

(2013) 07 KL CK 0010
In the High Court Of Kerala
Case No : W.A. No. 824 of 2013

Jisha P. Jayan

APPELLANT

Vs

Sree Sankaracharya University of Sanskrit

RESPONDENT

Date of Decision : 15-07-2013

Acts Referred:

Constitution of India, 1950 — Article 21
Maternity Benefits Act, 1961 — Section 1(3)

Citation : (2013) 139 FLR 740 : (2013) 3 KHC 434 : (2013) 3 KLT 533

Hon'ble Judges : Manjula Chellur, C.J.; K. Vinod Chandran, J

Bench : Division Bench

Advocate : A.G. Basil, for the Appellant; Arun B. Varghese, S. Krishnamoorthy, C.G.C. and Girija Gopal, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Manjula Chellur, C.J.—Appellant, who was unsuccessful before the learned Single Judge is before us. The Writ Petition came to be filed seeking the following reliefs:--

- a) Issue a Writ of Certiorari calling for the records leading to issuance of Ext. P8 Order and letter and quash the same;
- b) Issue a writ of Mandamus or any other appropriate writ, order or direction, directing the 1st Respondent University to allow the Petitioner to resume her duty after the maternity leave;
- c) Direct the 1st respondent to disburse the arrear of salary for the month of September 2010 and the maternity leave salary from 4.10.2010 to 1.4.2011 without any hindrance.
- d) Declare that Ext. P8 is unconstitutional and ultra vires the provisions of the Maternity Benefit Act, 1961 (Act 53 of 1961);
- (e) Declare that the provisions of Rr. 100 and 101 and Notes thereto. Part I, to

the extent of denying maternity leave benefit to contract employees is unconstitutional and ultra vires to the provisions of the Maternity Benefit Act, 1961 with retrospective effect, i.e. from 1.9.2010;

(f). Declare that the State of Kerala has no authority and competency to frame rules against the Maternity Benefit Act 1961 (Act 53 of 1961), a central legislation, depriving the right of women employees of the State of Kerala.

(g) Declare that the 6th respondent is not entitled to continue after 1.4.2011 in Petitioner's vacancy;

(h) Grant such other appropriate reliefs to the petitioner as this Hon'ble Court may deem fit and proper in the interest of justice.

(i) Award cost to the Petitioner.

The brief facts that lead to the filing of the Writ Appeal are as under:-

While appellant was working as Junior Computer Scientist in Tamil University in Tamil Nadu, the respondent-University offered the appellant/petitioner the post of Technical Assistant in the Computer Centre and Student Web Centre at Kalady, of the respondent-University for a period of one year on contract basis on a monthly remuneration of Rs. 15000/-. According to the appellant/petitioner, as the project itself was sponsored by the 3rd respondent-University Grants Commission--for upgrading the computer centers, since the project is for a tenure of three years, the petitioner has a right to be continued in the project for three years. With the legitimate expectation that she would be continued till the project is completed, she joined with effect from 16.10.2009. While serving so, she was absent from duty between 4.10.2010 and 4.11.2011 and applied for maternity leave on 4.9.2010 for a period of 180 days. She also submitted a medical certificate on 24.9.2010.

2. The respondent-University did not pay the full salary to the petitioner for the month of September 2010 and was also not continued in employment. When she contacted the respondent's office, she was asked to approach the Vice Chancellor and later she did submit a representation which was of no avail to her. Therefore, she approached this Court in the first round of litigation, wherein the University was directed to consider the representation and proceed with the matter in accordance with the procedure applicable. After considering the representation, the sanction of maternity leave came to be denied and according to the appellant, it is against the provisions of Maternity Benefit Act of 1961 and the respondent-University ought not to have rejected the same while other sister Universities like Kerala University and M.G. University are in the practice of granting 180 days of maternity leave to the contract employees as well. Referring to R. 100 and 101 of Part I of K.S.R., she has approached the Court seeking the above reliefs contending that Central legislation is applicable to her as the provisions of K.S.R. runs contrary to the Central Legislation.

3. It is pertinent to mention that she also raised an issue based on right to life

(Art. 21 of the Constitution of India) before the learned Single Judge. The contention that right to life would take in the right to conceive and give birth is irrelevant in so far as the employer has not curbed any such right. The denial was only with respect to maternity leave and consequential denial of salary; since the employment was contractual, and did not contemplate maternity leave as per the extant rules. We are of the opinion, so far as argument based on Art. 21 of Constitution of India, we fail to understand how it is applicable. The learned Judge, after referring to Rr. 100 and 101 of Part I K.S.R., opined that unless the contract employee is in service beyond one year, she would not be entitled to have such maternity leave. Therefore, the question of the rule being ultra vires would not come into play as contended by the appellant that it is repugnant to the Central legislation. So far as the Central enactment is concerned, apparently there is no notification extending such benefit to the present respondent - University as indicated in S. 1(3) of the Act. In the absence of any notification extending the benefit of Central Act to the establishment in question, we fail to understand in the light of definite provisions of the K.S.R. Part I Rr. 100 and 101, if the appellant has not put in service beyond one year on contract basis how she is entitled to such benefit. Neither under the Central enactment nor in K.S.R. Part I she is entitled to such benefit for want of notification and factually not working beyond one year on contract basis. The rules under the KSR cannot be held to be repugnant of the provisions of the Central enactment, for the simple reason that the central legislation does not cover the respondent-University. The learned Judge was justified in rejecting the claim of the appellant.

In view of the above provisions, we find no good ground to interfere with the said opinion of the learned Single Judge. Accordingly the appeal is dismissed.