
(2009) 04 RAJ CK 0063
In the Rajasthan High Court

Smt. Ritu Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-04-2009

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2009) 04 RAJ CK 0063

Hon'ble Judges : Prem Shanker Asopa, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prem Shanker Asopa, J.—Issue notice to the respondents.

2. Ms. Priyanka Pareek, Dy. Govt. Counsel is directed to accept the notices.

3. Heard learned Counsel for the parties.

4. Since the matter is squarely covered by the judgment of this Court rendered in SBCWP No. 5253/2007 (Durgesh Sharma v. State and Ors.) decided on 24.9.2007 this writ petition is being finally disposed of with the consent of the counsel for the parties.

5. By this writ petition, the petitioner has prayed for a direction to the respondents to sanction maternity leave for the period from 16.7.2007 to 28.11.2007 with all consequential benefits in terms of Rule 103 of R.S.R. 1951.

6. Briefly stated facts of the case are that the petitioner was appointed as Nurse Grade-II on contract vide order dated 17.9.2003 on urgent temporary basis. On 18.8.2007, the petitioner gave birth to a female child and submitted medical sickness and fitness certificate for the period from 16.7.2007 to 28.11.2007. The petitioner requested the concerned authorities for sanction of the maternity leave as per the Rules but no heed was paid and ultimately, she served a detailed letter of demand for justice on the respondents but all in vain. Hence, she has filed this writ petition.

7. Submission of counsel for the petitioner is that the aforesaid controversy has been adjudicated by this Court in Durgesh Sharma's case (supra) and the case of the petitioner is squarely covered by the aforesaid decision.

8. Ms. Pareek, Dy. Govt. Counsel does not dispute the aforesaid position of law.

9. I have gone through contents of the writ petition and considered submissions of the counsel for the parties.

10. The relevant para 10 of the judgment in Durgesh Sharma's case (supra) is as follows:

10. I am of the view that matter is to be considered under Rule 103 of the Rajasthan Service Rules read with circular dated 25.2.55 whereby female Government servant is entitled thrice for maternity leave and this Court has interpreted the Rule 103 RSR and circular dated 25.2.55 by holding that the same is applicable to the person working in temporary capacity, though getting consolidated wages. Otherwise also a person working in temporary capacity with consolidated wages in Government will enjoy better status than a casual employee working in any establishment. The legislation made by the parliament for casual worker and Rule 103 of RSR has been promulgated by the then Rajpramukh of Rajasthan under Article 309 of the Constitution of India rightly made no distinction on the ground of mode of payment of the female casual labour and female Govt. employees for grant of maternity leave. Therefore, the circular dated 23.7.2004 is contrary to the aforesaid Rule and otherwise also there is no justification for restricting the benefit of maternity leave to the petitioner and other similarly situated persons by a circular dated 23.7.2004. The circular dated 23.7.2004 and the impugned order dated 8.6.2006 are liable to be quashed.

11. I am of the view that the controversy raised in this writ petition is squarely covered by the decision rendered by this Court in Durgesh Sharma's case (supra).

12. Accordingly, the writ petition is allowed and the respondents are directed to sanction maternity leave to the petitioner for the period from 16.7.2007 to 28.11.2007 and to release amount of salary for the aforesaid period of maternity leave, within a period of three months.