
(2014) 11 P&H CK 0032
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 22166 of 2014 (O and M)

Vibha

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Citation : (2015) 178 PLR 200

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Mohit Garg, Advocate for the Appellant; Harish Rathee, Senior Deputy Advocate General, Advocate for the Respondent;

Final Decision : Allowed

Judgement

Rajesh Bindal, J.

1. The petitioner, who is working as Lecturer, has approached this court for a direction to grant maternity leave on account of birth of third child. In support of the claim, reliance has been placed upon a Division Bench judgment of this court in Ruksana Vs. State of Haryana and Others--> . According to learned counsel for the petitioner, SLP (Civil) No. 31511 of 2011-State of Haryana and others v. Ruksana filed by the State against the judgment of this court was dismissed as withdrawn on 2.1.2012. Learned counsel for the State does not dispute the fact that as on today, the case of the petitioner is squarely covered by the judgment of this Court in Ruksana's case (supra), Special Leave Petition filed before Hon"ble the Supreme Court against which was withdrawn by the State, as no rules have been framed by the State to deny such benefit to the employees. He further submitted that he has received a communication from the department to seek time so as to enable the Government to frame law on the issue.

2. Heard learned counsel for the parties and perused the paper book.

3. The issue regarding entitlement of the government employee to maternity leave on account of birth of third child was considered by a Division Bench of this

Court in Ruksana's case (supra). In the aforesaid judgment, this court framed the following questions:

"i) Whether the classification of women employees, one having two children and another having more than two children is just and appropriate? Whether the Government can create such a distinction ?

ii) If the answer to the first question is in affirmative, whether Note 4 to Rule 8.127 is contrary to the provisions of the Act which do not lay down two child norm for grant of maternity benefits ?

iii) Whether the Executive Instructions dated 5.2.1993 (Annexure R2) infringe, supersede or override the Rules framed by the Government ?

iv) Whether having two children from the previous marriage will eclipse the right of a woman to obtain maternity benefit for the first child to be born from the second marriage ?"

4. While answering question No. (ii), this court opined that Note 4 to Rule 8.127 of the Punjab Civil Services Rules Volume I Part I is not in consonance with the provisions of the Maternity Benefit Act, 1961 (for short, "the Act") and this cannot be given effect to and the government employee cannot be deprived of maternity benefit for birth of third child. Questions No. (iii) and (iv), as referred to above, were not required to be answered in view of answer to question No. (ii). It was further opined that till such time amendment is carried out in the Act and the Rules framed by the State, the benefit of maternity leave available to the government employee cannot be curtailed even on account of birth of a third child. The aforesaid judgment was followed by this Court in CWP No. 18515 of 2011- Pooja Sindhu v. State of Haryana, decided on 15.10.2012. For the detailed reasons recorded in Ruksana's case (supra), the writ petition is allowed. The petitioner is held entitled to benefit of maternity leave on account of birth of third child.