(2013) 05 P&H CK 0135

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 5142 of 2013

Reena Singla — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 16-05-2013

Acts Referred:

Constitution of India, 1950 — Article 39, 42
Maternity Benefits Act, 1961 — Section 5

Citation : (2014) LabIC 943 : (2013) 171 PLR 222 : (2013) 4 SCT 564

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : D.S. Randhawa, for the Appellant; Inder Pal Goyal, Additional Advocate General, Punjab for Respondent No. 1 and Mr. Anupam Singla for Respondents No. 2 to 5, for the Respondent

Final Decision : Allowed

Judgement

Augustine George Masih, J.—Petitioner, who is a Teacher, was appointed under Sarav Sikhiya Abhiyan Authority (hereinafter referred to as ''SSA Authority''), Punjab on contract basis on 28.01.2011 (Annexure P-1) by the Director General School Education-cum-State Project Director, Sarav Sikhiya Abhiyan Authority, Punjab-respondent No. 2. After fulfilling the requisite conditions and formalities as per the appointment letter, she joined at Government School Ghuman Kalan, District Bathinda on 15.02.2011. She was transferred to Government Senior Secondary School Gaggarpur-Eilpur, Tehsil Sunam, District Sangrur and joined on 02.08.2011. Petitioner was further transferred to Government Senior Secondary School Dirba, Tehsil Sunam, District Sangrur where she joined on 23.11.2012 and continues as such. She is working on annual contract basis and her contract is being extended by the respondents on yearly basis. Petitioner, prior to her joining as a Teacher under the SSA Authority, Punjab, was a mother of a female child. During her service, she became pregnant and delivery was expected in first week of December, 2012. She applied for maternity leave and was granted the same for 90 days which ended on 02.03.2013. She gave birth to a male child on

05.12.2012. The son of the petitioner was not keeping well and was admitted in hospital on 08.12.2012 and was discharged on 11.12.2012. At the time of discharge, the doctor advised breast feeding to the child for at least six months. Much prior to the date of expiry of her maternity leave, she sent application dated 06.02.2013 (Annexure P-4) to respondents No. 2 and 3 vide registered post to grant her maternity leave up to 180 days in view of Rule 8.137-A of Punjab Civil Services Rules Volume-I Part-I. Reliance was also placed upon the circular dated 19.10.2012 (Annexure P-5) issued by the Director Education Department (Secondary Education), Punjab, which dealt with entitlement of different kinds of leave to the employees appointed on contract basis. In the said letter, reference has been made to the Punjab Government, Finance Department (Finance Personnel) Circular Letter dated 25.12.2011, which clarified that under Rule 8.57 of the Punjab Civil Services Rules Volume-I Part-I, employees appointed on contract basis are entitled to different kinds of holidays. Appendix 16 of the Punjab Civil Services Rules Part-I Volume-II provides for model terms regarding holidays of the employees, who have been appointed on contract basis, but the same do not deal with maternity leave. Reference has been made to Rule 8.133 to 8.138 of the Punjab Civil Services Rules Volume-I Part-I, which deals with the different kinds of leave to the temporary Government employees, under which maternity leave for female employees for 180 days has been provided under Rule 8.137-A. On the basis of this letter, petitioner had sought extension of her maternity leave for 180 days.

2. When no decision was taken on the application submitted by the petitioner for extension of her maternity leave up to 180 days despite various efforts and visits made in this regard, she was compelled to file CWP No. 3995 of 2013 in this Court praying for decision on the representation submitted by the petitioner for extension of her maternity leave. The said writ petition was disposed of by this Court vide order dated 22.02.2013 directing respondent No. 2 to decide the representation of the petitioner dated 06.02.2013 within a period of one week from the date of receipt of certified copy of the order. In compliance with the order passed by this Court, respondent No. 2 proceeded to decide the same and rejected the claim of the petitioner for extension of her maternity leave vide order dated 01.03.2013 (Annexure P-7) by stating that the Punjab Civil Services Rules are not applicable to the service conditions of the petitioner as she was working on contract basis in SSA Society. This society has framed its own regulations which govern the services of its employees and have been incorporated in the contract of appointment of the petitioner. As per the said regulations/instructions of the SSA Authority, petitioner is only entitled to 90 days maternity leave and not beyond that. The petitioner has, thus, approached this Court challenging this order of rejection of her extension of maternity leave.

3. It is the contention of the counsel for the petitioner that the SSA Authority is a Central Government sponsored scheme of the Ministry of Human Resource Development, Government of India. The Manual on financial management and procurement has been issued by the Department of Elementary Education and

Literacy, Ministry of Human Resource Development, Government of India. As per para-2 of the said Manual, provisions outlined in the said Manual are mandatory which empowers the concerned implementing society to formulate Financial Rules and Regulations including the delegation of financial powers for effective implementation of SSA Authority. Regulations and procedure outlined in this Manual have to be formally adopted by the Executive Committee and the Financial Rules and Regulations framed in accordance with the provisions of this Manual. As per para 30.1(ii)(d), salary of teachers and their service conditions should be similar to that of the Government School teachers. He, on this basis, contends that when the service conditions of the teachers have been mandated to be similar to that of the Government School teachers, there can be no discrimination between the teachers working in the SSA Authority under the SSA Scheme and the teachers, who have been appointed on contract basis by the State Government especially when this is a beneficial legislation and the statutory Rules, which have been framed by the State of Punjab granting maternity leave of 180 days, are in consonance with the basic principles as laid under the Maternity Benefit Act, 1961, which has been legislated to give effect to the directive principles as laid down under Articles 39 and 42 of the Constitution of India. He further placed reliance upon the decision of the Government of India, according to which, Rule 43(1) of the Central Civil Services (Leave) Rules, 1972 has been modified to enhance the maternity leave to 180 days from 135 days, which is in consonance with the recommendations of the Sixth Central Pay Commission relating to Maternity Leave and Child Care Leave. Reliance has also been placed upon the Combined Fourth and Fifth Periodic Reports of the Government of India in the Convention on the Elimination of All forms of Discrimination against Women before the United Nations, where in para-27, it has been stated that the maternity leave for Government and Public Sector employees has been increased from 135 days to 180 days. Government of India, while submitting Children''s Alternative Report to UNCRC with Child Friendly Version of Government Report to UNCRC Committee, has stated that maternity leave for Government employees has been increased from 135 to 180 days. The scheme being a central sponsored scheme of the Government of India, the benefit needs to be extended to the employees of the SSA Authority, Punjab also. He, on this basis, contends that both under the Central or the State Rules, 180 days of maternity leave is provided and, therefore, the benefit should be extended to the petitioner. Reliance has also been placed upon the decisions of the Government of West Bengal, Andhra Pradesh, Maharashtra, Tamilnadu and Jharkhand, who are also running the SSA Scheme sponsored by the Central Government where 180 days of maternity leave has been granted to the female employees. On this basis, it has been contended by the counsel for the petitioner that the writ petition deserves to be allowed.

4. On the other hand, counsel for respondents No. 2 to 5 submits that the SSA Scheme is an all India effort to universalize elementary education by community ownership of the school system. In Punjab, this scheme is being implemented

through the SSA Authority, Punjab. It is an autonomous and independent body laying emphasis on the systematic community participation and creation of an effective decentralized decision-making and program implementation system for spread of elementary education. He contends that the petitioner has been appointed as a teacher under the SSA Scheme on contract basis and as per Clause 4 of the appointment letter, it is clear that the policy, instructions and Rules of SSA Authority, Punjab issued from time to time are applicable to the petitioner during her service, which are binding upon her. Petitioner having accepted the said terms and conditions, as laid down in her appointment letter dated 28.01.2011 (Annexure P-1), cannot now turn around to state that her claim would be covered under the Punjab Civil Services Rules, which are not applicable to the employees working under the SSA Authority. A policy decision dated 24.05.201 J (Annexure P-8) has been taken by the SSA Authority, Punjab, according to which an employee working under the SSA is entitled to 3 months maternity leave, which has already been availed of by the petitioner. Appointment of the petitioner is an annual contract, which is renewed every year and is not having any permanent lien on the post. In case, 6 months leave, as is claimed by the petitioner, is granted to her out of the one year contract period, the entire purpose for recruitment of the petitioner would be defeated which may lead to defeating the very purpose, for which the scheme has been prepared and is being implemented i.e. spreading of elementary education. Reliance has been placed upon a Division Bench judgment of this Court passed in LPA No. 302 of 2012 titled as Harjeet Kaur v. State of Punjab and others, decided on 21.08.2012 (Annexure R-1) to contend that the Rules framed by the Government of Punjab are not applicable to the SSA because it is a scheme formulated by the Government of India. Accordingly, it is contended by the counsel that the instructions issued by the Director Public Instructions (Secondary Education) Punjab dated 19.10.2012 (Annexure P-5) as also the Punjab Civil Service Rules relied upon by the petitioner for claiming the benefit of extended maternity leave would not be applicable to the service conditions of the petitioner. His further submission is that the benefit, as has been provided under the Maternity Benefit Act, 1961, which provides for 12 weeks maternity leave, has been complied with as 90 days of maternity leave has already been sanctioned and availed of by the petitioner. The mandate of the statute having been adhered to, no further claim can be made by the petitioner, which is not supported by the decision of the competent authority i.e. SSA Authority, which is the employer of the petitioner.

5. Similar argument has been raised with regard to the non applicability of the decision of the Government of India extending the maternity leave to 180 days from 135 days. Counsel has referred to a judgment passed by the Supreme Court in the case of Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) and Another, and a Division Bench judgment of this Court in Anima Goel Ms. Vs. Haryana State Agricultural Marketing Board, . On the basis of these judgments, counsel contends that the petitioner having been granted the benefit of the Maternity Benefit Act, 1961, the writ petition is without merit and deserves

to be dismissed.

6. I have heard the counsel for the parties and with their assistance, have gone through the records of the case.

7. Before proceeding to decide the case, the central sponsored SSA Scheme needs to be looked into. Chapter-I of the Manual on financial management and procurement dated 02.04.2004 issued by the Department of Elementary Education and Literacy, Ministry of Human Resource Development, Government of India gives an insight into the scheme in the introduction. It has been stated that the Sarva Shiksha Abhiyan (SSA) is the comprehensive and integrated flagship programme of Government of India, to attain Universal Elementary Education (UEE) in the country in a mission mode. This Abhiyan has been launched in partnership with the State Government and Local Self Governments, with the aim to provide useful and relevant education to all children in the 6-14 age groups by 2010 which stands extended. SSA was launched in 2000-01 with the objectives of (a) bringing all children in school, Education Guarantee Centre, Alternative School, ''Back-to-School'' camp by 2003; (b) all children complete five years of primary schooling by 2007; (c) all children complete eight years of elementary schooling by 2010; (d) focus on elementary education of satisfactory quality with emphasis on education for life; (e) bridge all gender and social category gaps at primary stage by 2007; and (f) universal retention by 2010. The components of SSA include (a) preparatory activities for micro-planning (b) appointment of teachers (c) opening new primary and school facilities (d) opening of upper primary schools (e) constructing additional classrooms, schools and other facilities (f) free textbooks to all girls/SC/ST children (g) maintenance and repair of school buildings (h) Teaching Learning Equipment for primary schools on up-gradation of Education Guarantee Scale to regular schools for setting up of a new primary school (i) TLE for upper primary schools (j) school grant (k) teacher grant (l) teacher training (m) opening of SIEMAT (n) training of community leaders (o) provision for disabled children (p) Research, Evaluation, Supervision and Monitoring (q) management cost (r) innovative activity for girl''s education, early childhood care and education, interventions for children belonging to SC/ST community, computer education specially for upper primary level (s) setting up BRCs/CRCs and (t) interventions for out of school children. Under para 1.5, the responsibilities for implementation of the programme on the various authorities have been specified.

8. Under para 1.6, it has been stated that at the State level, the programme is to be implemented in a Mission mode by a State Implementation Society registered under the Societies Registration Act, 1860 with a General Council and an Executive Committee. Under para 1.7, the district level implementations and the authorities for doing so have been specified and under para 1.8, the authorities at the village level have been mentioned. Para-2 gives the general outlook of the scheme. Under para 2.1, it has been stated as follows:-

2.1 While the provisions outlined in this Manual are mandatory, the State

Implementing Society shall formulate well-defined Financial Rules and Regulations including the delegation of financial powers for effective implementation of SSA. Rules, Regulations and procedures outlined in this document should be formally adopted by the Executive Committee and Financial Rules and Regulations framed in accordance with the provisions of this Manual.

9. Para 21 of this chapter deals with the appointment of teachers, according to which the SSA is an additionality to States/UT over and above the expenditure on elementary education already being incurred. New teachers are appointed for opening of new schools and additional teachers for existing schools. Norms have been prescribed depending upon the Pupil Teacher Ratio (PTR). In para 21.8, it is mentioned that the States have their own norms for recruitment of teachers and payment of salary to new recruits. The States will be free to follow their own norms as long as these are consistent with the norms prescribed by NCTE. Paras 30 and 31 of Chapter-III deal with the grant to the school and teachers, according to which, it can be given to the Government schools and the Government aided schools, Cantonment/Municipal Corporation Schools, aided Madaras. The conditions have, however, been imposed for release of such grant as per proviso (d), salary to the teachers and their service conditions should be similar to that of Government school teachers. The norms, therefore, are normally laid down under this chapter for release of grants under the scheme to the concerned authority of the school.

10. Chapter III deals with the ''Budgeting'' and paras 30, 31 and 32 deal with ''School Grant'', ''Teacher Grant'' and ''Teacher Training'' respectively. Under all these paras, it has been stated that the grant is to be given to (i) Government schools; and (ii) Government aided schools, Cantonment/Municipal Corporation Schools, aided Madarsas. For grant to be given, conditions have been specified. One of the conditions is that the salary of the teachers and their service conditions should be similar to that of the Government school teachers. This condition, as has been imposed for granting the benefit under the SSA, would be applicable to the teachers, who have been appointed under the SSA in the Government schools also. When such a condition is applicable for the teachers appointed under the Sarva Shiksha Abhiyan Scheme, the same cannot be said to be applicable to the teachers, who have been appointed in the Government schools. Thus, the salary of such teachers and their service conditions are required to be similar to that of the Government school teachers. Merely because a teacher has been appointed on contractual basis under the Sarav Sikhiya Abhiyan by the Sarav Sikhiya Abhiyan Authority and there is no regular post available as their appointment is under the scheme, would not entitle respondent No. 2 to deny the benefit, which is a precondition for the release of funds to the teachers appointed under the said scheme.

11. In view of the above position, it cannot be said that the Rules/Regulations framed by the SSA Society of a State can be at the sole discretion of the said society. No doubt that the society can frame its own regulations to govern the

services of its employees but those cannot be inconsistent with the terms and conditions as that of the Government school teachers. Even if the scheme is a central sponsored scheme, the norms, as laid down by the Central Government for its teachers/employees in the Government organization, cannot be said to be inapplicable as the Division Bench judgment of this Court in LPA No. 302 of 2012 titled as Harjeet Kaur v. State of Punjab and others, decided on 21.08.2012 has only held that the statutory Rules governing the conditions of appointment of the State would not be applicable to the employees of the scheme. It has further been observed that it is always open to the employer to fix better qualification than what is fixed in the Rules. The issue in the said case was that the higher qualifications have been prescribed under the SSA Scheme on the appointment to the post of Hindi Masters than those provided under the Punjab State Education Class-III (School Cadre) Service Rules, 1978. It is under these circumstances that the observations were made by the Court with regard to the non-applicability of the Rules. What has further weighed in the mind of the Court was that the petitioner having participated in the selection process and not having been selected then came forth with the plea as had been raised before the Court.

12. Further, the provisions, as contained in Chapter-III of the Manual on Financial Management and Procurement, were not brought to the notice of the Court and, therefore, the Court had no occasion to consider the same. The regulations, as framed by the SSA Society cannot, thus, be inconsistent with the mandate of manual, which clearly lays down that the service conditions should be similar to that of the Government school teachers. It has further been clarified that it would be similar to the teachers of the State Government concerned where the SSA Society has been formulated as per the procedure laid down in the manual. Accordingly, the Rules, as applicable to the regular Government employees viz-a-viz the service conditions having similarity with regard to the claims would be applicable.

13. In the present case, the claim of the petitioner is limited to the extent of grant of maternity leave of 180 days. It is true that under the Maternity Benefit Act, 1961, a woman is entitled to maternity leave of six weeks. However, there is no bar to the grant of benefits over and above the said period, as specified in Section 5 of the 1961 Act, The State of Punjab as well as the Central Government having adopted the norm of 180 days to be the maternity leave, the employees, who are working in the State of Punjab under the SSA Society, would be entitled to the same benefit of 180 days. As per Rule 8.137-A of the Punjab Civil Services Rules Volume-I Part-I and the circular dated 19.10.2012 (Annexure P-5) issued by the Director Education Department (Secondary Education) Punjab, petitioner would be entitled to the grant of 180 days of maternity leave. Even under Rule 43(1) of Central Civil Services (Leave) Rules, 1972, maternity benefit has been now enhanced to 180 days from 135 days, which is in consonance with recommendations of the Sixth Central Pay Commission relating to maternity and child care leave. Government of India has itself, in its report submitted before

the United Nations in its combined fourth and fifth periodic reports relating to Convention on the Elimination of All Forms of Discrimination against Women, in para 27 stated that maternity leave for Government and public sector employees has been increased from 135 days to 180 days. In its Children''s Alternative Report to UNCRC, again the Government of India has stated that the maternity leave for Government employees has been increased from 135 to 180 days. By the Government of West Bengal, Andhra Pradesh, Maharashtra, Tamil Nadu and Jharkhand, where the SSA Scheme is being run, 180 days of maternity leave is being granted to its employees. The scheme admittedly being a Central Government sponsored scheme, the employees covered under the said scheme would be entitled to the same benefits as the. employees of the Government of India as far as the maternity leave is concerned because the said benefit to an employee is a beneficial scheme, which is relatable to the public policy of the Government and in consonance with the Articles 39 and 42, Part-IV of the Constitution of India containing the directive principles of State Policy. There can be no discrimination on this score with regard to the grant of maternity benefits to a female employee especially when the conditions of the scheme clearly lays down that the service conditions should be similar to that of Government school teachers. The judgments relied upon by the counsel for the respondents only deal with a situation where no maternity leave was granted at all there the Court proceeded to grant of benefit under the Maternity Benefit Act, 1961 where six weeks of maternity leave stands provided and accordingly, the said benefit was granted by the Courts.

14. In view of the above, the present writ petition is allowed. The impugned order dated 01.03.2013 (Annexure P-7) passed by the Director General School Education-cum-State Project Director, Sarav Sikhiya Abhiyan Authority, Punjab-respondent No. 2 is hereby quashed. Petitioner is held entitled to the grant of 180 days of maternity leave. Copy of this order be given dasti to the counsel for the parties under the signatures of the Bench Secretary of this Court for compliance forthwith.