(2007) 05 RAJ CK 0034

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3006 of 2006

Meenaxi Bhati (Smt.) APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 10-05-2007

Acts Referred:

Rajasthan Medical and Health Subordinate Service Rules, 1965 — Rule 27
Rajasthan Service Rules, 1951 — Rule 103

Citation : (2007) 2 WLN 219

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Judgement

H.R. Panwar, J.—By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks quashing of order dt. 30.10.2001Annex.-8 and directions to the respondent to extend the benefits of maternity leave and other benefits to the petitioner.

2. I have heard learned Counsel for the parties.

3. The facts giving rise to the instant writ petition are that the respondents issued an advertisment date 31.07.2003 Annex.-1 inviting the applications for the post of Nurse Gr.II contract consolidated salary. The petitioner holding qualification of Senior Secondary and diploma course of General Nursing and Midwifery from Mahatma Gandhi Hospital, Jodhpur, applied for the post of Nurse Gr. II contract consolidated salary in pursuance of Annex.-1. After due selection procedure as provided under the Rajasthan Medical and Health Subordinate Service Rules, 1965 (for short ?the Rules 1965? hereinafter). the petitioner was selected and appointed on the said post on contract basis vide order date 17.09.2003 Annex.-2 and as such she has been continously serving on the post of Nurse Gr.II contract consolidated.

4. Learned Counsel for the petitioner submits that the controversy involved in the instant case stands concluded by a decision of this Court in Smt. Neetu Chodhuary v. State of Rajasthan and Ors. 2005 (5) RDD 1144 (Raj). It is

reported by the counsel for the parties that a special appeal filed against the decision in Smt.Neetu Choudhary v. State of Rajasthan and Ors. has also been dismissed by the Division Bench and as such, the order of this Court in Smt. Neetu Choudhary has been affirmed by the Division Bench.

5. It is contended by learned Counsel for the petitioner that though the petitioner was appointed on urgent temporary basis and under the Rajasthan Medical and Health Subordinate Service Rules, 1965, an employee even if appointed temporarily under the Rules of 1965 is entitled for the maternity leave in view of the provision of Rule 103 of the Rajasthan Service Rules, 1951 (for short ?the RSR? hereinafter).

6. Learned Deputy Government Advocate appearing for the respondents contended that the provision of maternity leave is not applicable to the employees who have been appointed on urgent temporary basis on a consolidated salary. Learned Government Advocate submits that Rule 27 of the Rules of 1965 empowers the Government or the Authority competent, to make appointment on urgent temporary basis and the petitioner was appointed on urgent temporary basis under the said Rule.

7. Rule 103 of the RSR deals with the maternity leave and reads as under:

103. Maternity Leave.-A competent authority may grant ?Maternity Leave? to a female Government servant thrice during the entire period of her service. However, if there is no surviving child even after availing of it thrice, Maternity Leave may be granted on one more occasion.

The maternity leave may be allowed on full pay for a period which may extend upto the period of 90 days from the date of its commencement.

NOTE

Maternity leave under this rule may also be granted in case of miscarriage, including abortion, subject to the conditions that:

(i) the leave does not exceed six weeks, and

(ii) the application for the leave to supported by a certificate from the Authorised Medical attendant. Government of Rajasthan?s Decision.

1. Maternity leave is also admissible to temporary female Government servants under this Rule.

2. Maternity leave is not admissible in case of incomplete abortion.

Clarification

Abortion does not include ?threatened abortion? and maternity leave cannot be granted in the case of threatened abortion.

8. Learned Counsel for the petitioner submits that the Government of Rajasthan

by its order No. F12(1)F.II54, dt. 25.02.1955 declared that the maternity leave is also admissible to temporary female Government servants under this Rule 103.

9. The Government of Rajasthan took a decision by order dt. 25.02.1955 and the same has been inserted in the Rule 103 of the RSR providing that the maternity leave is also admissible to temporary female Government Servants under this Rule. Thus, it is admitted case of the respondent State that the maternity leave is also admissible to temporary female Government servants. In these circumstances, it is not open for the respondent State now to contend that the petitioner being appointed on urgent temporary basis is not entitled for the maternity leave. The stand taken by the State is contrary to the order dt. 25.02.1955 and therefore, such a benefit cannot be denied to the petitioner merely on account of her being engaged on urgent temporary basis on consolidated salary. Similar view has been taken by Jaipur Bench of this Court in Smt. Puja Arora v. State and Ors. S.B. Civil Writ Petition No. 493/2007 decided on 29.01.2007. While allowing the writ petition, this Court held the female employee, appointed on contract basis for consolidated salary, entitled for the maternity leave.

10. Keeping in view the decision of this Court in Smt.Neetu Choudhary v. State of Rajasthan and Ors. (supra) and Smt. Puja Arora v. State and Ors. (supra), in my view, the petitioner deserves the similar treatment and entitled for the maternity leave.

11. In the result, the writ petition is allowed. The order Annex.8 dt. 30.10.2001 denying the maternity leave is quashed and the respondents are directed to extend the benefit of maternity leave to the present petitioner as applied by her and all benefits consequential thereto be given to her within a period of two months from the date of production of certified copy of this order before the competent authority. There shall be no order as to costs.

