
(2019) 10 CAT CK 0011

In the Central Administrative Tribunal

Case No : Original Application No. 4576 Of 2017

Samvedna Sindani Singhani

APPELLANT

Vs

Director Of Hospital Administration And Ors

RESPONDENT

Date of Decision : 03-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Municipal Corporation Service Regulations, 1959 — Regulation 3

Citation : (2019) 10 CAT CK 0011

Hon'ble Judges : Pradeep Kumar, Member (A)

Bench : Single Bench

Advocate : Sunil Dahiya, D.S. Mahendru

Final Decision : Allowed

Judgement

1. Applicant is a Doctor, who was appointed on contractual basis in Hindu Rao hospital under North Delhi Municipal Corporation. She applied on 28.09.2016 for maternity leave for a period of 180 days for the period 01.10.2016 to 29.03.2017 for her first child. This application was not decided. Feeling aggrieved, she had approached the Tribunal in OA No.655/2017 wherein directions were given to decide on the maternity leave. However, no orders were passed thereon and accordingly she had preferred CP-387/2017 which was closed vide orders dated 14.11.2017, as by that time maternity leave for 84 days was sanctioned.

2. This is the second round of litigation for the same maternity leave. The applicant is aggrieved that she ought to have been granted 180 days maternity leave whereas only 84 days was sanctioned.

3. The applicant had also submitted that one similarly placed Doctor by the name Dr. Rachita Ravindra Misri was granted six months maternity leave vide orders dated 20.07.2010. This order reads as under:

"Under orders of M.S./SDNH and as per leave title given by ACA/SDNH, Dr. Rachita Ravindra Misri, SR has been granted Maty. Leave for six months (1st Mat.

Leave) w.e. from 17.05.2010."

The applicant pleads of discrimination.

4. The applicant also relied upon regulation 3 of Municipal Corporation Service Regulations, 1959, which reads as below:

"3. To whom applicable-Unless otherwise provided in the Act or these regulations, these regulations shall apply to all municipal officers and other municipal employees and is chargeable to the 'General Account' of the Municipal Fund.

Provided that nothing in these regulations shall apply to such municipal officers and other municipal employees as are appointed under any contract or render part-time service or are in receipt of daily wages."

5. In this context, applicant pleaded that in respect of the maternity leave she is entitled to be treated at par with regular employees of the Municipal Corporation who were entitled for 180 days maternity leave and since this was not sanctioned, she is aggrieved that even while rules were not followed but at the same time, she has also been discriminated against.

6. The applicant relied upon the following judgments:

i) Judgment of the Hon'ble High Court of Delhi in W.P. (C) No.3089/2014 dated 09.12.2014 [Govt. of N.C.T. Delhi & Ors. v. Shweta Tripathi & Anr.] The relevant observations and the decision by the Hon'ble High Court are reproduced below:

"1. The petitioner, Govt. of NCT of Delhi (GNCTD) challenges an order of the Central Administrative Tribunal (CAT) dated 17.09.2013 in O.A. No.4212/2012. The respondents/applicants had approached the CAT for appropriate directions, questioning the GNCTD's decision not to grant them maternity leave for 180 days and confining it to 12 weeks. Both the respondents were working in the Department of Women and Child Development, GNCTD. They were appointed as Welfare Officers on 25.08.2009 and 14.07.2010. The first applicant sought leave on 20.06.2012 through the proper channel, stating that her expected date of delivery is 27.12.2012. The second applicant applied on 15.08.2012. Both the applicants sought leave for six months. The GNCTD, however, granted leave only to the extent of 12 weeks. Relying upon the directions of the CAT in O.A. No.939/2011, Dr. Shilpa Sharma v. The Chairman, NDMC and Ors. and other judgments, including the decision of the Supreme Court in MCD v. Female Workers (Muster Roll) and Anr. 2000 (3) SLJ 369 (SC), the applicants contended that the disparity in employment terms - so far as maternity benefits were concerned, was arbitrary and discriminatory against them. The CAT, by its impugned order accepted the applicants' contentions and held that the mere circumstance that they were contractual employees could not arm the GNCTD with the discretion to treat them differently from other employees, who were extended the benefit of 180 days' maternity leave.

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6. The CAT's reasoning is premised upon its previous ruling in Dr. Shilpa (supra) which has, in turn, relied upon several other judgments, including that of the Supreme Court in the Female Workers (Muster Roll) (supra) as well as Neetu Chaudhary (Smt.) v. State of Rajasthan and Ors. 2008 (2) RLW 1404 (Raj). The reasoning adopted by the CAT, for proceeding in the way it did, is that the higher benefit which is given to employees who are not contractual but are borne in the establishment of the GNCTD itself, is a standard which should not have been deviated. This Court is of the opinion that keeping in mind the larger public interest sub- served in the grant of maternity benefit, the GNCTD, as a model employer, which is bound by Articles 14 and 16(1), could not have discriminated between two female employees, for the purpose of maternity benefit, on the basis that one of them is a contractual employee and thus entitled to lesser extent of pay, whereas the other, being a permanent employee, could be favoured with a better term. This cannot be treated as a reasonable classification, considering the object of the rule for grant of maternity benefit.

7. For these reasons, the Court finds that the challenge to the CAT's order is meritless. The writ petition is accordingly dismissed."

ii) Decision of the Principal Bench of this Tribunal in OA No.1761/2015 dated 12.08.2015 [Dr. Swati & Anr. v. Govt. of NCT of Delhi & Anr.]. The relevant parts of this judgment are reproduced below:

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On being recommended by the Staff Selection Commission, the Medical Superintendent, GTB Hospital offered the applicants appointment to the post of Senior Resident for a maximum period of 89 days or till the appointment of regular Senior Resident Doctors, whichever could be earlier.

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Dr. Swati proceeded on maternity leave for 84 days from 19.02.2015 to 13.05.2015. Nevertheless in view of the fact that delivery was pre-mature and the child required intensive care for longer period, she applied for maternity leave for 180 days.

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The ratio decendi of the judgment of Honble High Court in Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) is that for the purpose of maternity leave, the muster roll and regular workers need to be treated at par. It was way back in the year 1961 that the Maternity Leave Benefit Act, 1961 provided for maximum 12 weeks leave maternity leave. At that time, the beneficiary of CCS (Leave) Rules were also entitled to maternity leave only upto 3 months (90 days). It was only in the year 2008 that vide OM No.13018/2/2008-Estt. (L) dated 11.09.2008, the benefit of maternity leave for a period of 180 days from

the date of its commencement is given to female Government servants. Thus the respondents need to consider the entitlement of the applicants for maternity leave with due regard to the ancillary legal provisions in vogue at that point of time when such leave is needed/availed by the ad hoc employees. In the wake, we dispose of Original Application with direction to respondents to examine the claim of the applicants for maternity leave upto 180 days, with due regard to the fact that in the year 1961 when the Maternity Leave Benefit Act, 1961 provided for 84 days maternity leave, the beneficiary of CCS (Leave) Rules were also entitled to such relief only upto 90 days and in 2008 the duration of such leave admissible in terms of the CCS (Leave) Rules has been increased to 180 days, thus the adhoc female employees also need to be benefited proportionately and give the applicants benefit of maternity leave upto 180 days. No costs."

iii) Judgment of the Hon'ble High Court of Madhya Pradesh at Jabalpur in W.P. No.17004/2015 dated 02.03.2017 [Mrs. Priyanka Gujarkar Shrivastava v. Registrar General & another]. The Hon'ble High Court had observed as under:

"16. Identical issue of granting maternity leave to women employees appointed on contract basis or on adhoc or temporary basis have been considered by the Allahabad High Court, the Rajasthan High Court, the Punjab & Haryana High Court and the Uttarakhand High Court and based on the law laid down by the Supreme Court in the case of Female Workers (Muster Roll) (Supra), petitions have been allowed and directions issued to grant benefit to the employees. The Division Bench of the Allahabad High Court in the case of Dr. Parul Mishra Vs. State of U.P. decided on 27th January, 2010 in the case of a Lecturer working as Government and Post Graduate College on contract basis, after applying the laid down in the Supreme Court Female Workers (Muster Roll) (Supra) held that the employees therein was entitled to avail maternity benefit as is applicable to regularly lecturer in the Government College and identical contention of the State Government counsel to say that contractual employees are not entitled for maternity benefit was rejected. It was held by the learned High Court that the maternity leave does not change with the nature of employment. It is concerned with human right of a women and the employer and the Courts are bound under the constitutional scheme guaranteeing right to life, a right to live with dignity and protect the health of both mother and child, and after taking note of identical principle, petitions have been allowed. Similarly, the Rajasthan High Court in various writ petitions has directed for granting benefit to contract and temporary employees who are also claiming identical benefit in the cases of Civil Writ No.1598/2017 - Meenakshi Rao Vs. State of Rajasthan & others decided on 14th February, 2017 following earlier an judgment of the Rajasthan High Court rendered by Division Bench in the case of Neetu Choudhary Vs. State of Rajasthan & others (2008) Vol.-II RNW page 1404 (Raj). The Punjab & Haryana High Court has also granted similar benefit and allowed identical writ petition in the case of Anima Goel Vs. Haryana State Agricultural Development Corporation (2007) Vol.III LLJ page 64, Punjab & Haryana and the Uttarakhand High Court has allowed a writ petition on identical terms in the case of Smt. Nidhi

Choudhary Vs. State of Uttarakhand Writ Petition No.1866/2016 decided on 27.09.2016. Copies of all these judgments available in the website of Indian Kanoon Organization have been produced before us for perusal and we find that in all these cases after applying the law laid down by the Supreme Court as detailed here-in-above, identical writ petitions have been allowed and contractual employees have been directed to be granted the benefit of maternity leave at par with regular employees and we see no reason to take different view.

17. Accordingly, we allow this petition, quash the impugned order dated 21.08.2015 and direct the respondents to grant to the petitioner the maternity leave as claimed for and as applicable to the regular employees working in the establishment of District & Sessions Court or the High Court.

With the aforesaid, the petition stands allowed and disposed of."

iv) Judgment of the Hon'ble High Court of Rajasthan (S.B.) Civil Writ Petition No.5600/2017 dated 20.04.2017 [Smt. Radha Bai v. State of Rajasthan and Ors.]. The Hon'ble High Court made the following observations and directions:

"The present writ petition has been filed under Article 226 of the Constitution of India, praying that the petitioner who has been engaged as contractual employee on the post of Cook be granted 180 days maternity leave.

2. Whether a contractual employee engaged under a Scheme of the Govt, is entitled to grant of 180 days leave toward maternity leave, is an issue which has already been decided in affirmative by a co-ordinate Bench of this Court on 14.2.2017 in Meenakshi Rao vs. The State of Rajasthan & Ors., SBCWP No.1598/2017.

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In view of the fact that they are contractual employees certainly would be entitled for maternity (3 of 4) [CW-5600/2017] leave pursuant to the circular dt.06.11.2007 and those who are appointed on temporary/contract basis would certainly be entitled to the maternity leave u/R.103 of the Rules, 1951 and this issue has been settled by this court in the case of Neetu Choudhary, of which reference has been made supra, and has been upheld by the Division Bench at main seat at Jodhpur in D.B. Special Appeal (Writ) No.01703/2009 (State of Rajasthan & Ors. Vs. Smt. Dr. Monika Sharma) decided on 23.04.2010 but the respondents on her application seeking maternity leave, have sanctioned maternity leave for a period of two months, as reveals from order dt.05.08.2016 (Annex.3).

Once the petitioner stands entitled to claim maternity leave, in terms of Rule 103 of the Rules, 1951, the order passed by the respondents sanctioning a period of two months dt.05.08.2016 certainly is not sustainable in the law and since the issue has been finally settled by this court, remains no more res integra to be further examined by this court.

Accordingly, in the light of the discussion supra, the order passed by the respondents dt.05.08.2016 is not sustainable in law and the instant writ petition is disposed of with direction to the respondents to allow maternity leave and benefit in consequence thereof to the petitioner, in terms of R.103 of the Rules, 1951.

In case of any difficulty in carrying out the directions given above, the respondents are at liberty to move an application for modification/clarification of the order."

3. Mr. Sanjay Sharma, Government Counsel appearing for the respondents could not distinguish the order passed in the case of Meenakshi Rao (supra).

4. Consequently, the present petition is allowed in terms of the order dated 14.2.2017 passed in Meenakshi Rao vs. The State of Rajasthan & Ors., SBCWP No.1598/2017. The petitioner is held entitled to grant of 180 days as maternity leave."

7. Applicant pleaded that in view of the foregoing rule position and rulings, she is entitled to be sanctioned 180 days of maternity leave at par with regular employees irrespective of the fact that there she was a contractual employee at the relevant point of time.

8. Per contra, respondents opposed the OA. It was pleaded that the applicant was a contractual employee and accordingly she is entitled to the benefit as per Maternity Benefits Act, 1961, which provided for 12 weeks of maternity leave. Even though this was not sanctioned in the first instance, the same was sanctioned as a result of adjudication by the Tribunal.

The said Act was modified in the year 2017 vide Gazette notification dated 28.03.2017 wherein the maternity leave period was enhanced to 26 weeks. In the instant case, maternity leave was requested from 01.10.2016, which is prior to this amendment. Accordingly, 180 days maternity leave cannot be granted to the applicant.

9. The respondents also pleaded that the maternity leave to regular employees is being granted as per CCS (Leave) Rules wherein the provisions for 180 days maternity leave came into being prior to the Maternity Benefits (Amendment) Act, 2017 promulgated on 28.03.2017. Accordingly, the applicant being a contractual employee, provisions of the CCS (Leave) Rules providing 180 days maternity leave are not applicable to her.

10. Respondents also pleaded that the case of Dr. Rachita Ravindra Misri, quoted by applicant, is quite an old case and the relevant records are not readily available. However, it was mentioned across the Bar that there were certain complications in her case and accordingly 180 days maternity leave was sanctioned as a special case.

11. The matter has been heard. Shri Sunil Dahiya, learned counsel represented

the applicant and Shri D.S. Mahendru, learned counsel represented the respondents.

12. There is no dispute that as a contractual employee applicant was also entitled for grant of maternity leave. The dispute is in regard to quantum of leave whether it will be 84 days or 180 days.

The subject matter of quantum of leave has already been adjudicated by Hon'ble High Court of Delhi, Hon'ble High Court of Madhya Pradesh and Hon'ble High Court of Rajasthan as well as this Tribunal and the same has been brought out by the applicant in para-6 [(i) to (iv) supra].

13. This Bench is in respectful agreement with the ratio of those judgments and there is no reason to deny 180 days of maternity leave to the applicant. Accordingly, instant OA succeeds.

14. Respondents are directed to sanction a total of 180 days of maternity leave and make due payments within a period of 03 months from the date of receipt of a certified copy of this order. There shall be no interest. No costs.