

**Central Administrative Tribunal  
Principal Bench**

**OA No. 1978/2018**

**Reserved on: 13.03.2019  
Pronounced on:12.04.2019**

**Hon'ble Mr. Mohd. Jamshed, Member (A)**

Dr. Kavita Yadav, aged about 30 years,  
Wife of Shri Saurabh Karalia,  
Resident of 719-J, Bhagwati Market,  
Gaushala Road, Najafgarh,  
New Delhi – 110043.  
Working as Senior Resident (Pathology) at  
Janakpuri Super Speciality Hospital Society

...Applicant

(By Advocate: Mr. Punit Yadav)

Vs.

1. The Secretary  
Ministry of Health and Family Welfare Department,  
Govt. of NCT of Delhi,  
Delhi Secretariat, Delhi.
2. Janakpuri Super Speciality Hospital Society,  
Govt. of NCT of Delhi,  
C2B, Janak Puri  
New Delhi – 110058.
3. The Director,  
Janakpuri Super Speciality Hospital Society,  
Govt. of NCT of Delhi,  
C2B, Janak Puri,  
New Delhi – 110058.

...Respondents

(By Advocate: Mr. Virendra Kumar for Ms. Priyanka  
Bhardwaj)

**ORDER****Mohd. Jamshed, Member (A):-**

This OA has been filed seeking the following reliefs:-

“

- (a) *Direct the Respondents to grant of maternity benefits to the applicant and quash the orders dated 22.07.2017 and 14.11.2017 and 13.04.2018 passed by the Respondent No. 2 and 3.*
- (b) *Direct the Respondents to pay the litigation expenses to the applicant.*
- (c) *Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”*

2. The applicant was appointed as Senior Resident (Pathology) in JanakPuri Super Speciality Hospital Society (an autonomous institute) w.e.f. 12.06.2014, for a period of one year which can be extended further up to a maximum period of three years. The services of the applicant were extended for one year from 12.06.2015 till 11.06.2016 and were further extended for another year from 12.06.2016 to 11.06.2017. On 18.05.2017 the applicant applied for earned leave on medical grounds as she was not able to attend the duties from 15.05.2017 to 31.05.2017 on account of her being pregnant. On 24.05.2017, the applicant applied for maternity leave starting from 01.06.2017 in view of her medical condition. However, the applicant received a notice dated

09.06.2017 from the respondents indicating that as per the terms and conditions of the offer of appointment the contract ends on 11.06.2017 and, therefore, this period of contract cannot be extended beyond three years. It was stated that the applicant is, therefore, eligible for leave only up to 11.06.2017.

3. This was contested by the applicant stating that as per the extant law, she is entitled to maternity benefits. Vide letter dated 14.11.2017, the respondents advised the applicant that the period of her contract was only for three years till 11.06.2017 and no further extension is allowed/permissible under the rules. In these circumstances, maternity leave could be sought by her only for the period 01.06.2017 to 11.06.2017 and not, thereafter. It was also mentioned in this letter that the case has been further referred to Health and Family Welfare Department and the reply is awaited. Vide impugned order dated 22.07.2017, the applicant was advised that with reference to her application dated 13.07.2017 the matter has been sent to Secretary, Health and Family Welfare Department for advice and as soon as any direction is received, the same will be intimated.

4. On 13.04.2018, the Respondents disposed off the representation of the petitioner stating that the matter was referred to GNCT of Delhi and they have also confirmed the notice issued by respondents dated 09.06.2017. It is once again reiterated in the counter reply that the applicant was appointed as Senior Resident in this Hospital w.e.f. 12.06.2014 for a period of one year. The service was extendable up to a maximum period of three years and no leave of any kind including maternity could be granted beyond the period of three years and that on 14.03.2018, GNCT of Delhi has also issued an order in this regard. It is also stated in the OA that the petitioner had earlier filed OA No. 906/2018 and the Tribunal vide order dated 26.02.2018 disposed of the same at the admission stage itself as the matter of maternity leave was still pending with the respondents. The respondents were directed to take a final decision on this matter within a period of 30 days.

5. The applicant on 18.03.2018 sent a letter to the respondents requesting that her representation may be disposed of. The representation was further disposed of by the respondents vide letter dated 13.04.2018. The applicant has sought reliefs in terms of quashing the

orders dated 22.07.2017 and 14.11.2017 and 13.04.2018 passed by the Respondent No. 2 and 3 and requested the Hon'ble Tribunal to grant maternity benefits to the applicant.

6. Respondents in their counter reply have primarily stated that the Respondent's Hospital is an autonomous society registered under the Societies Registration Act, 1860 having its own governing body as per its Memorandum of Association and the Respondent Hospital/Society has not been notified by the State Government as per the provisions of Section 14 of the Administrative Tribunal Act, 1985. The Hon'ble Tribunal, therefore, does not have the jurisdiction of entertaining the present petition. It is further submitted that even on merits, the applicant plea is not sustainable as she was appointed as Senior Resident in the Respondent Hospital w.e.f. 12.06.2014 for a period of one year which was extendable to a maximum period of three years. The applicant was granted two extensions of one year each and the cumulative period of three years came to an end on 11.06.2017. As per the conditions, no further extension can be granted. When the applicant applied for maternity leave, she was granted maternity leave for the

remainder of her tenure i.e. from 01.06.2017 and 11.06.2017. It is also stated that during the period of her contract she had been earlier granted maternity leave in the year 2015 and therefore her contention that maternity leave is being denied is incorrect. It is not permissible, as per any law, that an employee whose contractual period has come to an end would also be entitled to maternity leave beyond the period of the contract as that would amount to extending the period of the contract which is not permissible as per the conditions of the contract.

7. Learned counsel for the applicant argued that in terms of Section 5 of the Maternity Benefit Act, 1961, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence. Learned counsel also relied upon various provisions of this act and argued that although the applicant was working on contractual basis and her tenure was ending on 11.06.2017, she would be entitled to maternity leave beyond that period.

8. Learned counsel for the respondents during the arguments reiterated their points that as JanakPuri Super

Speciality Hospital Society where the applicant worked, is an autonomous society registered under the Societies Registration Act, 1860 having its own governing body as per its Memorandum of Association, therefore, it does not fall within the jurisdiction of Hon'ble Tribunal. It is further submitted by them that even on merits this OA is not sustainable as appointment of the applicant was purely on contractual basis for one year extendable up to a maximum period of three years. The offer of appointment clearly mentions that this appointment is purely temporary. This offer of appointment was accepted with all the conditions by the applicants and vide office order dated 19.06.2014 she was appointed for a period one year w.e.f. 12.06.2014. Her contract was extended twice, for one year period each, and as per the last extension her three years contract was ending on 11.06.2017. Any leave beyond this period cannot be granted and, therefore, the plea of the applicant that she could have been given maternity leave beyond the contract period is not tenable.

9. Heard the arguments of the learned counsels for the applicant and respondents and perused the records.

10. The applicant was appointed on a temporary basis as Senior Resident, initially for a period of one year extendable up to a maximum period of three years on various terms and conditions by JanakPuri Super Speciality Hospital, New Delhi, being run by JanakPuri Super Speciality Hospital Society (an autonomous institute). She was twice given extension of one year and her maximum three years period of contract was to end on 11.06.2017. The applicant due to her pregnancy was on leave from 15.05.2017 to 31.05.2017. On 24.05.2017, she further applied for maternity leave starting from 01.06.2017 indicating that her expected date of delivery was 07.07.2017. The respondents advised the applicant vide their letter dated 09.06.2017 that the same is not admissible. Vide their letter dated 14.11.2017, the applicant was advised that her tenure comes to end on 11.06.2017 and no further extension is allowed/permissible under the rules. It was further stated that maternity leave could be sought by the Applicant only for the period 01.06.2017 to 11.06.2017 and not, thereafter. It was intimated that the applicant's case has been referred to Health and Family Welfare Department and the reply is awaited.

11. The applicant filed OA No. 906/2018 seeking relief from the Tribunal for grant of maternity leave to her. The OA was disposed of at the admission stage itself directing the respondents to consider the same within a period of 30 days. As directed by the Hon'ble Tribunal, the respondents vide letter dated 13.04.2018 advised the applicant that the matter was referred to GNCT of Delhi and they have also confirmed the order dated 09.06.2017. It was once again reiterated that the applicant was appointed as Senior Resident in JanakPuri Super Speciality Hospital Society (an autonomous institute) w.e.f. 12.06.2014, for a period of one year which can be extended further up to a maximum period of three years and that maternity leave granted for 01.06.2017 to 11.06.2017 is as per rules. A letter from Secretary, Health and Family Welfare Department, GNCT of Delhi dated 14.03.2018 was also brought to the applicant's notice.

12. As far as point of jurisdiction is concerned, there is no merit in that as the offer of appointment dated 06.06.2014 also mentions that the service conditions will be applicable as prescribed by GNCT of Delhi from time to time. It is also obvious that respondents have referred

the matter to GNCT of Delhi and obtained their confirmation in this regard. Therefore, the point that it is beyond the jurisdiction of the Tribunal is not sustainable. Be that as it may, the fact remains that the applicant's tenure was temporary and for a maximum period of three years. The case of **Bharti Gupta vs. Rail India Technical and Economical services Ltd. (RITES) & Ors.** W.P. (C) No. 4798/2003 in the Hon'ble High Court of Delhi decided on 09.08.2005, relied upon by the applicant is about relief of maternity benefits to an employee who was engaged on contractual basis. Further, this was provided to someone whose contract was for six months and did not have any limit or a maximum period. This case is, therefore, of not much help to the facts of the present OA. Any contractual period has a certain time limit and if the conditions do not permit extension of the same period, it comes to an end at the end of the prescribed period. In this case the three years period ended on 11.06.2017. Grant of maternity leave beyond that period would amount to extending the period of contract, which is not permissible. The relief sought by the applicant in the present OA is, therefore, not sustainable. The OA is

devoid of merit and the same is, therefore, dismissed.

There shall be no order as to costs.

**(Mohd. Jamshed)**  
**Member(A)**

/ankit/