
(2019) 05 CAT CK 0062
In the Central Administrative Tribunal
Case No : Original Application No. 508 Of 2018

Dr. Krati Mehrotra

APPELLANT

Vs

Dr. Baba Saheb Ambedkar Hospital

RESPONDENT

Date of Decision : 03-05-2019

Acts Referred:

Maternity Benefit Act, 1961 — Section 5(2)

Citation : (2019) 05 CAT CK 0062

Hon'ble Judges : L. Narasimha Reddy, J; Aradhana Johri, J

Bench : Division Bench

Advocate : Mansi Bajaj, H.A. Khan

Final Decision : Partly Allowed

Judgement

1. The applicant was appointed as Senior Resident (Skin) in the Dr. Baba Saheb Ambedkar Hospital, New Delhi on ad hoc basis initially for a period of 89 days, through order dated 22.03.2016. On expiry of the period of 89 days, she was issued orders for extension on as many as five occasions. Ultimately, through order dated 23.05.2017, the respondents have treated the tenure of the applicant as complete, as on 24.04.2017. This OA is filed challenging the said order. Apart from the said relief, the applicant prayed for the extension of the benefit of maternity leave for a period of 26 weeks from the date of her application i.e. 17.04.2017.

2. The respondents filed counter affidavit opposing the OA. It is stated that the applicant was appointed against a sanctioned vacant post of Senior Resident and that the regular appointment against that post was made in the recent past. It is also stated that the selected candidate has joined on 21.06.2017. As regards the claim of the applicant for medical leave, they contend that such a facility is not available for the Doctors appointed on ad hoc basis.

3. We heard Ms. Mansi Bajaj, learned counsel for applicant and Shri H.A. Khan, learned counsel for respondents.

4. The applicant no doubt was appointed on ad hoc basis, initially for a period of 89 days. However, the same was extended on as many as five occasions. It appears that the applicant made a request for grant of maternity leave. Through impugned order, the respondents sanctioned the leave from 17.04.2017 to 24.04.2017. They have also informed the applicant that her term will be treated as complete w.e.f. 24.04.2017.

5. Had there existed a vacancy, we would have certainly considered the case of the applicant by directing the respondents to continue the applicant in service. It is clearly mentioned that the regular appointment was made and the candidate has also joined the service.

6. As regards the maternity leave, it is evident that Section 5(2) of the Maternity Benefit Act, 1961, confers right upon a woman to claim the benefits. The Delhi Administration also examined this issue with reference to the Resident Doctors. Memo dated 14.03.2018 reads as under. :-

"Sub: Guidelines for grant of Maternity Leave/Miscarriage Leave to Resident doctors (SRs/JRs/SR (Adhoc) & JR (Adhoc).

It has come to the notice that many files/proposals are being received in Health & Family Welfare Department from the hospitals seeking clarifications regarding provisions of Maternity Leave/Miscarriage Leave for resident doctors.

The issue has been examined in light of Maternity Benefit Act, 1961 and Maternity Benefit (Amendment) Act, 2017.

As per Section 5(2) of the Maternity Benefit Act, 1961, no woman shall be entitled to maternity benefits unless she has actually worked in establishment of the employer from whom she claims maternity benefits for a period of not less than one hundred and sixty days in the twelve months immediately preceding the date of her expected delivery.

It has been decided that the Resident doctors (SRs/JRs/SR(Adhoc) & JR (Adhoc) shall be entitled for maternity leaves of 26 weeks and miscarriage leave of 06 weeks as per Maternity Benefit Act, 1961 and Maternity Benefit (Amendment) Act, 2017 in accordance with Section 5(2) of the Maternity Benefit Act, 1961 subject to the condition that no leave shall be granted after the completion/expiry of tenure of the doctor concerned.

Accordingly, all the Medical Superintendents/ Dean/ MD/Heads of Institutions are hereby advised to implement the above said guidelines while granting Maternity Leaves/Miscarriage Leave to Resident Doctors (SRs/JRs/SR(Adhoc) & JR(Adhoc).

The Medical Superintendent/ MD/ Director of the concerned hospital/institution would be responsible for non-compliance of above said guidelines."

7. From this, it is evident that if a Resident Doctor has worked for a period of 160 days in 12 months immediately the preceding the date of her expected delivery, she shall be entitled to be extended the benefit under Section 5(2) of the

Maternity Benefit Act, 1961. It is not in dispute that the applicant worked for more than one year and during that spell, she worked for more than 160 days.

8. Learned counsel for applicant submits that the applicant may be issued a certificate in respect of the service rendered by her in the hospital.

9. We therefore, partly allow the OA directing that :

(a) the respondents shall extend the benefit of the maternity leave to the applicant in terms of Section 5(2) of the Maternity Benefit Act, 1961, within four weeks from today.

(b) respondents shall also issue a certificate to the applicant indicating the length of service rendered by her in the hospital.

There shall be no order as to costs.