
(2013) 01 P&H CK 0241
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 23841 of 2011

Kiran alias Dr. Kiran Bajaj

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 28-01-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2013) 138 FLR 1058 : (2013) LabIC 987 : (2013) 3 LLJ 65 : (2013) 2 LLN 770

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : Ashish Gupta, for the Appellant; B.S. Rana, A.A.G., Haryana and Ramesh Hooda, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, C.J.—The petitioner is working with the respondent - University, admittedly on contract basis, meaning thereby she is not the regular employee of the University. Dispute raised in this petition pertains to the admissibility of maternity leave. In the year 2008, when the petitioner was in family way, she applied for maternity leave from 11.9.2008 to 1.10.2008, which was granted to her, vide sanction letter dated 26.9.2008. Thereafter, she proceeded on further leave w.e.f. 7.10.2008, which was also sanctioned vide letter dated 15.10.2008 up to 15.3.2009. However, the leave for latter period was granted without pay. The petitioner submits that she is entitled to six months" maternity leave which is admissible to the regular employees. On the other hand, the respondents are granting three months" maternity leave to ad hoc/contractual employees for which instructions dated 22.6.2009 have been issued. In this petition, the petitioner has challenged the validity of the aforesaid instructions dated 22.6:2009 on the ground that these are discriminatory, inasmuch as the petitioner cannot be given different treatment than those employees who are working on regular basis insofar as benefit of maternity leave is concerned. In

support of this plea, the petitioner has relied upon a bunch of petitions with lead case titled as Raj Bala Vs. State of Haryana decided by a Division Bench of this Court on 11.4.2002. In the counter-affidavit filed by the respondents, the respondents have sought to justify the instructions dated 22.6.2009. It is stated that the ad hoc/daily wage/contractual employees cannot be treated at par with the regular employees. Insofar as these employees, in which category the petitioner falls are concerned, they are given the statutory benefit contained in Section 5(3) of the Maternity Benefit Act, 1961 (hereinafter referred to as the Act) which provides for 12 weeks' maternity leave. It is further argued that insofar as regular employees are concerned, if they are granted some benefit, which is more favourable and better than the statutory provision contained in the Act, that cannot be extended to these contractual employees. This provision contained in instructions dated 22.6.2009 is sought to be traced in the Supreme Court judgment in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others,

2. From the facts narrated above, it becomes clear that the petitioner has been granted benefit, which is provided under the Act. Section 5(3) thereof, which entitles such employees to 12 weeks' maternity leave, reads as under:--

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.

3. The question is as to whether the petitioner can claim parity with the regular employees since regular employees are entitled to six month's maternity leave, which provision is better than what is provided in the Act. No doubt, in Raj Bala (supra), the Division Bench of this Court held that it was not permissible to draw any line of distinction between regular employees and contractual employees insofar as entitlement of maternity benefit is concerned. However, a close scrutiny of the said judgment would reveal that the entire matter was in the context of provisions contained in the Act taking note of the fact that the contractual employees were not given any maternity leave at all. The ratio of the case has to be read as to what it decides and what it logically follows therein. In this backdrop, it was held that even contractual employees are entitled to grant of maternity leave. As pointed out above, in the instant case, leave as per the Act has been given to the petitioner. She cannot claim parity with the regular

employees and the issue in this respect now stands authoritatively settled by seven members Bench of the Supreme Court in Uma Devi (supra), wherein the Court held as under:-- It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. the employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

It is clear from the aforesaid principle laid down by the Supreme Court that giving different treatment to the ad hoc/contractual employees than what is given to the regular employees does not offend Articles 14 and 16 of the Constitution of India. We, thus, do not find any merit in this appeal which is accordingly dismissed.