



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No. 4050/2023

Reserved on : 02.05.2024

Pronounced on : 15.05.2024

Hon'ble Dr. Anand S. Khati, Member (A)

Dr. Deepali Gola
W/o Dr. Munesh Kumar
R/o A-18, Rishal Garden, Nangloi
New Delhi-110041
Aged 32 years.

.. Applicant

(By Advocate: Mr. Mukesh Kumar Sharma)

Versus

1. Government of NCT Delhi
Through its Secretary
Department of Health and Family Welfare
9th Level, A-Wing
Delhi Secretariat, I.P. Estate
New Delhi-110002.
2. Medical Superintendent
Sardar Vallabh Bhai Patel Hospital
Govt. Of NCT of Delhi
East Patel Nagar, New Delhi-110008.

.... Respondents

(By Advocate: Ms. Purnima Maheshwari)



ORDER

The applicant was appointed as a Senior Resident (OBS and Gynae) on contractual basis at Sardar Vallabh Bhai Patel Hospital and GNCTD vide order dated 18.05.2023. She is aggrieved by the curtailment of her entitlement of Maternity leave from 22.11.2023 to 25.12.2023, i.e. the last day of current tenure, vide impugned Office Order No.F.No.5(22)/2023/SVBPH/SR/8107-11 dated 01.12.2023. According to the applicant, the action of the respondents is against the statutory provisions of the Maternity Leave Act, 1961 read with CCS Leave Rules and also in violation of the law laid down by the Hon'ble Supreme Court in the case of **Municipal Corporation of Delhi v. Female Workers (Muster Roll) and Anr.**, 2000 (3) SLJ 369 (SC).

2. At the outset, learned counsel for the applicant drew my attention towards the impugned order dated 01.12.2023, whereby the applicant was granted maternity leave w.e.f. 22.11.2023 to 25.12.2023, i.e. the last day of her current tenure, as per guidelines issued by Health and Family Welfare Department, GNCTD dated 14.03.2018, which comes out to 34 days. Being aggrieved, the applicant has filed the present O.A. seeking the following relief(s):



- “(a) Quash the impugned order of the respondent department whereby they are not allowing benefits of maternity leave to the applicant, being arbitrary, malafide, discriminatory and illegal;
- (b) Direct the respondents to grant the maternity leave of 180 days to the applicants with all other consequential benefits;
- (c) Direct the respondents to extend the tenure of the applicant without any delay.
- (d) Allow the cost of this application to the applicant.
- (e) Pass such other orders or reliefs as deemed fit and proper in the facts and circumstances of the case in the favors of the applicant and against the respondent.”

3. The grievance of the applicant is that instead of granting benefit of maternity leave, the respondent hospital just approved leave for about one month and no further extension of her tenure has been granted. Learned counsel for the applicant argued that the applicant is entitled for the benefit of maternity leave of 180 days in terms of Section 5(2) of the Maternity Benefit Act, 1961 and in support of his contention, he has placed reliance on several pronouncements of judicial forums including this Tribunal, whereby directions were issued that the benefits of maternity leave must pass to all the employees either permanent or on contractual basis, a few of these are listed below:

“(i) Judgment dated 11.03.2022 of the Hon'ble High Court of Delhi in W.P. (C) No.1278/2020 titled Dr. Baba Saheb Ambedkar Hospital, Govt. of NCT Of Delhi & Anr. vs Dr. Krati Mehrotra;



(ii) Order dated 03.10.2019 in O.A. No.4576/2017 titled Dr.Samvedna Sindani Singhani vs North Delhi Municipal Corporation;

(iii) Order dated 12.08.2015 in O.A. No.1761/2015 titled Dr. Swati & Anr. vs GNCT of Delhi & Anr.

4. The respondents have filed a counter affidavit opposing the O.A. Placing reliance on the counter affidavit, the learned counsel for the respondents submitted that the applicant was appointed on *ad hoc* basis to the post of Senior Resident in the Department of OBS and Gynae, vide order dated 18.05.2023. As per the terms and conditions of the appointment order, the appointment was on *ad hoc* basis for a period of 89 days or till the appointment of Senior Resident on regular basis, whichever is earlier, which was accepted by the applicant. The said *ad hoc* appointment has been renewed from time to time and vide order dated 21.09.2023 (Annexure A-2), the last renewal was for a period of 89 days, i.e. from 28.09.2023 to 25.12.2023 or till these posts are filled up on regular basis, whichever is earlier. Thereafter, the applicant applied for Maternity Leave on 22.11.2023 and the same was granted to her vide letter dated 01.12.2023 w.e.f. 22.11.2023 to 25.12.2023, in terms of directions contained in Letter No.11/158/H&FW/2017-HR-Med/CD#112457062/3304-08 dated 14.03.2018 issued by the Secretary, Health & Family Welfare Department, GNCT of Delhi. She also



clarified that her period of *ad hoc* appointment was otherwise elapsed on 25.12.2023 and as per the law settled by the Hon'ble Supreme Court in **Secretary, State of Karnataka vs Umadevi & Anr.**, AIR 2006 SC 1806, "an *ad hoc* employee does not acquire any right to permanent appointment".

5. She further submitted that, in the meantime, the respondent - SVBP Hospital notified vacancies for regular appointment vide Notification No.F/392/2023/JR-SR/SVBPH/8513 dated 19.12.2023. However, the applicant did not participate in the same and, thus, she has lost the right of consideration for appointment against a regular vacancy. Copy of the Result dated 08.01.2024 for the post of Senior Resident doctors on regular basis is also enclosed as Annexure R-2 along with the counter reply. Hence, the applicant is not entitled for the relief claimed by her.

6. Heard the learned counsel for both sides and carefully considered the pleadings/judgments on record.

7. The main facts are not in dispute. The dispute is regarding entitlement of 180 days' maternity leave and further extension of applicant's tenure.

8. On a perusal of various judicial pronouncements on the issue of maternity leave, it is noticed that in SLP No.



12797/1998 in the matter of **Female Workers (Muster Roll)** (supra), the Hon'ble Supreme Court noted as under:

“The Parliament has already made the [Maternity Benefit Act, 1961](#). It is not disputed that the benefits available under this Act have been made available to a class of employees of the petitioner-Corporation. But the benefit is not being made available to the women employees engaged on muster-roll, on the ground that they are not regular employees of the Corporation. As we shall presently see, there is no justification for denying the benefit of this Act to casual workers or workers employed on daily wage basis.

[Section 2](#) of the Maternity Benefit Act, 1961 deals with the applicability of the Act. [Section 3](#) contains definitions. The word "child" as defined in [Section 3\(b\)](#) includes a 'still-born' child. "Delivery" as defined in [Section 3\(c\)](#) means the birth of a child. "Maternity Benefit" has been defined in [Section 3\(h\)](#), which means the payment referred to in sub-section (1) of [Section 5](#). "Woman" has been defined in Clause (o) of [Section 3](#) which means "a woman employed, whether directly or through any agency, for wages in any establishment." "Wages" have been defined in Clause (h) of [Section 3](#) which provides, inter alia, as under :

"Wages means all remuneration paid or payable in cash to a woman". [Section 5](#) provides, inter alia, as under :

"5. Right to payment of maternity benefit –

(1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.”



9. Further, in WP (C) No. 3089/2014 dated 09.12.2014 in the matter of **Government of NCT Delhi & Ors.** vs. **Shweta Tripathi and Anr.**, the Hon'ble High Court of Delhi observed thus:

“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 maternity benefits were concerned, was arbitrary and discriminatory against them. The CAT, by its impugned order accepted the applicants' contentions so far as 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.

Section 5(3) of the Maternity Benefit Act, 1961 which requires every establishment a term which comprehends even government departments - to grant maternity benefit of 12 weeks to be given to each female employee, is in the following terms:

Right to payment of maternity benefit.....

xxxxx xxxxxx

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks, that is to say, six weeks up to and including the day of her delivery and six weeks immediately following that day:

Provided that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

Provided further that where a woman, having been delivered of a child dies during her delivery or during the period of six weeks immediately following the date of her delivery, leaving behind in either case the child, the employer shall be liable for the maternity benefit for the entire period of six weeks immediately following the day of her delivery but if the child also dies during the said period, then for the days up to and including the day of the death of the child."



4. This provision is in pursuance of the Directive Principle articulated Article 42 of the Constitution of India.

5. Rule 43 of the Central Civil Services (Leave) Rules, 1972, on other hand, reads as follows:

"43. Maternity Leave

(1) A female Government servant (including an apprentice) with less than two surviving children may be granted maternity leave by an authority competent to grant leave for a period of (135 days) from the date of its commencement.

(2) During such period, she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

NOTE: In the case of a person to whom Employees' State Insurance Act, 1948 (34 of 1948), applies, the amount of leave salary payable under this rule shall be reduced by the amount of benefit payable under the said Act for the corresponding period.

(3) Maternity leave not exceeding 45 days may also be granted to a female Government servant (irrespective of the number of surviving children) during the entire service of that female Government in case of miscarriage including abortion on production of medical certificate as laid down in Rule 19:

Provided that the maternity leave granted and availed of before the commencement of the CCS (Leave) Amendment Rules, 1995, shall not be taken into account for the purpose of this sub-rule.

(4) (a) Maternity leave may be combined with leave of any other kind.

(b) Notwithstanding the requirement of production of medical certificate contained in sub-rule (1) of Rule 30 or sub-rule (1) of Rule 31, leave of the kind due and admissible (including commuted leave for a period not exceeding 60 days and leave not due) up to a maximum of one year may, if applied for, be granted in continuation of maternity leave granted under sub-rule (1).

(5) Maternity leave shall not be debited against the leave account."

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.”

10. Following the aforesaid judgments, coordinate Bench of this Tribunal in OA 4576/2017 in the matter of **Dr. Samvedna Sindani Singhani Vs. NDMC and Others**, vide Order dated 03.10.2019, allowed the O.A. with the following directions:

“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.”

11. In view of aforementioned, since the issue regarding entitlement as a contractual employee as well as quantum of maternity leave has already been adjudicated upon by the higher Courts of law, and following the same, number of cases have already been decided by the Hon'ble High Courts as well as this Tribunal, I find no reason to have any distinct view.

12. Resultantly, the O.A. is partly allowed and the impugned order dated 01.12.2023 is quashed and set aside. The respondents are directed to sanction total 180 days maternity leave to the applicant and she will be paid the due payment for the remaining period of 180 days maternity leave, within a period of two months from the date of receipt of a certified copy of this order. However, in view of notification and selection of candidates against the tenure posts already being made, the tenure of the applicant cannot be extended after expiry of maternity leave.

13. In the facts and circumstances, there shall be no order as to costs.

(Dr. Anand S. Khati)
Member (A)

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