

(2019) 08 CAT CK 0085

In the Central Administrative Tribunal

Case No : Original Application No. 4676 Of 2018

Dr. Shipra Agarwal

APPELLANT

Vs

Government Of India

RESPONDENT

Date of Decision : 30-08-2019

Acts Referred:

Maternity Benefits Act, 1961 — Section 4, 5, 12, 21, 23, 27
Constitution Of India, 1950 — Article 12, 14, 15, 15(3)

Citation : (2019) 08 CAT CK 0085

Hon'ble Judges : Mohd. Jamshed, Member (A)

Bench : Single Bench

Advocate : Meghna De, Rajnish Prasad

Final Decision : Disposed Off

Judgement

Mohd. Jamshed, Member (A)

1. The applicant worked as Research Associate w.e.f. 04.02.2008 till 31.12.2009 under the Directorate of Plant Protection, Quarantine and Storage, Ministry of Agriculture. The applicant was again given placement as Research Associate vide order dated 28.01.2011 Annexure (A-4). The appointment was on contract basis and was to be continued on year to year basis up to the date of the termination of the project and depending upon its satisfactory progress. The applicant submits that during 2011-2018, she continued to work as Research Associate based on approval and extension granted by the respondents from time to time. It is also submitted that she worked without break since 2011. On 03.10.2018, she applied for maternity leave for 180 days w.e.f. 26.11.2018. On 01.11.2018, the respondents granted her 35 days of maternity leave, i.e. 26.11.2018 to 31.12.2018.

2. On 25.10.2018, the respondents had issued a memorandum regarding continuation of the applicant and other staff on contractual basis indicating administrative approval and financial sanction for continuation of contractual

employees for the project only from 1. 04.2018 to 31.12.2018. This extension order was also with the condition that no further extension shall be granted and fresh engagement shall be made through identified man power supply agency beyond the period of December, 2018.

3. The applicant made representations dated 02.11.2018, 08.11.2018 and 18.11.2018 for grant of 180 days of maternity leave and for continuation of her services after the said leave. The respondents did not consider the representation and issued an advertisement dated 19.11.2018 for a walk-in-interview to be conducted on 18.12.2018 for various posts including the post on which the applicant was working. The applicant in the meanwhile proceeded on maternity leave w.e.f. 22.11.2018. The applicant aggrieved by this action filed the present OA seeking the following relief(s):-

"(i) Set aside Office Order dated 01.11.2018 (Annexure A-1) whereby the applicant has been granted only 35 days of maternity leave instead of 180 days without any justification, cause or reason; and/or

(ii) Set aside of Letters dated 28.09.2018 (Annexure A-2 (COLLY)).

(iii) Set aside the advertisement dated 19.11.2018 (Annexure A-3).

(iv) Direct the Respondent to grant the Applicant 180 days of maternity leave as prescribed under law and to grant other benefits for the said period as per Maternity Benefits Act, 1961;

(v) Direct the Respondent to allow the Applicant to join back in service with the same terms and conditions as it was before the maternity leave; and/or

(vi) Pass any such other or further order (S) as this Hon'ble Tribunal may deem fit and appropriate in favour of the Applicants; and

(vii) Allow the present Original Application with costs, in favour of the applicant."

4. The applicant also prayed for interim relief from the Tribunal in terms of restraining the respondents not to make fresh appointments in the post where the applicant is working till the disposal of the present OA. This Tribunal vide order dated 21.12.2018 directed the respondents not to dispense with the services of the applicant till the next date of hearing. This interim order was further extended vide orders dated 07.01.2019, 16.01.2019, 28.02.2019 and 19.03.2019 and 24.04.2019.

5. The respondents in their counter reply have opposed the OA and continuation of the interim relief granted vide order dated 21.12.2018 by this Tribunal. The respondents have also submitted that the applicant was engaged as Research Associate on specific terms and conditions vide letter dated 28.01.2011 which stipulated that the appointment is purely contractual and is likely to be terminated on completion of sanctioned period. This contract was extended from time to time as per the requirement and the financial approvals received for the project. It is also stated that there were breaks in service of the applicant and

she did not work from 02.05.2017 to 11.06.2017 and also from 01.08.2017 to 10.08.2017. The applicant was granted last extension as Research Associate on contractual basis from 01.04.2018 to 31.12.2018. Vide office order dated 28.09.2018, the Competent Authority in the Ministry of Agriculture directed that no further extension to the engagement of existing personnel will be considered and the contractual staff beyond the period of December, 2018 is to be engaged through fresh engagement process. Accordingly, an advertisement was issued for walk-in-interview for the post of three Research Associates and other persons dated 19.11.2018, which was also uploaded on the official website. The applicant, however, did not participate in the said interview held on 18.12.2018. She instead filed the present OA, just before end of her contractual agreement on 31.12.2018. It is also submitted by respondents that the provisions of the Maternity Benefit Act, 1961 has not been violated in any way as in view of the applicant's contract expiring on 31.12.2018, she had been granted leave of only 35 days, i.e. up to 31.12.2018 as admissible.

6. Respondent further submitted that it is not possible for any public authority to grant such leave beyond the date of contractual agreement, i.e. beyond 31.12.2018 in this case. It is also submitted that the applicant's case is not the only case and all other employees engaged along with her on contract basis have been discontinued. This was done in view of the policy decision by the Ministry of Agriculture that beyond December, 2018 the engagement of employees will be through fresh engagement process for which advertisement was issued on 19.11.2018 and a walk-in-interview was conducted on 18.12.2018. The applicant, however, did not participate in the same. Therefore, there is no discrimination against the applicant. It is also submitted by the respondents that prior to the directives given by the Tribunal, the walk-in-interview had already been conducted on 18.12.2018 and short listing was done by the Committee for three positions of Research Associates. The proposal had been submitted to the Ministry for approval. It is also prayed that in view of the submissions, the interim order dated 21.12.2018, which is continuing all this while, may be recalled otherwise huge administrative problems will be faced by the respondents.

7. In the rejoinder, it is submitted by the applicant that despite the Tribunal vide order dated 21.12.2018, directing the respondents not to discontinue the applicant from service, the respondents have failed to pay the salary of the applicant. It is also mentioned that the applicant has not been discontinued and working continuously.

8. The learned counsel for the applicant relied upon the judgment of the Hon'ble Delhi High Court in W.P. (C) No. 4798/2003 decided on 09.08.2005 in Bharti Gupta Vs. Rail India Technical and Economical Services Ltd. (Rites) and Ors., the order of Central Administrative Tribunal in OA No. 160/2017 decided on 05.05.2017 in Mona khatri Vs. Govt. of NCT of Delhi and Ors., and the Hon'ble Apex Court Judgment in S.L.P. (C) No. 12797 of 1998 decided on 08.03.2000 in Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) and Ors. The

respondents have also relied upon the Judgment of Central Administrative Tribunal in OA No. 1978/2018 dated 12.04.2019 in Dr. Kavita Yadav Vs. Govt. of NCT of Delhi.

9. It has been argued by the learned counsel for the applicant that she is entitled to the maternity leave of 180 days, which was denied by the respondents and she had been granted maternity leave of only 35 days, in violation of the Maternity Benefit Act, 1961. It was also argued that such maternity benefits cannot be denied even to the contractual staff as ruled by the Hon'ble Delhi High Court in W.P. (C) No. 4798/2003 decided on 09.08.2005 in Bharti Gupta Vs. Rail India Technical and Economical Services Ltd. (Rites) and Ors. The learned counsel for the respondents have vehemently argued that it is not possible for any authority to grant leave to a contractual employee beyond the period of contract which is pre decided as that would amount to extending of the contract and that will be discriminatory to others. The authorities for specific projects have to engage persons for a certain period of contract, which is pre decided. In this case the contract period of the applicant was only up to 31.12.2018 and in a situation like that of the applicant the maternity leave can only be granted up to the end of contract period and not beyond that. Granting 180 days of maternity leave as requested by the applicant would have amounted to extension of the contract for which there is no sanction. A policy decision in this regard was conveyed well in time to all the contractual employee that fresh recruitment will be done beyond 31.12.2018, in which the applicant could also participate.

10. Heard Ms. Medhna De, learned counsel for the applicant and Mr. Rajnish Prasad, learned counsel for the respondents, perused the pleadings and also relied upon judgments.

11. The applicant in this case was engaged as Research Associate under the Ministry of Agriculture on contractual basis. As per the terms and conditions this contract period was for one year and could be extended depending upon the requirement and continuation of the project. The initial placement letter dated 28.01.2011 (Annexure - A-4) of the applicant for her placement as Research Associate clearly stipulates terms and conditions including the nature of contractual appointment. It subsequently mentions that the appointment of the Research Associate will be terminated by any time by issue of a 24 hour notice. The applicant has continued to work as Research Associate with the respondents since 2011 based on extensions of the contract. There have also been breaks in her contractual service and the last extension of her contract was for the period 01.04.2018 till 31.12.2018. This was notified by the respondents, in view of the policy decision dated 28.09.2018 of the Ministry of Agriculture that no further extension for the engagement of the personnel working on contract basis would be considered and the contractual staff beyond that period would be engaged through a selection process. The last sanction for all the 23 contractual employees was accordingly granted for the period 01.04.2018 to 31.12.2018. Thus, the contractual employment of all the 23 employee was to end on

31.12.2018 only. The maternity leave was sanctioned by the Competent Authority vide letter dated 01.11.2018 for the period from 26.11.2018 till her contract period up to 31.12.2018.

12. The respondents also issued the advertisement for walk-in-interview on 19.11.2018 for engagement of three Research Associates for which interview was held on 18. 12.2018. The applicant did not apply or appear in the walk-in-interview for the post of Research Associate advertised by the respondents. The present OA was, however, filed on 18.12.2018, seeking relief in terms of setting aside the office order dated 01.11.2018 for the sanctioned leave for 35 days and setting aside two letters of Ministry of Agriculture dated 28.09.2018 indicating extension of contract period only upto 31.12.2018 and directing that no further extension of the existing persons will be considered beyond the period of December, 2018. The applicant has also sought relief for setting aside the advertisement dated 19.11.2018 for the walk-in-interview, and allow the applicant to join back the service with same terms and conditions.

13. The Tribunal vide order dated 21.12.2018 in this OA granted interim relief by directing the respondents not to dispense with the services of the applicant till the next date of listing. This interim relief has continued till now. There are two issues in this OA, one regarding the grant of maternity leave of 180 days with all associated benefits to the applicant and the second is continuation of the applicant in the same post after the expiry of her contractual period i.e. 31.12.2018. The relied upon judgments had been perused. The Hon'ble High Court of Delhi in W.P. (C) No. 4798/2003 decided on 09.08.2005 in Bharti Gupta Vs. Rail India Technical and Economical Services Ltd has held as under:-

"8. In this view of the matter, and having regard to the fact that the petitioner is not pressing her claim for reinstatement the issue for decision is whether the respondent would have denied maternity benefits under the 1961 Act.

...

12. Articles 14 and 15 of the Constitution guarantee equality, Article 15(3) enables the State to make special provision for women. The Act makes provisions that are in furtherance of two objectives-affirmative action (Sections 4, 5 and 27) and non-discrimination (Sections 12, 21 and 23). Their universality is undeniable.

13. RITES, in my considered opinion, is an establishment covered under the Act. Equally, it is an instrumentality of State (under Article 12 of the Constitution of India) and therefore bound by Part III of the Constitution. The record shows that the petitioner continued in employment till 11.11.2000, as per the RITES itself. The last order, extending the contract of appointment by 6 months, was issued on May, 2000,; the previous period had expired on 17.4.2000. Hence, the period commenced on 17.4.2000, and continued till 16.10.2000. In view of these admitted facts, and the circumstance that the petitioner went on leave with effect from 11.11.2000, after which she delivered a baby on 5.12.2000, the

RITES cannot escape its obligation to pay benefits under the Maternity Benefits Act, 1961.

14. I accordingly, partly allow the petition. A direction is issued to the respondent RITES to calculate and release all amounts payable under the Maternity Benefits Act, 1961 (including full salary for the maximum periods of leave permissible under the Act and also the bonus amount admissible) within a period of six weeks from today. No costs."

14. The ruling given in this Judgment is regarding the maternity leave benefits. It was directed that respondents shall calculate and release all amounts payable under the Maternity Benefits Act, 1961 (including full salary for the maximum periods of leave permissible under the Act and also the bonus amount admissible). However, in this case the petitioner was not pressing claim for reinstatement and the claim was only for maternity benefits under the Maternity Benefits Act of 1961.

15. In the present OA, the maternity leave was sought for 180 days and the same was granted by the respondents for about 35 days from 26.11.2018 to 31.12.2018. This Tribunal passed the interim order of 21.12.2018 directing the respondents not to dispense with the services of the applicant till the next date and this has continued since then. It is evident that the period of 180 days of maternity leave which was requested by the applicant is a period that has already been covered with the interim relief granted vide order dated 21.12.2018. It has further been mentioned by the applicant in the rejoinder that despite interim orders, no salary has been paid by the respondents to the applicant. As far as the other aspect is concerned i.e. the relief sought by the applicant in terms of quashing the decision of the respondents regarding the last extension of contract period up to 31.12.2018 issued by letter dated 28.11.2018, it is evident that it was applicable not only to the applicant but also for all other contractual employees.

16. In this case it is obvious that the respondents have taken a policy decision regarding the last extension of the contract period of the existing employees to be only up to 31.12.2018 and thereafter the engagement is being done through a fresh recruitment process for which walk-in-interview took place. There have been a number of judgments in connection with continuation of ad-hoc or contractual staff and their extensions. This Tribunal has also dealt with similar subjects in OA No. 1978/2018 and in OA No. 1927/2019 but the facts of those cases are different. It is also worthwhile mentioning that as far as the aspect of continuation of the applicant in the same post is concerned, it is evident that this group of contractual employee have been working on a specific project, which has its own time frame and funding. There was a clear condition that this group of contractual employees have been engaged only on the basis of requirement of the project and their services would be extended depending upon the requirement and financing on year to year basis. Memorandum dated 28.01.2011 regarding placement of the applicant as Research Associate clearly mentions that

the placement is for the Central Sector Scheme, 'Monitoring of Pesticide Residues at National Level' sponsored by Department of Agriculture and Cooperation (DAC), Ministry of Agriculture, Government of India. It is also indicated that the placement to the post of Research Associate is purely temporary position and Research Associate had a fixed remuneration of Rs. 24000/- + HRA consolidated per month under the project entitled "Monitoring of Pesticide Residues at National Level" up to March, 2011 from the date she joined the post. Alongside there were many conditions including that the placement of Research Associate is on contract basis which could be continued on year to year basis up to the date of termination of the scheme depending upon satisfactory progress.

17. The last extension granted was up to 31.12.2018 and the respondents had given advance notification in this regard. It was also indicated that under this scheme fresh engagements will be made through Walk-in-Interview. An advertisement dated 19.11.2018 was published through Employment News. In this advertisement the post advertised was Research Associate (Chemistry) with emoluments of Rs. 40000/-p.m. + HRA (as per applicable rates) for Ph. D & Rs. 38,000/- p.m. + HRA (as per applicable rates) for Master Degree Holders. Qualification and Experience prescribed for the post were Ph.D or Master Degree with three years' experience in Analytical Chemistry or Organic Chemistry or Agricultural Chemistry/Chemicals or Biochemistry or Biotechnology or Environmental Sciences. Desirable qualification prescribed was basic and practical knowledge of HPLC, GC-ECD/FPD, GC-MS and exposure to pesticide residue analysis.

18. It is thus obvious that on completion of the contract on 31.12.2018, the respondents initiated process for fresh selection through Walk-in-Interview for the position of Research Associate (Chemistry) with the above mentioned qualification. These are obviously different from the previous engagements and requirements. Thus, it is not a case of replacement of one set of contractual employee with another set of contractual employee. All the staff working in the earlier project were entitled to apply for these posts. The applicant, however, did not appear for the same.

19. In view of the above mentioned, the respondents are directed as under:-

a) The applicant shall be paid salary including the maternity benefits in terms of the extant rules as due to her during the period from 31.12.2018 till the issue of this order.

b) The claim of the applicant for continuation in the same post is not tenable. The stay granted as interim relief stands vacated. The respondents are now at liberty to decide on the continuation of the applicant's services or otherwise. If it is so decided that her services are to be discontinued, a show cause notice will have to be issued within 04 weeks and a decision, as deem fit, shall be conveyed to the applicant within 04 weeks thereafter.

20. The OA is disposed of with the above directions. There shall be no order as to

costs.