

**Central Administrative Tribunal
Madras Bench**

OA/310/01439/2015

Dated the 17th day of October Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

V.Jayanthi
Pharmacist,
JIPMER,
Pondicherry. .. Applicant
By Advocate **M/s.V.Vijay Shankar**

Vs.

The Director,
JIPMER,
Pondicherry. .. Respondent
By Advocate **Mr.M.T.Arunan**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OA is filed seeking the following relief:-

“....to call for the records of the respondent in its Admn.I.27(28)/2015 dated 22.9.2015 and quash the same and consequently direct the respondent to grant further 90 days maternity leave commencing from 01.9.15 to the applicant in accordance with Rule 43 of the Leave Rules and pass such other order or orders as may be deemed fit and thus render justice.”

2. The short point to be considered in this case is whether the applicant who is under contract employment under JIPMER, Pondicherry is entitled to get 180 days of Maternity Leave (ML) or not.
3. The applicant in this case is a Pharmacist working in the institute from 2011 onwards. According to her, she was appointed on contract basis as per Annexure A1 order dated 05.12.2011. Initial appointment was for a period of 6 months on a consolidated pay. According to her, the said contract employment was extended from time to time. In the year 2014 she got married. Now the applicant is in her family way and she is expected to give birth in the 2nd week of June 2015. The applicant submitted leave application as provided under Rule 43 of Leave Rules. But the respondent did not sanction it. So she filed OA seeking interim order for granting 3 months ML initially and for granting 180 days of ML eligible to all women employee.

4. When the matter came up for hearing on admission, the counsel for the applicant submitted the difficulties of the applicant and pointed out that as per Special Kinds of Leave Other than Study Leave, “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 days from the date of its commencement.” After hearing both sides the Tribunal ordered to grant 3 months ML as an interim measure on 27.5.15.

5. The respondent entered appearance and filed a detailed reply stating that the applicant is only a contract employee and she is not entitled to get any benefit like provident fund, pension, gratuity, medical attendance treatment etc. as per order dated 05.12.2011. The applicant has accepted the above conditions and joined the duty. Now she cannot claim ML on par with other government servants. As per the interim order of the Tribunal, the respondent had granted 90 days ML to the applicant w.e.f 01.6.15. According to the respondent, the applicant is not entitled to get all the maternity benefits as that of a regular employee.

6. We have carefully gone through the annexures and heard the counsel for the applicant and the counsel for the respondent. The applicant in this case mainly rely upon the decision of the Principal Bench in ***Mrs. Anju Sharma v. Lt.Governor, NCT of Delhi (OA 543/2011)*** wherein the Principal Bench has granted 180 days of ML even to contract employees. She also rely upon the judgment of the Hon'ble High Court of Kerala in ***Rakhi P.V. & Others v. State of Kerala*** where the question was the contract teachers appointed under the State funded projects are entitled to get ML for

6 months. According to the counsel for the applicant, the Hon'ble Kerala High Court has categorically held that irrespective of the service conditions all women employees are entitled to get the same treatment from the government and they are entitled to get 6 months ML. Counsel for the respondent argued on the basis of the reply they had already filed.

7. On a careful perusal of the decision of the Hon'ble Kerala High Court in *Rakhi P.V. & Others v. State of Kerala*, it can be seen that the Kerala High Court has extended the benefit of 180 days leave to all women employees who were working under the state funded projects. The Kerala High Court has relied upon an earlier decision of that High Court in *Mini v. Life Insurance Corporation of India [2018 (1) KLT 530]* wherein it was observed that -

“.....grant of leave to fulfil essential maternal obligations involves an essential human rights issue and that the State is duty bound to address the special needs of women employees working in the organised and unorganised sectors. The State has a responsibility to see that a restricted meaning is not given to welfare legislation so that rights of women employees to avail leave is restricted. It is stated that the right to maternity leave is an essential element of the fundamental right to life as far as a woman employee is concerned and the issue has to be seen in the context of Articles 14, 15 and 16 of the Constitution of India. It is stated that a woman employee cannot be discriminated on account of compelling family responsibilities and that the said aspects of the matter are also to be taken into account while considering the issue of grant of maternity leave.”

The Hon'ble Kerala High Court in *Rakhi P.V.'s* case has followed the above said decision and granted ML of 180 days to women employees irrespective of whether

they are contract employees or permanent employees.

8. In view of the already settled position of law, no discrimination can be made between contract employees and regular employee for the purpose of granting ML. The respondent in this case had granted only 90 days ML to the applicant. In the light of the above position, the respondents are not justified in granting only 90 days ML to the applicant. Accordingly, the impugned order No. Admn.I.27(28)/2015 dated 22.9.2015 is hereby set aside. The respondents are directed to grant further 90 days maternity leave in continuation of the 3 months leave granted as per order by this Tribunal to the applicant and pass orders within a period of one month from the date of receipt of a copy of this order.

9. OA is allowed with the above direction. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

17.10.2019

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Annexures referred to by the applicants in OA No.310/01439/2015:

Annexure A1: Application for maternity leave dt. 05.5.15.

Annexure A2: Order in OA No.705/15 dt. 27.5.15.

Annexure A3: Order sanctioning 3 months maternity leave dt. 04.7.15.

Annexure A4: Application made by applicant for further extension of leave dt. 29.7.15.

Annexure A5: Impugned order dt. 22.9.15.

Annexure A6: Extract Rule 43 of Leave Rules.

Annexures with reply statement:

Annexure R1: Engagement order of applicant as Pharmacist on contract basis.