(2011) 12 SHI CK 0228

In the High Court Of Himachal Pradesh

Case No : CWP No. 1889 of 2009-D

Smt. Meena Chauhan APPELLANT

Vs

State of H.P. and others RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:

Central Civil Services (Leave) Rules, 1972 — Rule 43
Constitution of India, 1950 — Article 14, 16, 42

Citation : (2011) 12 SHI CK 0228

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Justice Rajiv Sharma, Judge

1. Petitioner joined as Trained Graduate Teacher (Non-Medical) in Government Senior Secondary School, Pressi, Karsog, District Mandi on 13.4.2007. She applied for maternity leave on 1.5.2007. She joined back her duties on 1.8.2007 in Government Senior Secondary School, Pressi. She was transferred to Government Senior Secondary School, Kao, Karsog on 13.8.2007. The maternity leave was declined to the petitioner vide letter dated 31.5.2007. Petitioner preferred original application before the erstwhile Himachal Pradesh Administrative Tribunal bearing O.A. No. 580/2008. The same was disposed of by the Tribunal on 20.3.2008 with Yes direction to the second respondent to decide the representation. The second respondent rejected the case of petitioner on 2.12.2009. The second respondent while rejecting the case of the petitioner, vide Annexure P-5 stated that the petitioner should have applied for extension and the petitioner was not Government servant at the time of confinement.

2. Mr. Dilip Sharma has strenuously argued that the reasons assigned in Annexures P-2 and P-5 are against the letter and spirit of rule 43 of the Central Civil Services (Leave) Rules, 1972 (hereinafter referred to as "Rules for brevity sake). He then argued that the expression "commencement" mentioned in rule

43 of the Rules means the date when the employee submits an application seeking maternity leave. He further argued that something which is not provided for in the Rules cannot be read as has been done by the second respondent in the case in hand while rejecting the case of the petitioner. He lastly contended that rule 43 is welfare legislation and has to be construed liberally.

3. Mr. Vikas Rathore, learned Deputy Advocate General has supported Annexure P-2 and the reasons assigned in Annexure P-5.

4. I have heard the learned counsel for the parties and have perused the pleadings carefully.

5. Petitioner was blessed with a son on 5.3.2007. Petitioner joined her duties on 13.4.2007 as Trained Graduate Teacher (Non-Medical) in Government Senior Secondary School, Pressi. She applied for maternity leave with effect from 1.5.2007 and she joined back her duties on 1.8.2007. She has availed only 92 days leave.

6. The plain reading of rule 43 of the Rules makes it abundantly clear that a female Government servant with less than two surviving children may be granted maternity leave by an authority competent to grant leave for a period of 180 days from the date of its commencement. The expression "commencement" means to begin and to start. In the instant case, commencement of the period shall be from the date when the petitioner applied for maternity leave, i.e. 1.5.2007. Giving other meaning to word "commencement", as mentioned in Annexure P-2, will amount to doing violence to the spirit of enactment. Petitioner was not required to seek extension to join duties as stated by the second respondent. Petitioner was blessed with a son on 5.3.2007 and she joined her duties on 13.4.2007. She applied for maternity leave with effect from 1.5.2007. The maternity leave ought to have been granted to the petitioner strictly as per rule 43 of the Rules. Second respondent has come to a wrong conclusion that on the basis of old precedent, petitioner could also apply for extension of period for joining the duties. In case the petitioner had adopted this course, she would have lost her seniority and monetary benefits. Maternity leave is to be granted to the female Government servant from the date she applies. Providing of maternity leave under rule 43 of the Rules is for the welfare of the mother and child, which is the primary concern. In the instant case, Annexures P-2 and P-5 have been issued against the spirit of rule 43 of the Rules. It is duty cast upon the State to make provisions to secure just and humane conditions of work and for maternity relief, as per Article 42 of the Constitution of India. The petitioner was not required to be confined to avail the maternity leave. It is for the female employee to decide when she should avail the maternity leave taking into consideration all the circumstances. In case the female delivers a baby and within reasonable time is employed, she is certainly entitled to get the maternity leave. In the instant case, delivery took place on 5.3.2007. The petitioner joined her duties on 13.4.2007. Thus, at the time when the petitioner joined her duties, her baby was only 42 days old and required care and protection of the mother. To

deny the maternity leave to the petitioner only on the ground that at the time of delivery, she was not Government servant will be arbitrary and unreasonable.

7. The conditions of service of employees should be humane and the same are required to be liberally construed. In the case in hand, petitioner was entitled to 180 days maternity leave instead of 92 days. Petitioner was not required to apply for the leave of kind due, as mentioned in Annexure P-2. The action of respondents to deny the maternity leave to the petitioner, vide Annexures P-2 and P-5 is arbitrary, unreasonable and unfair and thus violative of Articles 14 and 16 of the Constitution of India.

8. Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. Annexures P-2 and P-5 dated 31.5.2007 and 2.12.2008 are quashed and set aside. Respondents are directed to grant maternity leave applied for by the petitioner on 1.5.2007 and to pay her leave salary equal to the pay drawn immediately before proceedings on leave. Needful be done within a period of four weeks from the date of production of certified copy of this judgment by the petitioner. No costs.