(2014) 12 DEL CK 0140

In the Delhi High Court

Case No : Writ Petition (Civil) 3089/2014

Government of N.C.T. Delhi — APPELLANT

Vs

Shweta Tripathi — RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 42
Maternity Benefits Act, 1961 — Section 5(3)

Citation : (2014) 12 DEL CK 0140

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Yogesh Saini, Kartik Jindal for V.K. Tandon, Advocate for the Appellant

Judgement

S. Ravindra Bhat, J.—The petitioner, Govt. of NCT of Delhi (GNCTD) challenges an order of the Central Administrative Tribunal (CAT) dated 17.09.2013 in O.A. No. 4212/2012. The respondents/applicants had approached the CAT for appropriate directions, questioning the GNCTD''s decision not to grant them maternity leave for 180 days and confining it to 12 weeks. Both the respondents were working in the Department of Women and Child Development, GNCTD. They were appointed as Welfare Officers on 25.08.2009 and 14.07.2010. The first applicant sought leave on 20.06.2012 through the proper channel, stating that her expected date of delivery is 27.12.2012. The second applicant applied on 15.08.2012. Both the applicants sought leave for six months. The GNCTD, however, granted leave only to the extent of 12 weeks. Relying upon the directions of the CAT in O.A. No. 939/2011, Dr. Shilpa Sharma v. The Chairman, NDMC and Ors. and other judgments, including the decision of the Supreme Court in Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) and Another, , the applicants contended that the disparity in employment terms - so far as maternity benefits were concerned, was arbitrary and discriminatory against them. The CAT, by its impugned order accepted the applicants'' contentions and held that the mere circumstance that they were contractual employees could not arm the GNCTD with the discretion to treat them differently from other employees, who were extended the benefit of 180 days'' maternity leave.

2. The GNCTD contends that the terms of engagement under which the applicants were given contractual employment are embodied in various Office Memorandum dated 12.04.1985, 05.07.1990 and 12.07.1999, as well as parts of appendix to the Central Services (Leave) Rules, 1972. It is only to the extent of such leave that the contractual employees could claim entitlement. These, contended learned counsel, had to be read together with the provisions of the Maternity Benefit Act, 1961 which mandated that every establishment or shop necessarily has to give 12 weeks'' maternity benefit to its employees. Learned counsel submitted that the Central Civil Services (Leave) Rules, 1972 in its substantive provision Rule 43, which enables permanent employees to avail of maternity leave for 180 days, could not have been applied under the circumstances.

3. Section 5(3) of the Maternity Benefit Act, 1961 which requires every establishment " a term which comprehends even government departments - to grant maternity benefit of 12 weeks to be given to each female employee, is in the following terms:

5. Right to payment of maternity benefit. ....

XXXXXX XXXXXX

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks, that is to say, six weeks up to and including the day of her delivery and six weeks immediately following that day:

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 of six weeks immediately following the date of her delivery, leaving behind in either case the child, the employer shall be liable for the maternity benefit for the entire period of six weeks immediately following the day of her delivery but if the child also dies during the said period, then for the days up to and including the day of the death of the child."

4. This provision is in pursuance of the Directive Principle articulated in Article 42 of the Constitution of India.

5. Rule 43 of the Central Civil Services (Leave) Rules, 1972, on the other hand, reads as follows:

"43. Maternity Leave

(1) 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 (135 days) from the date of its commencement.

(2) During such period, she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

NOTE :- In the case of a person to whom Employees'' State Insurance Act, 1948 (34 of 1948) , applies, the amount of leave salary payable under this rule shall be reduced by the amount of benefit payable under the said Act for the corresponding period.

(3) Maternity leave not exceeding 45 days may also be granted to a female Government servant (irrespective of the number of surviving children) during the entire service of that female Government in case of miscarriage including abortion on production of medical certificate as laid down in Rule 19:

Provided that the maternity leave granted and availed of before the commencement of the CCS (Leave) Amendment Rules, 1995, shall not be taken into account for the purpose of this sub-rule.

(4) (a) Maternity leave may be combined with leave of any other kind.

(b) Notwithstanding the requirement of production of medical certificate contained in sub-rule (1) of Rule 30 or sub-rule (1) of Rule 31, leave of the kind due and admissible (including commuted leave for a period not exceeding 60 days and leave not due) up to a maximum of one year may, if applied for, be granted in continuation of maternity leave granted under sub-rule (1).

(5) Maternity leave shall not be debited against the leave account."

6. The CAT''s reasoning is premised upon its previous ruling in Dr. Shilpa (supra) which has, in turn, relied upon several other judgments, including that of the Supreme Court in the Female Workers (Muster Roll) (supra) as well as Neetu Choudhary (Smt.) Vs. State of Rajasthan and Others, . The reasoning adopted by the CAT, for proceeding in the way it did, is that the higher benefit which is given to employees who are not contractual but are borne in the establishment of the GNCTD itself, is a standard which should not have been deviated. This Court is of the opinion that keeping in mind the larger public interest sub- served in the grant of maternity benefit, the GNCTD, as a model employer, which is bound by Articles 14 and 16(1) , could not have discriminated between two female employees, for the purpose of maternity benefit, on the basis that one of them is a contractual employee and thus entitled to lesser extent of pay, whereas the other, being a permanent employee, could be favoured with a better term. This cannot be treated as a reasonable classification, considering the object of the rule for grant of maternity benefit.

7. For these reasons, the Court finds that the challenge to the CAT''s order is meritless. The writ petition is accordingly dismissed.

