

(2023) 05 DEL CK 0362

In the Delhi High Court

Case No : Civil Writ Petition No. 3559 Of 2023

Renuka

APPELLANT

Vs

University Grants Commission (UGC)

RESPONDENT

Date of Decision : 23-05-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 15(3), 21, 39(e), 39(f), 41, 42, 226

Citation : (2023) 05 DEL CK 0362

Hon'ble Judges : Purushaindra Kumar Kaurav, J

Bench : Single Bench

Advocate : Bhawanshu Sharma, Apoorv Kurup, Kirit Dadheech, Nikhil Jain

Final Decision : Disposed Of

Judgement

Purushaindra Kumar Kaurav, J

1. The petitioner in the instant petition has prayed for directions to respondent no.2 to allow her the benefit of maternity leave and pursuant to that, grant her relaxation of attendance for completing the Master of Education (M.Ed.) course. The petitioner has also prayed for directions to respondent no.1-University Grants Commission (UGC) to frame specific rules and regulations for the grant of maternity leave for post-graduate and under-graduate courses.

2. Learned counsel appearing on behalf of the petitioner submits that the petitioner was enrolled in December, 2021 for pursuing the 2 year M.Ed. regular course from respondent no.2-University.

3. The petitioner had filed an application for maternity leave before the concerned Dean and Vice-Chancellor of respondent no.2 annexing the doctor's advice along with the prescription.

4. On 28.02.2023, the petitioner received a reply from the Dean of respondent no.2 whereby, her request for maternity leave was denied. The petitioner thereafter, raised her grievance before respondent no.1 and since the petitioner

did not receive any response, she has approached this court for the aforesaid directions.

5. Learned counsel appearing on behalf of the petitioner states that respondent no.1- UGC in terms of circular dated 14.12.2021 made provisions in the UGC (Minimum Standards and Procedure for Award of M.Phil./Ph.D Degrees) Regulations, 2016 (hereinafter 'UGC Regulations, 2016') providing for women candidates to avail maternity leave/child care leave ('CCL') once in the entire duration of M.Phil/Ph.D course for up to 240 days. He, therefore, submits that the respondent no.2 should also be directed to make the necessary provisions for providing the sufficient days of leave towards maternity leave/CCL.

6. Learned counsel for the petitioner has placed reliance on various decisions in the cases of Saumya Tiwari v. State Of U.P. & Ors. 2021 SCC OnLine All 963 : (2022) 1 All LJ 732 delivered by the learned single judge of the High Court of Allahabad and a decision passed by the High Court of Judicature at Madras dated 09.07.2012 in A. Arulin Ajitha Rani v. State of Tamil Nadu W.P. (C) 440/2011, to reiterate that the petitioner cannot be denied the benefit of maternity leave solely on the ground that no provision exists in the statute, ordinance or regulations applicable to the University, for such an act would be a violation of the Petitioner's fundamental rights under Article 14, 15(3) and 21 of the Constitution of India (hereinafter 'Constitution').

7. Learned counsel appearing on behalf of respondent no.2 opposed the submission and he submits that the circular relied upon by the petitioner does not have any application in the instant case.

8. In addition he submits that the course of the petitioner is governed by the provisions of National Council for Teacher Education Act, 1993 (hereinafter 'NCTE Act, 1993') and the regulations made therein. While placing reliance on National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2014 (hereinafter 'NCTE Regulations, 2014') he states that the candidates pursuing M.Ed. course are governed by Appendix-5 i.e. Master of Education Program Leading to Master of Education (M.Ed.) Degree.

9. While taking this court through Appendix-5, he states that there are requisite number of working days as stipulated under Clause 3.2 of Appendix-5. According to him, for any M.Ed. student there shall be at least 200 working days each year, exclusive of the period of admission and inclusive of classroom transaction, practicum, field study and conduct of examination. He, further states that the minimum attendance of students shall be 80% for theory course and practicum and 90% for field attachment. He, therefore, states that there is no provision under Regulations, 2014 or under Appendix-5 to create any category, for the purpose of the students who want to avail the benefit of maternity leave. According to him, in the absence of any provision for the same, the university cannot consider the application submitted by the petitioner.

10. I have considered the submissions made by learned counsel for the parties

and perused the record.

11. There is no doubt that the circular issued by the UGC will not have a direct application to the M.Ed. course which is essentially governed by the provisions of the NCTE Act, 1993 and the regulations made therein.

12. If the UGC circular is perused, the same clearly indicates that it has been made applicable to the entire duration of M.Phil/Ph.D course and a provision is made for grant of 240 days of maternity leave. The duration of M.Phil/Ph.D course and the duration of M.Ed. course are distinctly different.

13. The course in question i.e. M.Ed. course is only for a period of two years in contradistinction to the M.Phil/Ph.D course, which is for a considerably longer period of time and normally lasts for 5-6 years. It is thus seen that the circular relied upon by the petitioner issued by the UGC will not have a direct application under the facts of the present case.

14. The only question that requires consideration of this court is whether, in the absence of any specific provisions for maternity leave, the same can be directed to be favourably considered by the respondent no.2-University.

15. It was no less a person than Dr. B.R. Ambedkar himself, who on the 3rd of September 1949 moved an amendment to substitute the hitherto existing Entry 26 of List III of the Constitution. The amended entry, which was adopted by the Constituent Assembly, and now forms part of our Constitution reads as under:

"26. Welfare of labour including conditions of work, provident funds, employers, liability, workmen's compensation, invalidity and old age pensions and maternity benefits."

16. Similarly Article 42 of the Constitution forming part of the Directive Principles of State Policy provides as under:

"42. Provision for just and humane conditions of work and maternity relief.—The State shall make provision for securing just and humane conditions of work and for maternity relief."

17. The pronouncements of Supreme Court relating to reproductive rights are then as follows:

18. The Hon'ble Supreme Court in the case of Suchita Srivastava v. Chandigarh Admn. (2009) 9 SCC 1, has held that reproductive choices are inherent to a woman's right to privacy, dignity and bodily integrity which in turn are encompassed under Article 21 of the Constitution of India. K.G. Balakrishnan CJ (speaking for himself and P. Sathasivam and BS. Chauhan JJ.) in paragraph no. 11 of the said decision, stated the following:

"11. ... There is no doubt that a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can

be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth-control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children..."

19. In the case of K.S. Puttaswamy (retired) v. Union of India, (2017) 10 SCC 1" the Hon'ble Supreme Court in paragraph no.108 has held that it is the duty of the State to safeguard the ability of its citizens to take decisions.

"Life? within the meaning of Article 21 is not confined to the integrity of the physical body. The right comprehends one's being in its fullest sense. That which facilitates the fulfilment of life is as much within the protection of the guarantee of life."

20. The Hon'ble Supreme Court in the case of Bandhua Mukti Morcha v. Union of India (1984) 3 SCC 161, while considering various rights of workmen has held the following in paragraph no.10:

"This right to live with human dignity, enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief."

21. In addition to the decisions referred to hereinabove, there is a catena of decisions passed by the Hon'ble Supreme Court and various other High Courts wherein the right of women to avail the benefit of maternity leave in the workplace has been expounded as an integral aspect of the right to live with dignity under Article 21 of the Constitution.

22. The Constitution as adopted on 26th of November, 1949 served as a pledge that the citizens of India made to themselves. A pledge to disassociate ourselves from the parochial notions of society that prevented the ushering of equality. It was without any form of equivocation that the people asserted their right to be treated equally. Irrespective of gender, race, religion or caste, citizens were to claim their opportunities.

23. The Constitution envisaged an egalitarian society where citizens could exercise their rights, and the society as well as the State would allow the manifestation of their rights. A compromise was then not sought in the Constitutional scheme. The citizens could not be forced to choose between their

right to education and their right to exercise reproductive autonomy.

24. A man could then well enjoy parenthood while pursuing his higher education, whereas a woman necessarily has to undergo pre and post pregnancy care. It is not her choice, but the will of nature. What is, however, left for us to decide is the consequence we would impose upon a woman who bears a child.

25. The court, as well as the society, has two roads that it can tread in such a scenario. It can either follow the bare text of an existing legal provision, be stuck at the bark of words, be blind to the consequences of the law, and allow it to take its course. The other path-way is of being sensitive to the person in the dispute, applying the values enshrined in the Constitution and attempting, wherever possible, to accommodate the law falling short of societal development.

26. The first path would force a woman to necessarily choose between her right to a higher education and the right of becoming a mother. A woman would then have to either re-engage herself in the activity that she was previously pursuing and was halted by her pregnancy or would have to remain content with her having been unable to complete her vocation or education.

27. Undoubtedly, in exercise of its power under Article 226 of the Constitution of India, this court cannot create a different compartment for the purposes of relaxation of attendance. The applicable regulations which require a specific number of days of attendance are also required to be fulfilled. At the same time, the interests of candidates seeking maternity leave are also required to be catered to.

28. Under the instant case, the petitioner has requested for 59 days of maternity leave.

29. The genuineness of the application submitted by the petitioner is not doubted nor challenged. If the leave as prayed for i.e. 59 days is considered under the 'theory classes' the petitioner would be fulfilling the 80% attendance criteria in the theory classes. The same would ensure that the right of the petitioner is secured without compromising the standards to be maintained by the educational institution. It is for this reason, this court under the facts of the present case deems it appropriate to direct the respondent no.2- University to consider the application of the petitioner for the grant of 59 days leave as maternity leave against 80% theory classes.

30. Needless to state that if the petitioner has missed any practical classes during the period of leave, the same can always be directed to be rearranged as a special case.

31. In view of the aforesaid, the instant petition is disposed of with the following directions to the respondent no.2-University:

(i) The decision dated 28.02.2023 is set aside.

(ii) Respondent no.2- University is directed to consider the application of the

petitioner afresh, in view of the observation made in this order to consider her 59 days of maternity leave application against theory classes.

(iii) In case the petitioner fulfils the minimum 80% attendance criteria in theory classes, after accounting for the 59 days maternity leave, let the appropriate steps to allow the petitioner to appear in the examination be taken by the respondent no.2-University without any delay.