
(2017) 10 BOM CK 0106
In the Bombay High Court
Case No : 2402 of 2016

Laxmi Subhash Yadav

APPELLANT

Vs

Office of Directorate Through Water and Sanitation Support
Organization (WSSO) Water Supply and Sanitation
Department, & Ors.

RESPONDENT

Date of Decision : 13-10-2017

Acts Referred:

Constitution of India, Article 42 -
Provision for just and humane conditions of work and maternity relief

Citation : (2017) 10 BOM CK 0106

Hon'ble Judges : S.C.Dharmadhikari, Bharati H.Dangre

Bench : DIVISON BENCH

Advocate : Uday P. Warunjikar, B.V.Samant

Judgement

1. The Petitioner has approached this Hon"ble Court for quashing and setting aside of the termination order, dated 30th December, 2013 served upon the Petitioner on 12th February, 2014, thereby terminating her contractual services and she has further prayed that she be extended the benefits available to a female employee under the Maternity Benefits Act, 1961. The Petition revolves around certain facts which are not disputed. The Petitioner was appointed as Document Consultant by an order dated 2nd April, 2013 appointing her on the said post with effect from 9th January, 2013 to 8th December, 2013 on consolidated salary of Rs.30,000/per month on contractual basis. The said appointment order was accompanied with a contract containing the terms and conditions of the appointment and Petitioner had accepted the same by signing the contract. The terms and conditions clearly mentioned that the services of the Petitioner on contract basis are required in the Government of India funded Water and Sanitation Support Organization (WSSO) under National Rural Drinking Water Programme (NRDWP) in the Water Supply and Sanitation department, Government of Maharashtra. The contractual assignment was for the period commencing from 9th January, 2013 and to continue till 8th

December, 2013 and it was mentioned that the contractual period of 11 months of the assignment may be shortened or terminated any time during the period depending upon the need and progress of the programme. The contractual assignment contained clause No. (9) which reads as follows:

"He/She will be eligible for total 08 days of casual leave (C.L.) and 10 days of Medical/sick leave for a year or equivalent thereof for the proportionate length of the service rendered. However, for any assignment less than 3 months, no Medical/Sick leave will be entitled. Further, not more than 3 days of C.L. will be allowed at a time. In case of fresh agreement signed with the contractual person, the leave shall not carry over to the new contract period. No other kind of leave shall be admissible to the consultant."

The initial contract was subsequently extended for another period of 11 months by order dated 26th December, 2013 and the appointment was continued from 10th December, 2013 to 9th November, 2014.

The Petitioner absented herself from work from 30th December, 2013 and on 8th January, 2014 she submitted an application for leave addressed to the Director, Water and Sanitation Support Organization, Belapur, thereby intimating that she was unable to attend the office since 1st January, 2014 due to her ill health. It was also informed that she had developed certain complications in her pregnancy and doctor had advised her complete bedrest for next three months. Therefore, she requested for grant of medical leave from 1st January, 2014 to 7th April, 2014 considering the pregnancy complications. The said application was accompanied by certificate from a private Maternity Hospital at Navi Mumbai, where it was diagnosed that the Petitioner was carrying two months pregnancy and she was advised three months rest from 8th January, 2014.

The Petitioner attempted to resume her services by submitting an application to the Director on 10th December, 2014, thereby intimating that the doctor had advised her to have rest due to complications in her pregnancy, therefore, she had sought leave for three months, however, now her health was good and therefore, as per the doctor's advice she intends to resume her duties. The Petitioner was served with an order of termination dated 12th February, 2014 informing that in view of her absence with effect from 30th December, 2013, her services were put to an end with effect from 30th December, 2013. She was not allowed to resume her duties and she preferred representation to the Principal Secretary, Water Supply and Sanitation Department on 13th February, 2014. In the said representation she mentioned that she had applied for medical leave for period of three months, however, her file has been processed as maternity leave, however she had not made any application for maternity leave. Thereafter, the Petitioner preferred various representations unsuccessfully. The Petitioner has further contended that the representations of the Petitioner and the efforts by her to agitate before the employer that even contractual employee should be entitled the benefits of maternity leave, ultimately yielded results by the action of the State Government issuing a Government circular on 20th March, 2015,

thereby extending the benefits of maternity leave to the contractual employees working in the District Water and Sanitation Mission Cell of the State Government and by virtue of the State Government Resolution, all the contractual women employees working in the District Water and Sanitation Mission would be entitled for maternity leave for 60 days and they would be entitled for the pay which they were entitled before proceeding on leave. Grievance of the Petitioner however is that the benefits of such Government Resolution is not extended to her.

2. We have extensively heard Advocate Shri Warunjikar, the learned counsel for the Petitioner and Shri B.V.Samant, A.G.P. for the Respondent. The learned counsel Shri Warunjikar has invited our attention to International Covenant on Economic Social and Cultural Rights, which include a Covenant relating to special benefits to women during period of pregnancy and postdelivery and would rely upon clause (2) of Article 10 of the said Covenant which reads as follows:

"Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits."

He also relied upon Article 25 of the Covenant which reads as follow:

"Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."

3. He also placed heavy reliance on the judgment of the Hon''ble Apex Court in case of Municipal Corporation of Delhi Vs. Female Workers (Muster Roll and another) reported in (2000)3 Supreme Court Cases 224, wherein the Hon''ble Apex Court has conferred the benefits of the Maternity Benefits Act, 1961, on the female workers of the Municipal Corporation of Delhi, who were on muster roll and not in its regular employment. He emphasized on the observations of the Hon''ble Apex Court that the employer has to be considerate and sympathetic towards an employee, who is becoming a mother and he must realize the physical difficulties, which working women undergo while rearing the child in their womb or while raising a child after birth.

4. Per contra, the learned Assistant Government Pleader relied upon the affidavit in reply filed by the Director, Water and Sanitation Support Organization, Belapur, Navi Mumbai, wherein the Respondents have categorically stated that the appointment of the Petitioner was contractual one and was governed by the terms and conditions mentioned in the appointment order, which were binding between both the parties. It is stated in the affidavit that the Petitioner remained absent from duty from 1st January, 2014 to 8th January, 2014 and submitted a medical leave application on 8th January, 2014 with the medical certificate requesting for grant of medical leave from 1st January, 2014 to 7th April, 2014 considering the pregnancy complications. It is contended that the Petitioner never submitted a maternity leave application and since she has only applied for medical leave, there is no question of granting her maternity leave and she was

not entitled for medical leave for three months as per her terms and conditions of appointment which permitted only 8 days of casual leave and 10 days of medical leave as per clause No.9 of the contractual agreement. So far as applicability of Government Circular of 20th March, 2015 it is stated in the affidavit that the termination of the Petitioner was effected from 30th December, 2013 and the circular was issued on 20th March, 2015, which is prospective in nature and did not extend to the Petitioner. It is further contended by the Respondent that the Petitioner is not in service and her services have been terminated and the issue of maternity leave is for the first time agitated before the Court and Petitioner in fact never applied for maternity leave.

5. Since the facts are not in dispute, we proceed to deal with the issue involved in the present case. The Maternity Benefits Act, 1961 has been enacted in the backdrop of the fact that number of women are employed in various establishments and it is necessary to confer certain benefits on such women who need certain special treatment in a phase when they are rearing the child in their womb and also required to nurture the child after his birth. Article 42 of Constitution of India, in form of Directive Principle mandates the State to make provisions for securing just and humane condition of work and for maternity relief. In furtherance of the said duty the cast on the State Government, the Parliament had enacted the Maternity Benefits Act, 1961 and the benefits available under the Act have been made available to various class of the employees by the State Government by making enactment applicable to them. The Act regulates the employment of women in certain establishments for certain periods before and after child birth and provide for maternity benefit and certain other benefits. The said Act ensures the right to payment of maternity benefits which means the payment referred to in subsection 1 of Section 5. Further, the said Act also entitles a woman for payment of medical bonus, leave for miscarriage etc. The said enactment by virtue of Section 10 entitles a woman suffering from illness arising out of pregnancy, delivery, premature birth of a child to be entitled to leave with wages at the rate of maternity benefit for maximum period of one month. This beneficial piece of legislation also prevents an employer from dismissing the employee when she absents herself from work during or on account of such absence.

There is no quarrel about the proposition that the said piece of legislation is beneficial legislation and is based on the principle of fairplay to the women employee by recognizing the fact that motherhood is the most important phase in the life of a woman and she needs special treatment during the said period. However, from reading of the provisions of the Act in terms of the benefits to which an employee is entitled under the provisions of the Act, it is clear that the benefit conferred upon an woman employee in terms of the maternity benefit is the payment referred to in subsection 1 of Section 5. The said Section recognizes the factum that a women needs rest preceding the crucial phase before delivering a child and another critical face after the delivery, when she has to care and nurture the child and therefore, it prescribes the maximum period for

which the women shall be entitled for maternity benefit by the Maternity Benefits (Amendment) Act of 2017, the said period has been permitted to be 26 weeks out of which not more than 8 weeks shall precede date of her expected delivery.

Section 6 prescribes the manner in which the maternity benefit and payment thereof can be availed and it requires a woman employed in the establishment to give notice in writing in such form as prescribed stating that her maternity benefit and the amount to which she may be entitled under the Act may be paid to her or to a person nominated by her and she will not work during the said period for which she received the maternity benefit. Further it also mandates that a woman who is pregnant should state in the notice the date from which she will absent from work not being a date earlier than six weeks from the date of her expected delivery. It is also permissible to give such a notice after delivery, if such notice is not given when she was pregnant and on receipt of such notice the employer shall permit such woman employee to absent herself from the establishment during the period when she receives the maternity benefit. Section 7, Section 9(a) and Section 10 are the different instances of maternity benefits which entitles a woman to certain benefits arising out of pregnancy, delivery, miscarriage, premature birth etc. Section 10 entitles a woman suffering from illness arising out of pregnancy, delivery, premature birth of a child, miscarriage, medical termination of pregnancy to be entitled to leave with wages at the rate of maternity benefit for maximum period of one month which is in addition to the period of absence allowed to her under Section 6 or as under Section 9. Thus, the woman can avail maternity benefit for period of one month in total, in addition to the period i.e. prescribed in Section 6. These are the special benefits which are available under the Maternity Benefits Act, 1961, to a woman employee.

6. The Petitioner was appointed as a contractual employee and the terms and conditions of her appointment were governed by the contract which she had signed on 2nd April, 2013. As per the said contract, she was eligible for 8 days casual leave and 10 days of medical leave. The Petitioner preferred an application for leave on 8th January, 2014 after absenting herself from duty from 30th December, 2013 and sought medical leave for period of three months as per doctor's advice. As a contractual employee she was not entitled for medical leave of three months, which she applied for. At the relevant time in her application she did not claim the said leave as maternity benefit on account of illness arising out of pregnancy. Her claim was for medical leave which she was not entitled as per terms and conditions of the contract. In view of her absenteeism from 30th December, 2013 the employer issued an order of termination with effect from date of her absence i.e. 30th December, 2013. The Petitioner herself has placed before us the documents she has sought under the Right to Information Act, pertaining to the notings of the department. Perusal of the note clearly reveal that the Petitioner had absented herself from duty from 30th December, 2013 and had sought medical leave from 1st January, 2014 to 7th April, 2014 and since she was working on contractual basis she was not

entitled for three months maternity benefit. The said application came to be rejected with a remark from Director that since the Petitioner was working on contractual basis, she is not entitled for leave of three months and therefore, in absence of such leave to her credit her absenteeism from 30th November, 2013 without availability of leave period necessitated the department to terminate the services of the Petitioner. It is further noted that the circular which the Petitioner has referred to, was issued on 20th March, 2015 by which the benefits of the maternity leave were extended to the contractual employees working with the Respondent department, however, the said circular does not operate retrospectively and till the time of issuance of the said circular the contractual employees were entitled for a limited casual leave and medical leave during the period of contract which did not include the maternity leave. This came to be extended to the contractual employees of the department only with effect from 20th March, 2015. The Petitioner cannot therefore claim benefit of the said circular. The Petitioner thereafter made various representations and sought extension of benefit of the said Government Resolution retrospectively to her case, however, the same was turned down. It is not in dispute that the law relating to maternity benefit has been enacted to achieve the object of securing social justice to the women workers. However, it has also to be seen that when a law operates it has to strike a balance between the individual right and need of the orderly society. The Petitioner's appointment was governed by the terms and conditions of the contract and the same was binding upon her. By virtue of the contract she was not entitled for maternity benefit and she was only entitled for medical leave for limited period. She absented herself and after one week submitted her leave application with medical certificate and prayed for grant of leave for three months when at the relevant time she was in the very early stage of pregnancy. The policy contained in the social legislation intends to grant benefit to women workers to have a safe pregnancy and to develop a bond with the child and nurture the child immediately after delivery, expects the benefit to be conferred on the eve of delivery of a child and therefore, it has bifurcated the period into two terms namely first term, preceding the delivery and the second term postdelivery . However, the said benefit is not available on the eve of pregnancy and the woman is not entitled to claim the said benefit since the time when a woman conceives and during her entire gestational period. If the maternity benefit is to be conferred in this manner, it would rather defeat the whole purpose, since the employee will also have to look at it from the angle of running the administration and the woman employees may not claim such privilege for such entire period of pregnancy, but necessarily have to regulate themselves in accordance with the provisions of the Maternity Act. In any contingency, the Petitioner was not entitled for extension of the benefits of maternity leave in terms of her order of appointment and she is not entitled to claim benefit of the Government Circular dated 20th March, 2015, when her services were already terminated with effect from 30th December, 2013.

In view of the aforesaid observations, we are not inclined to grant the relief as

prayed by the Petitioner namely reinstating the Petitioner till completion of the contractual period of employment. We do not find merit in the submission of the Petitioner and in the result, we dismiss the writ petition. No order as to costs.