

(2018) 04 CAT CK 0037

In the Central Administrative Tribunal

Case No : Original Application No. 3329 Of 2016

Dr. Priyanka Mittal

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 13-04-2018

Acts Referred:

Maternity Benefit Act, 1961 — Section 5(3)

Citation : (2018) 04 CAT CK 0037

Hon'ble Judges : Uday Kumar Varma, Member (A)

Bench : Single Bench

Advocate : Malaya Chand, Anmol Pandita, Vijay Pandita

Final Decision : Allowed

Judgement

1. The only relief prayed for by the applicant in this OA is to issue a direction to the respondents to grant the remaining maternity leave of 138 days due to her, as she is entitled to 180 days of this leave as per rules but has been granted only 42 days leave on this count.

2. Brief facts of the case are that the applicant joined the office of respondent no.2 on 12.05.2015 as Senior Resident on ad hoc basis vide order dated 07.05.2015 for 89 days. It is the contention of the applicant that as during the service she was in a family way, she submitted an application dated 06.02.2016 for grant of maternity leave for 180 days w.e.f. 08.02.2016 to 05.08.2016. She gave birth to a girl child at B.L.K. Memorial Hospital, Pusa Road, New Delhi on 22.02.2016. It is further contended that as the tenure of 89 days was about to expire on 20.03.2016, the applicant made an application on 14.05.2016 for extension of her tenure for further 89 days. She also got a legal notice dated 14.05.2016 served upon the respondents pertaining to grant of maternity leave for 180 days. On 16.06.2016, the applicant made yet another application for extension of her tenure for further 89 days as Senior Resident Pathology. It is the contention of the applicant that despite several representations, when she did not receive any response from the respondents, she made an application dated

18.06.2016 under Right to Information Act, 2005 to the respondents to enquire about the status of her maternity leave to which she received a vague reply dated 01.07.2016 informing that her application has been transferred to the Public Authority and on 05.08.2016 the respondent no.2 forwarded her RTI application to the Head of the Department of the Hospital but no reply has since been received by her. The applicant submits that on 05.08.2016 she came to know from her colleagues that the respondent no.2 conducted an interview on 22.07.2016 against her post and different other vacant posts and appointed some candidates. It is to the dismay of the applicant that the respondents have neither considered her case for further extension of tenure nor decided her maternity leave application. The applicant submits that she had received only 42 days maternity leave upto 20.03.2016 whereas as per settled law she is entitled for 180 days maternity leave as admissible under the rules.

3. To strengthen her claim pertaining to entitlement of 180 days maternity leave, the applicant has relied upon several decisions of the Tribunal i.e. Dr. Swati & Ors. vs. Govt. of NCT of Delhi & Ors. [OA No.1761/2015 decided on 12.08.2015]; Dr. Kamini Singhal vs. Govt. of NCT of Delhi & Ors. [OA No.1181/2014 decided on 10.09.2015] and Ms. Veenu Grover vs. National Capital Territory of Delhi & Ors. [OA No.3843/2013 decided on 14.02.2014].

4. The respondents have filed their counter reply refuting the claim of the applicant on the ground that as the applicant's tenure came to end on 20.03.2016 beyond which no extension of tenure was granted, therefore, the applicant cannot be granted maternity leave beyond 20.03.2016 as per Section 5(3) of the Maternity Benefit Act, 1961. They have further submitted that the applicant was adjusted against the ST vacant post and as she did not apply for extension of tenure for further period, the respondents, as per the guidelines, could not keep the said post vacant and, therefore, they had to advertise.

5. Heard the learned counsel for the parties and perused the material on record.

6. There are some facts which are material to the adjudication of this OA that need to be once again stated. One undisputed fact is that the applicant was in the employment of the respondents on adhoc basis since 12.05.2015 and that her last extension of 89 days was completed on 20.03.2016. It is also undisputed that she had sought maternity leave for 180 days, i.e., w.e.f. 08.02.2016 - 05.08.2016. It is also a fact that she had approached the respondents for further extension of her tenure on 14.05.2016 and again on 16.06.2016. It is also an undisputed fact that the applicant's application for maternity leave for 180 days was not declined or denied to her at any stage by the respondents.

7. Given these facts, following emerge:

8. The applicant had legitimately asked for maternity leave for a period of 180 days. At the time of oral hearing, the counsels for both the sides were of the view that the claim of 180 days of maternity leave is as per law. The respondents chose not to take any action on her application for maternity leave but eventually

decided to grant her only 42 days of maternity leave, i.e., between 08.02.2016 and 23.02.2016 when her tenure of 89 days was complete.

9. In my view, given the special situation of the applicant, the respondents were, in the least, expected to clarify to the applicant that her entitlement for maternity leave will be curtailed to only 42 days. It is a different matter that it would also have meant that they had pre decided not to extend her senior residency beyond 20.03.2016, a proposition which may not stand scrutiny of law. The legal position in this regard is rather unequivocal and unambiguous. Entitlement of 180 days of maternity leave is accepted in law as also in plethora of judgments of the Court. The issue of dispute here is, can the respondents legally limit the period of maternity leave to the applicant to 42 days taking into account that her 89 days engagement with the respondents would be complete on 20.03.2016. It may be borne in mind that she has continued as senior resident on adhoc basis since 12.05.2015 although with some notional breaks in between. There was no way for the applicant to anticipate that a further extension would not be granted nor did the last extension explicitly provide that the said engagement should be deemed as the last one by the applicant. Therefore, in my view, it was not justified on the part of the respondents to deny the applicant the total period of maternity leave of 180 days without in any way putting the applicant to notice that her maternity leave application will only be partially allowed.

10. The judgments placed before me by the applicant, more or less, corroborate and strengthen the view as articulated above. One of the two main grounds that the respondents have taken for denying the maternity leave of 180 days to the applicant is that she cannot be granted maternity leave beyond 23.02.2016 as per Section 5(3) of the Maternity Benefit Act, 1961. Section 5(3) of the Maternity Benefit Act, 1961 provides as follows:

"(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery;

Provided that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death;

Provided further that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child."

11. This provision does not, in any way, offer the respondents the right to curtail the maternity leave. In fact, it talks about situations and circumstances which are not relevant in the context of the applicant

12. Given the above discussion, I am of the considered opinion that the applicant is entitled for full 180 days of maternity leave beginning from 08.02.2016 and her ad hoc engagement should be deemed to be in extension till this 180 days period is complete. OA is accordingly allowed in above terms.

13. No costs.