
(2015) 11 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 18236 of 2015

Chitra Rani

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 3

Citation : (2016) 148 FLR 717 : (2016) LabIC 886

Hon'ble Judges : Deepak Sibal, J.

Bench : Single Bench

Advocate : Jasbir Mor, Advocate, for the Appellant; Harish Rathee Advocate DAG, for the Respondent

Final Decision : Allowed

Judgement

Deepak Sibal, J.—Through the present petition, the petitioner, while relying on the provisions of the Maternity Benefit Act, 1961 (hereinafter referred to as - the Act), seeks the benefits of maternity leave, which have not been granted to her on the ground that she has claimed maternity leave for the birth of her third child.

2. The issue raised in the present petition is no longer res integra as the same stands decided in the favour of the petitioner by a Division Bench of this Court in Ruksana Vs. State of Haryana and Others--> , wherein, like in the case of the petitioner, the benefit of Maternity Leave, on account of birth of third child, was denied to the petitioner therein by the State of Haryana. For such denial, the State relied upon Note 4 to Rule 8.127 of the Punjab Civil Services Rules, Volume I, Part I, as applicable to the State of Haryana (hereinafter referred to as - the Rules). After considering the entire law on the subject, the Division Bench was of the opinion that Note 4 to Rule 8.127 of the Rules was not in consonance with the provisions of the Act and resultantly, issued directions to grant the petitioner therein the payment of salary as Maternity Leave benefit, as envisaged under Section 5 of the Act read with Rule 8.127 of the Rules, without making any

reference to Note 4 appended thereunder.

3. It is the admitted position that the Special Leave Petition filed by the State of Haryana, to challenge the judgment of the Division Bench in Ruksana's case (*supra*), was withdrawn.

4. The issue raised in the present petition was again considered and decided by this Court in favour of the petitioner therein in C.W.P. No. 18515 of 2011 - Pooja Sindhu vs. State of Haryana and others, on 15.10.2012, by holding as under:-

"The claim as made by the petitioner in the present petition deserves to be allowed in the light of the Division Bench judgment of this Court in Ruksana's case (*supra*), wherein Rule 8.127(1) of the Punjab Civil Service Rules, Vol. I Part-I along with note 4 thereto was considered vis-a-vis Section 27 of the Act and it was held as follows:-

"The Act nowhere restricts the benefit of payment of maternity benefits to birth of two children. In other words, the provisions of the Act entitle the woman employee to maternity benefits for the birth of third child too. We are conscious that by Note 4 to Rule 8.127 of the Punjab Civil Services Rules Volume I Part I, the State Government intended to achieve a laudable object but such an object cannot be given effect to till the establishments of the Government are amenable to the Act. Unless an amendment is carried out in the Act, the Government cannot restrict beneficial provisions of the Act to a woman employee for the birth of a third child. Such a restriction imposed under the Rules is contrary to Section 27 of the Act and cannot sustain in the eyes of law. In *Vasu Dev Singh and Others Vs. Union of India (UOI) and Others*, , wherein the validity of Section 3 of the East Punjab Urban Rent Restriction Act, 1949 was challenged, the Hon'ble Apex Court referred to a large number of decisions on subordinate legislation and held as under:-

"118. A statute can be amended, partially repealed or wholly repealed by the legislature only. The philosophy underlying a statute or the legislative policy, with the passage of time, may be altered but therefore only the legislature has the requisite power and not the executive. The delegated legislation must be exercised, it is trite, within the parameters of essential legislative policy. The question must be considered from another angle. Delegation of essential legislative function is impermissible. It is essential for the legislature to declare its legislative policy which can be gathered from the express words used in the statute or by necessary implication, having regard to the attending circumstances. It is impermissible for the legislature to abdicate its essential legislative functions. The legislature cannot delegate its power to repeal the law or modify its essential features..."

To similar effect is the law laid in *Emp. State Insurance Corporation Vs. H.M.T. Ltd. and Another*, as their Lordships of the Hon'ble Apex Court held as under:-

"24. We agree with the said view as also for the additional reason that the

subordinate legislation cannot override the principal legislative provisions..."

Thus, we are of the opinion that Note 4 to Rule 8.127 of the Punjab Civil Services Rules Volume I Part I is not in consonance with the provisions of the Act and this cannot be given effect to and the petitioner cannot be deprived of the maternity benefit for the birth of a third child."

In the light of the above, the impugned order dated 7.9.2011 (Annexure P-4) passed by the Principal, Government Senior Secondary School, Village Dabra, Hisar - respondent No. 4 cannot sustain and is hereby quashed. Direction is issued to the respondents to treat the period of earned leave availed of by the petitioner as maternity leave to the extent of six months."

5. Pooja Sindhu's case (supra) was taken up in an intra-court appeal by the State of Haryana being L.P.A. No. 1346 of 2013 - State of Haryana and others vs. Pooja Sindhu, which was, through order dated 31.03.2014, dismissed.

6. In spite of the fact that the issue stood authoritatively settled through repeated pronouncements made by this Court, the State of Haryana continued to deny this benefit to identically placed ladies. When, after the law laid down in Ruksana's case (supra) and Pooja Sindhu's case (supra), one Krishna Devi was denied this benefit of Maternity Leave on account of having a third child, she approached this Court through C.W.P. No. 24723 of 2014 - Krishna Devi vs. State of Haryana and others While allowing her writ petition, this Court brought to the notice of the Secretary of the concerned Department that regularly such like cases were being filed in this Court, where Maternity Leave benefit on account of birth of third child was being declined, in spite of the fact that the law on the subject had been finally settled. Therefore, this Court, asked the Secretary of the Department to sensitize the concerned authorities, so that similarly placed employees are not forced to knock the doors of this Court, by holding as under:-

"Before parting with the order, this court would like to apprise the Secretary of the department concerned that regularly cases are being filed in this court, where leave on account of birth of third child is being declined by the department, which is against the judgment of this court delivered way back on 21.4.2011 in Ruksana's case (supra). Once that judgment has attained finality all the concerned authorities of the department need to be sensitized that unnecessarily the employees should not be forced to come to the court for a relief which is otherwise admissible to them in terms of the law laid down by this court."

7. Apparently, the above quoted observations made by this Court were not taken with as much seriousness as they ought to have been, because had that been so, the petitioner herein would have been granted the benefit of Maternity Leave on account of birth of her third child, especially, when it is the admitted position that on the earlier two occasions, when she gave birth to two children, she never availed of the claimed benefit.

8. When the matter came up before this Court for preliminary hearing, while issuing notice to the respondents, the following order was passed:-

"Learned counsel for the petitioner draws my attention to the following observations made by this Court in CWP No. 24723 of 2014; Krishna Devi v. State of Haryana and others; decided on 24.12.2014:

"Before parting with the order, this court would like to apprise the Secretary of the department concerned that regularly cases are being filed in this court, where leave on account of birth of third child is being declined by the department, which is against the judgment of this court delivered way back on 21.4.2011 in Ruksana's case (supra). Once that judgment has attained finality all the concerned authorities of the department need to be sensitized that unnecessarily the employees should not be forced to come to the court for a relief which is otherwise admissible to them in terms of the law laid down by this court."

Learned counsel for the petitioner submits that in spite of the above quoted directions, the benefit of maternity leave has not been granted to the petitioner.

Notice of motion for 8.9.2015.

Process dasti only."

9. A perusal of the above quoted order shows that it was to again bring to the notice of the respondent Department the observations made in Krishna Devi's case (supra), wherein the Department was asked to sensitize the concerned officials with regard to the issue authoritatively having been settled, but much to my disappointment, which I certainly do not appreciate, an affidavit of the Director, Elementary Education, Haryana was filed, wherein, while relying on Note 4 to Rule 8.127 of the Rules, maternity benefits were sought to be denied to the petitioner on the ground that she was bearing her third child. The affidavit further went to state that there was no provision in the Rules for granting Maternity Leave benefit on the birth of a third child and that "the power of interpreting, changing and relaxing these rule is vested in the Finance Department" "The Department is not competent to grant the Maternity Leave to the petitioner on the birth of third child."

10. The affidavit further went on to state that the matter had been referred to the Finance Department, the advice of which was awaited. In the operative part of the affidavit, it was quoted thus:

"6. That keeping in view the above rules/instructions the petitioner is not entitled for the Maternity Leave on the birth of third child. It is submitted that the petitioner is only entitled for grant of leave of the kind due or extra-ordinary leave as per note 4 of rule 8.127 of C.S.R. Vol. I Part I and the same can be considered favorably if the petitioner is willing for the same."

11. In view of the aforesaid position of facts and law, the present petition is

allowed with a direction to the respondents to release payment of salary to the petitioner as Maternity Leave benefit, as envisaged under Section 5 of the Act read with Rule 8.127 of the Rules, without making any reference to Note 4 appended therein. The needful be done within three months from the date of receipt of a certified copy of this order.

12. The facts of the case in hand also show the insensitivity, with which the administrative machinery in the State of Haryana has dealt with the issue. This is in spite of the law having been authoritatively settled by this Court, challenge to which before the Apex Court was withdrawn by the State of Haryana and the specific observations made by this Court in Krishna Devi's case (supra) asking the Secretary of the respondent Department to sensitize the concerned officials with regard to the authoritative pronouncements of this Court so that identically placed employees are not forced to knock the doors of this Court. Apparently, the observations made by this Court have not been paid heed to by respondent No. 1. What is more disturbing is the defiant attitude of the respondent authorities, as projected through the affidavit dated 03.10.2015, filed in response to the present petition, by Mr. R.S. Kharb, Director Elementary Education, Haryana, Panchkula, who, in spite of being made aware of the authoritative pronouncements by this Court, which were appended as Annexures with the present petition, chose to again defend the illegal action of the State.

13. In view of the above, respondent No. 1 - Mrs. Keshni Anand Arora, Additional Chief Secretary, Department of School Education, Haryana and respondent No. 2 - Mr. R.S. Kharb, Director Elementary Education, Haryana, Panchkula be issued notices for 27.11.2015 so as to why proceedings under the Contempt of Courts Act, 1971 be not initiated against them.

14. For proceedings under the Contempt of Courts Act, 1971, the matter be placed before the appropriate Bench as per Roster, after obtaining orders of Hon"ble the Acting Chief Justice in this regard.