons. This action of the respondents cannot be faulted, since they also have a moral and ethical duty towards their patients who have a legitimate expectation of being looked after by the hospital personnel.

16. In view of the foregoing facts the request of the applicant in OA cannot be acceded to and the same is accordingly dismissed. No costs.

(Praveen Mahajan)
Member (A)

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