
(2013) 07 P&H CK 0696
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 14681 of 2013 (O and M)

Jyoti Setia

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Punjab Civil Services Rules — Rule 8.137A

Citation : (2013) 172 PLR 181

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Kulbhushan Raheja, for the Appellant;

Final Decision : Disposed Off

Judgement

Tejinder Singh Dhindsa, J.—The petitioner was appointed as a Punjabi Mistress under the National Medium Education Abhiyan, on 19.07.2010 and is working as such on a contractual basis. The petitioner applied for Maternity Leave and it was granted for a period of 90 days only which is to end on 21.07.2013. It has been pleaded that the petitioner gave birth to a female child on 22.04.2013. Learned counsel for the petitioner submits that on account of the health condition of the child and as per doctor's advise the petitioner submitted an application dated 01.07.2013 (Annexure P-5) for an extension in the Maternity Leave for a further period of 90 days.

2. The grievance of the petitioner is that till date no final decision has been taken on the application dated 01.07.2013 (Annexure P-5) and the initial Maternity Leave of 90 days granted to her would expire on 21.7.2013.

3. Learned counsel would place reliance upon Rule 8.137-A of the Punjab Civil Services Rules to contend that the petitioner was vested with a right to be granted Maternity Leave of 180 days. That apart, reliance has also been placed upon a judgment dated 16.5.2013 rendered in CWP No. 5142 of 2013 titled as Reena Singla Vs. State of Punjab and others (Annexure P-7), whereby teachers

appointed under the Sarv Shiksha Abhiyan Authority have been held entitled to the benefits of Maternity Leave as admissible under the Punjab Civil Services Rules, Vol. I, Part-I.

4. Learned counsel for the petitioner has been heard at length.

5. Rule 8.137-A of Punjab Civil Services Rules, Vol. I, Part I reads in the following terms:-

(iii) Maternity Leave

8.137-A. (A) The competent authority under Rule 8.23 may grant to a female Govt. employee maternity leave on full pay for a period not exceeding 180 days without the necessity of production of a medical certificate and the grant of such leave shall be so regulated that the date of confinement falls within the period of this leave:

Provided that no leave under this sub-rule shall be granted to a female govt. employee who has three or more living children.

Note 1. Extension, in leave, if any, beyond 180 days shall, however, be permissible by the grant of leave of the kind due. Note 2. Maternity leave will not be debited against the leave account of the concerned female govt. employee).

Note 1. During such period she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave. The term "pay" in this rule includes officiating pay provided the authority sanctioning the leave certifies that the Govt. employee would have continued to officiate had she not proceeded on leave.

Note 2. Where a female govt. employee has less than two living children, maternity leave under this rule may also be granted in cases of miscarriages and abortion including abortion induced under the Medical Termination of Pregnancy Act, 1971, subject to the conditions that the leave does not exceed six weeks and the application for leave is supported by a certificate from a registered medical practitioner and in case of doubt certificate of a Principal Medical Officer or Assistant to Civil Surgeon or Gazetted Medical Officer may be called for.

Provided that a female govt. employee having two or more children shall not be entitled to avail of this concession, but, if required, can be sanctioned leave of kind due, on the production of a medical certificate.

(2) In the case of a person to whom the Employee's 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.

6. A bare reading of the rule would make it clear that the competent authority may provide to a female govt. employee Maternity Leave on full pay for a period not exceeding 180 days without the necessity of production of a Medical

Certificate. Such rule clearly cannot be construed so as to vest in an employee an absolute right to claim 180 days Maternity Leave. Be that as it may, the respondent-authority/competent authority is certainly obligated to look into the claim of the petitioner, who is seeking an extended Maternity Leave of 90 days i.e. a total of 180 days under the rule itself. As per contention raised by learned counsel, the application submitted by the petitioner for grant of extension of Maternity Leave is still pending consideration and no decision thereupon has been taken till date.

7. In the light of the facts noticed herein above, I deem it appropriate to dispose of the present writ petition with a direction to respondent no. 2 to consider the claim of the petitioner strictly in accordance with the provisions governing the grant of Maternity Leave and to take a final decision on the application dated 01.07.2013 (Annexure P-5) by passing a speaking order within a period of 7 days from the date of receipt of a certified copy of this order.

8. Petition disposed of. A copy of this order be furnished to learned counsel for the petitioner under the signatures of Bench Secretary.