
(2014) 02 RAJ CK 0079

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 1262/2013

The Commissioner, Rajasthan Elementary Education Council
and Others

APPELLANT

Vs

Shama Zahra and Others

RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Citation : (2014) 02 RAJ CK 0079

Hon'ble Judges : Amitava Roy, C.J.; Vijay Bishnoi, J.

Bench : Division Bench

Advocate : P.R. Singh, for the Appellant; L.K. Purohit, for the Respondent

Final Decision : Dismissed

Judgement

1. In challenge is the judgment and order dated 24.9.2013 passed in S.B. Civil Writ Petition No. 4053/2010.

2. We have heard Mr. P.R. Singh, learned counsel for the appellants and Mr. L.K. Purohit, learned counsel for the respondents.

3. The respondent-writ petitioner had approached this Court with the aforementioned writ petition pleading that she had been initially appointed as Sankul Sahyogini under the Lok Jumbish Project vide order dated 30.7.1997 and on the termination of the said Project, vide order dated 23.12.2004, she was absorbed in Sarva Shiksha Abhiyan after due selection, whereafter she was inducted in the post of Cluster Resource Centre Facilitator (for short, hereinafter referred to as "CRCF"). She was subsequent thereto appointed on the post of Prabodhak by the order dated 1.10.2008. According to her, while she was serving under the Lok Jumbish Project, she had been granted maternity leave in the year 2001. Thereafter, she gave birth to a second child in the month of Feb. 2006 and availed maternity leave from 20.2.2006 to 19.6.2006. However, she not having been allowed maternity leave and salary for that period, submitted a representation on 24.3.2007 seeking the same. According to her, the Rajasthan

Elementary Education Council, Jaipur (for short, hereafter referred to as "the Council") in its meeting held on 10.1.2005 had decided to grant maternity and paternity leave to the persons, who were working under the Lok Jumbish Project. This was affirmed by the order dated 6.1.2007 of the Director of the Council to the effect that such persons would be allowed maternity leave as per the provisions of the Rajasthan Service Rules, 1951 (for short, hereinafter referred to as "the Rules"). However, as inspite of the above affirmations, maternity leave and the salary for that period was not granted to her, she approached this Court.

4. The respondents No. 2 and 3 (appellants-herein) in their reply averred that the respondent-writ-petitioner was a contractual employee under the Lok Jumbish Project and on the abolition of thereof, she and other employees were offered the opportunity to render services under the Sarva Shiksha Abhiyan purely on annual contract basis. They denied the respondent-writ-petitioner's claim of having been appointed in the post of CRCF. They questioned the tenability of the writ petition also on the ground that she had failed to substantiate with documentary proof that she had experienced matured delivery. They clarified that for the purpose of grant of maternity leave, it is 120 days in case of matured delivery, but is much less in case of miscarriage of pregnancy. They contended further that the incumbents, who were initially appointed under the Lok Jumbish Project and thereafter, had been rendering services under the Sarva Shiksha Abhiyan on contract basis had been decided to be allowed the benefit of maternity leave only after the resolution dated 8.11.2006 to the said effect which was eventually proclaimed by the order dated 6.1.2007. According to the answering respondents, therefore, the respondent-writ-petitioner was not entitled to maternity leave as her child had been born in the month of February, 2006 i.e. much prior to the effective date i.e. 8.11.2006.

5. The learned Single Judge, however, allowed the claim of the respondent-writ petitioner on the following counts:

"(a) She had been earlier working under the Lok Jumbish Project and thereafter, engaged as CRCF in Sarva Shiksha Abhiyan.

(b) The Council had taken a decision in its meeting held on 10.1.2005 to extend the benefit of maternity leave to the employees working with it on contractual basis and were employed under the Lok Jumbish Project.

(c) This decision was reiterated vide resolution dated 8.11.2006 adopted by the Executive Committee of the Council, whereafter, the Director of the Council had passed the order dated 6.1.2007.

(d) She has produced on record the Certificate dated 20.2.2006 issued by the Medical Officer concerned recommending the grant of maternity leave for the period of 120 days from 20.2.2006 to 19.6.2006 and thus, the doubt sought to be raised by the appellants-herein regarding delivery of the child was unfounded.

(e) Nothing prevented the appellants-herein to seek for further documents in

support of her claim for maternity leave, if felt necessary.

The appellants-herein were thus directed to finalize the matter with regard to the grant of maternity leave to the respondent-writ-petitioner and release the payment within a period of one month from the date of receipt of a certified copy of the order, failing which the sum was ordered to carry interest @ 9% from the date it had become due."

6. Mr. Singh has argued that the Council having taken its decision to grant maternity leave to the incumbents engaged on contract basis under the Lok Jumbish Project and thereafter, under the Sarva Shiksha Abhiyan only from 8.11.2006, the respondent-writ-petitioner was clearly not entitled thereto and thus, the learned Single Judge did err in law in granting her the same.

7. Per contra, Mr. Purohit has urged that the issue with regard to the grant of maternity leave to the incumbents appointed on contract basis or consolidated salary in terms of Rule 103 of the Rules stands concluded amongst others by the determination made on 23.4.2010 by a Coordinate Bench of this Court in D.B. Special Appeal (W) No. 01703/2009 State of Rajasthan & ors. v. Smt. Dr. Monika Sharma.

8. After hearing the learned counsel for the parties and on a consideration of the materials on record, we are of the view that the impugned judgment and order does not warrant any interference. A conjoint reading of the minutes of the meeting of the Council held on 10.1.2005 and the order dated 6.1.2007 referred to hereinabove authenticate that the decision to grant maternity and paternity leave to the incumbents engaged on contract basis under the Lok Jumbish Project had been taken on 10.1.2005 and being reiterated on 8.11.2006 was notified on 6.1.2007. Noticeably, the appellants did not dispute that the respondent-writ-petitioner had in-fact delivered her second child in Feb. 2006. They did not dispute either the authenticity of the Certificate dated 20.2.2006 issued by the Medical Officer, Government Hospital, Rajsamand to the effect that the respondent-writ-petitioner, who gave birth to a child, was examined by him and recommended that she was entitled to maternity leave from 20.2.2006 to 19.6.2006 (120 days) for full restoration of her health.

9. On a perusal of the impugned judgment and order, we find ourselves in the above factual background to be in complete agreement with the findings recorded therein. The plea of the appellants that the respondent-writ-petitioner, who had delivered her second child in Feb. 2006, is not entitled to the maternity leave and the salary for the said period as the decision to grant the same had been taken only on 8.11.2006, cannot be sustained. The impugned judgment and order is hereby affirmed.

10. The appeal thus fails and is dismissed.