

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH  
(orders reserved on 2.5.2019)**

**O.A.NO. 060/00856/2017 Date of order:- 07.5.2019.**

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**  
**Hon'ble Mrs.P.Gopinath, Member (A).**

Meenu Kamboj w/o Sh. Sandeep Kamboj, working as Lecturer,  
Computer Applications on contract basis, Post Graduate Government  
College for Girls, Sector 11, Chandigarh.

.....Applicant.

( By Advocate :- Mr. R.K.Sharma )

Versus

1. Union Territory, Chandigarh through Advisor to Administrator,  
Union Territory, Chandigarh, U.T. Secretariat, Sector 9,  
Chandigarh.
2. Secretary, Education, Union Territory, Chandigarh, Sector 9,  
Chandigarh.
3. Director Higher Education, U.T. Chandigarh.
4. Principal, Post Graduate Government College for Girls, Sector  
11, Chandigarh.

...Respondents

( By Advocate : Mr.Arvind Moudgil ).

**ORDER**

**Sanjeev Kaushik, Member (J):**

The applicant assails an order dated 31.3.2017 (Annexure  
A-1) whereby her request for grant of abortion leave with full pay

from 4.7.2015 to 11.8.2015 and 26.10.2016 to 6.12.2016 has been rejected. She has further sought quashing of decision dated 24.1.2013 (Annexure A-2) issued by the Chandigarh Administration, whereby benefit of maternity leave has been put under Maternity Benefits Act, 1961, with a further prayer to extend her the benefit of judgment rendered by this Court in the case of **Vandana Jain & Ors. Versus Chandigarh Administration & Ors.** (O.A.No.33/CH/2011) decided on 31.3.2011 and judgment rendered in the case of **Sonika Kohli & Another versus Union of India & Ors.** ( 2004(3) S.L.J. Page 54).

2. The facts are not in dispute. The applicant was appointed ( on contract basis ) as Lecturer in Department of Computer Applications in Post Graduate Government College for Girls, Sector 11, Chandigarh, in pursuance of open advertisement on 15.9.2010. She is continuing as such as her contract has been extended from time to time. The persons who were appointed on contract basis approached this Tribunal by filing O.A.No.33/CH/2011 ( Vandana Jain & Ors. Versus Union of India & Ors. ) where they sought various reliefs including the grant of minimum of pay scale plus D.A. along with vacation salary etc. This Court while allowing the O.A. on 31.3.2011 has held that all the contractual lecturers shall be entitled to minimum of the pay scale of the post along with vacation salary and they were also entitled to various other benefits which were admissible to regular employees in the Chandigarh Administration.

3. On 29.6.2015, the applicant was admitted to undergo medical termination of pregnancy and was advised complete bed rest. Therefore, she applied for six weeks abortion leave with full salary from 4.7.2015 to 11.8.2015. When she received no response on her application, she submitted another application dated 4.11.2016 with the same request for abortion leave. Unfortunately again, she had to undergo medical termination of pregnancy on 26.10.2016 and she applied for six weeks abortion leave vide her application dated 4.11.2016. Vide impugned order dated 31.3.2017, the respondents have rejected her claim by saying that there is no provision for grant of abortion leave to contractual faculty, and that she has already been allowed 12 weeks maternity leave in view of letter dated 24.1.2013 under the Maternity Act, 1961, thus, her request cannot be acceded to. Hence the present OA.

4. The respondents while filing the reply have refuted the claim of the applicant by saying that once the contractual employee has already been granted 12 weeks maternity leave with pay under the Maternity Act, 1961, thus, she cannot be allowed abortion leave of six weeks as allowed to a regular employee. They have relied upon letter dated 24.1.2013, wherein it is submitted that there is no provision or instructions for grant of abortion leave to contractual faculty.

5. We have heard the learned counsel for the parties and have perused the material available on file.

6. Shri R.K.Sharma, learned counsel for the applicant vehemently argued that the impugned order rejecting the claim of the applicant for grant of six weeks abortion leave/medical termination of pregnancy is illegal, arbitrary and thus, it is liable to be set aside in terms of Rule 43 of the CCS(Leave) Rules, 1972. He submitted that in terms of Rule 43(3) of the Rules, 1972, a female government servant is entitled to maternity leave not exceeding 45 days. He further submitted that in terms of Rule 8.127 under Chapter 8 of the Punjab Civil Services Rules (Volume I Part I ) under the heading Maternity Leave & Hospital Leave, a female government employee who has less than two living children, maternity leave may also be granted in case of miscarriages and abortion including abortion included under the Medical Termination of Pregnancy Act, 1971 and he submitted that there is no time prescribed under the rules. Thus, he submitted that the view taken by the respondents is bad in law. He also submitted that in terms of decision rendered in the case of Vandana Jain (supra) and in the case of Sonika Kohli (supra), a contractual employee has already been held entitled to all the benefits which are admissible to a regular employee. He has alleged discrimination amongst the equal persons who are discharging the same duties.

7. Per contra, Shri Arvind Moudgil, learned counsel for the respondents has reiterated what has been stated in the written statement. He is not in a position to cite any law contrary to

Vandana Jain (supra) wherein contractual lecturers have been extended the same benefit which the regular employees are enjoying.

8. We have given our thoughtful consideration to the entire matter with the able assistance of learned counsel for the parties.

9. The solitary issue, which arises for our consideration in this matter is, whether a contractual lecturer working with the Chandigarh Administration is entitled for abortion/medical termination pregnancy leave or not ? In view of the facts canvassed by both the parties, it is clear from the grounds projected by the learned counsel for the applicant that the lecturers who are working on contract basis like the present applicant are held entitled to the benefit of abortion leave/maternity leave in view of decision rendered in the case of Sonika Kohli(supra). The findings so recorded in the case of Sonika Kohli are reproduced hereunder :-

" 16. The weight of the law discussed above is that the contract appointees who cannot be differentiated in any manner with the ad hoc appointees, are entitled to the benefit of maternity leave. It would not be out of place to mention that the question of grant of maternity leave to female teachers appointed on contract basis during the six months of service or lesser period would not arise because women candidates, is found to be pregnant at the time of entry would be temporarily held unfit and will not be recruited in service even on contract basis till they are fit for duty. The contingency of making a claim for the maternity leave would arise only in respect of teacher who have put in service of more than six months. In our view, all the female teachers appointed on contract basis, are entitled to maternity leave as is admissible to the regular employees in accordance with the rules.

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21(9) The female teachers appointed on contract basis shall be entitled to maternity leave with pay in accordance with the rules as are applicable to the regular teachers”.

In a subsequent decision in the case of Vandana Jain ( supra), where the similarly placed persons approached this Court for grant of minimum pay scale of the post with DA as admissible from time to time and also maternity leave to the extent indicated in the case of **Krishan Kumar versus Union Territory of Chandigarh & Ors** (2004(3) S.L.J. 229(CAT) was also allowed by this Court vide order dated 31.3.2011, which recorded findings in para 47, as under:-

“ 47. We would, accordingly, conclude as under:-

i)The applicants shall not be replaced by contractual employees and they shall continue in service till the posts are filled up on regular basis;

ii)The official respondents are directed to prepare a combined (subjectwise) seniority list of contractual lecturers and they shall be further duty-bound to follow the principle of “ First come, last go” in the matter of engagement of laid off lecturers and also the directions issued by the Coordinate Benches of this Tribunal in Krishan Kumar’s case and Santosh Malik’s case (supra). The yearly intake of the contractual lecturers shall, obviously, be need-based;

iii)The clauses, in the terms & conditions of the appointment letters issued to the applicants restricting the appointment to a period of eight months and also denying the salary for the vacation period to them, are held to be unconstitutional and are quashed; and

iv)In view of the categorical law laid down by the learned Coordinate Bench in KRISHAN KUMAR VS. UNION TERRITORY OF CHANDIGARH & OTHERS (supra) (wherein appropriate sustenance was drawn from the view obtained by the Apex Court in RATTAN LAL & OTHERS VS. STATE OF HARYANA & OTHERS, MUNICIPAL CORPORATION OF DELHI VS. FEMALE WORKERS (MUSTER ROLL) AND ANOTHER(supra), and also a Division Bench ruling of the Punjab & Haryana High Court

in the case of RAJ BALA VS. STATE OF HARYANA : 2002(3) RSJ (43) ), all the contractual lecturers shall be entitled to minimum of the pay scale of the post, with Dearness Allowance, as admissible from time to time and also the maternity leave to the extent indicated in that judgment (Krishan Kumar's case). The benefit of maternity leave would be available to a female contractual employee, with less than two surviving children. The duration thereof would be the same as has been recommended by the VIth Central Pay Commission."

Perusal of the above extracted part of the judgment clearly goes to show that the plea raised by the similarly situated persons for grant of minimum of pay scale plus dearness allowance as admissible from time to time and entitlement to maternity leave benefit as admissible to regular employee in accordance with rules has been upheld. The respondents issued a communication dated 24.1.2013 ( Annexure A-2) under the subject " maternity leave to the employees working on contract basis", where they have restricted that maternity leave to twelve weeks with pay to such female employees working on contract basis that too who have completed a minimum of one year service successfully whereas a regular employee is entitled for 180 days maternity leave. Though a challenge has already been made, which has been approved by this Court and pending decision before the High Court, all the contractual employees like the applicant were allowed the benefit of 12 weeks maternity leave. In the present case, the applicant is seeking invalidation of the impugned decision whereby her request for grant of abortion leave with full pay and allowances has been rejected. Rule 43 under Chapter V of the CCS(Leave) Rules, 1975 deals with special kind of leave other than study leave and as per Rule 43(3), a Central government employee is

entitled for not exceeding 45 days during the entire service in case of miscarriage including abortion on production of medical certificate. A similar provision is also available under Punjab Civil Services Rules ( Volume I Part I ) where under Rule 8.127 under Chapter 8, additional kind of leave in special circumstances is provided. As per note 3, a female government employee who has less than two living children can be granted maternity leave in case of miscarriages and abortion including abortion included under the Medical Termination of Pregnancy Act, 1975. Since both the rules are relevant, the same are reproduced hereunder :-

**"3. 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 (180 day's) 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".

“ Additional kind of leave in Special Circumstances.

8.127. (a) The competent authority under Rule 8.23 may grant to a female Government employee maternity leave on full pay for a period not exceeding 180 days without the necessity of production of a medical certificate and the grant of such a leave, shall be so regulated that the date of confinement falls within the period of this leave and the leave so granted shall not be debited against the leave account of the female Government employee:

Provided that no leave under this sub-rule shall be granted to a female Government employee who has three or more living children.

Note.—Extension in leave, if any, on the expiry of maximum period of 180 days maternity leave, shall be permissible by the grant of leave of the kind due.

Note 1.—During such period she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave. The term “pay” in this rule includes officiating pay: provided the authority sanctioning the leave certifies that the Government employee would have continued to officiate had she not proceeded on leave.

Note 2.—Where a female Government employee has less than two living children, maternity leave under this rule may also be granted in cases of miscarriages and abortion including abortion included under the Medical Termination of Pregnancy Act, 1971, subject to the conditions that the leave does not exceed six weeks and the application for leave is supported by a certificate from a registered medical practitioner specified in rule 8.13 and, in case of doubt, certificate of a Principal Medical Officer or Assistant to a Civil Surgeon or Senior Medical Officer may be called for:

Provided that a female Government employee having two or more children shall not be entitled to avail of this concession, but if required, can be sanctioned leave of the kind due, on the production of a medical certificate.”

A bare perusal of the rules make it clear that under the Central Rules or under the Punjab Rules, on abortion or miscarriage under the Medical Termination of Pregnancy Act, 1971, a female employee becomes entitled for grant of leave of 45 days under the Central Government and there is no time limit prescribed under the Punjab

Rules, on production of certificate from Medical Officer. Thus, it is clear that the benefit of leave of abortion or in case of miscarriage under the Medical Termination of Pregnancy Act, 1971, cannot be denied to a female employee. The plea raised by the respondents for denying the benefit of abortion leave on the ground that they had already granted 12 weeks maternity leave with pay, cannot be approved because maternity leave does not include leave which a female employee can claim due to miscarriage or abortion as it is available to a regular incumbent. Once they have been held entitled by this Court for grant of other benefits, then the view taken by the respondents in denying this cannot be approved of.

10. Accordingly, the decision in denying the benefit is hereby invalidated and a female employee working on contract basis with the Chandigarh Administration is held entitled for abortion/miscarriage leave to the extent of six weeks. No costs.

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

**(P.GOPINATH)**  
**MEMBER (A).**

Dated:- 07.5.2019.

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