

Dr Astuty Apurwa vs Gncd on 7 November, 2023

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OA No.1116 of 2023

Court No.5 (item No.52)

Central Administrative Tribunal
Principal Bench

OA No. 1116/ 2023

Reserved on: 01.11.2023

Pronouncement on: 07 .11. 2023

Hon'ble Dr.Chhabilendra Roul, Member (A)

Dr. Astuty Apurwa,
W/o Dr. Binod Kumar Singh,
R/o A-53, Krishna Residency,
Vijay CGHS, Plot-17
Sector -18A, Dwarka,
New Delhi-110075. -Applicant.

(Through Advocate:Mr.
Sanjay Kumar Mishra)

Ravi Shankar, Mr.

Versus

1. Chacha Nehru Bal Chikitsalaya,
Govt. of NCT of Delhi.
Through its Director
Geeta Colony, New Delhi-110031

2. Govt. of NCT of Delhi,
Through its Chief Secretary
Delhi Secretariat , IP Estate,
New Delhi. -110002

(Through Advocate: Mr.

Amit Yadav)

ORDER

By Hon'ble Dr.Chhabilendra Roul, Member (A):-

The present OA has been filed by the applicant seeking following reliefs:-

Court No.5 (item No.52) "(a) Set-aside/quash office order dated 24.05.2022 [No. F.28(1555)/CNBC/ADMN/2019/1704-081] passed by Respondent No. 1 thereby granting the applicant maternity leave of merely 2 weeks, And

(b) Extension of benefit of maternity leave for a period of 26 weeks from 11.11.2021 as noted in her application dated 18.11.2021;

(c) Grant interest at the rate of 18% p.a. from the time the Respondent No.1/Employer was bound to make payment of maternity benefit to the applicant till the disposal of instant OA;

(d) Pass such any other order that may be deemed fit and appropriate in the circumstances of the case may also be passed."

2. The factual matrix in the present case is as follows. The present applicant was appointed as senior resident with Chacha Nehru Bal Chikisalya, under the Govt. of National Capital Territory of Delhi on adhoc basis. She joined as senior resident in the said hospital w.e.f. 29.05.2019. The respondents were regularly extending the adhoc appointment of the present applicant. The applicant vide letter dated 26.08.2022 informed the respondents that she was expecting a child and she requested leave till 30.09.2021. The letter dated 26.08.2021 had the subject heading medical leave. Even after submission of her application dated Court No.5 (item No.52) 26.08.2021 the respondents were extending service of present applicant periodically. On 04.01.2022 a child was born to the applicant. The applicant had already applied for maternity leave on 18.11.2021 stating that her expected date of delivery was 24.12.2021. She requested for maternity leave starting from 01.11.2021. The respondents granted her maternity leave for 14 days vide letter dated 24.05.2022 (impugned order).

3. Notices were issued to the respondents and they have filed their counter affidavit. The applicant chooses not to file any rejoinder.

4. Learned counsel for applicant has tendered the following grounds in support of the relief sought by the applicant. He stated that according to the provisions under the Maternity Leave Act 1961, the applicant is entitled for 26 weeks for maternity leave. She has completed such service for more than 160 days in the 12 months immediately preceding date of expected delivery. In the instant case she has informed that her expected date of delivery is December 2022, vide her application dated 18.11.2021.

Court No.5 (item No.52) 4.1 The learned counsel for the applicant cites to the judgment of Delhi High Court in Dr. Baba Saheb Ambedkar Hospital, Govt. of NCT and another of Delhi Versus Dr. Krati Mehrotrar in WP (C) No. 1278/2020 decided on 11.03.2022 wherein the Hon'ble High Court of Delhi has upheld a decision of this Tribunal allowing maternity leave to the respondents therein, despite the fact that she was serving Delhi Govt. on adhoc basis. He states that the respondents have taken recourse to OM/circulars dated 14.03.2018 and 14.11.2018. In the first circular, they have allowed maternity benefits 26 days but the subsequent explanatory circular dated 14.03.2018, it has

been mentioned that no leave shall be granted after the completion/expiry of tenure of the doctor concerned. Learned counsel for applicant states that this circular has already been considered by the Delhi High Court in Dr. Krati Mehrotrrar (Supra) of the judgment. The Hon'ble High Court has stated that the circular has no applicability because it is counter to the provision of the section 5 sub-section (2) of the Maternity Benefit Act 1961. Paragraph 67 of the said judgment reads as follows:-

Court No.5 (item No.52) "67. To our minds, this circular would have no applicability for two reasons: firstly, it is a guideline; and secondly, the circular cannot go beyond the provisions of the 1961 Act; in particular, sub-section (2) of Section 5 of the 1961 Act, and lastly, circulars much less guidelines cannot impede, pre-empt judicial interpretation that a Court may place on the scope and ambit of a provision in the Act. (See Keshavji Ravji & Co. v. CIT:)."

4.2 He further states that paragraph 50 of the said judgment reads as follows:-

"50. Thus, as long as conception occurs before the tenure of the contract executed between a woman employee and her employer expires, she should be entitled to, in our opinion, maternity benefits as provided under the 1961 Act."

4.3 In the instant case the applicant has already informed the applicant that she was expecting a child and during her pregnancy period she was on adhoc employee of the respondents. Considering all the facts, Hon'ble High Court of Delhi has upheld decision of the Tribunal and held that :-

"71. Be that as it may, in our opinion, this aspect has no relevance as far as the grant of the maternity benefit is concerned. The respondent is not seeking a direction for the execution of a fresh contract. The only relief that the respondent seeks is the grant of maternity benefits under the 1961 Act. The benefit granted to the respondent under Section 5 of the 1961 Act should have a full play, in our view, once the prerequisites Court No.5 (item No.52) contained therein are fulfilled by the claimant i.e. the woman employee. The 1961 Act is a social legislation that should be worked in a manner that progresses not only the best interest of the women employee but also of the child, both at the pre-natal and post-natal stage. [See Article 24(2)(d) of the United Nations Convention on the Rights of the Child (CRC)10.] Without financial wherewithal, the interest of women employee and her child is likely to be severely impacted."

5. Per-contra, the learned counsel for respondents states that the circular dated 14.03.2018 has not been challenged in the present OA. Respondents have taken all the action according to this circular dated 14.03.2018. Accordingly, the action by the respondents is legitimate. He further states that the circular states that when there is no relationship of employer and employee, the maternity benefit cannot extend beyond the period of engagement with organization where the female employee is working. Learned counsel for respondents further refers to the application dated 26.08.2021 submitted by the applicant wherein she has stated that she was 20 weeks pregnant but she had not

applied for maternity leave. Instead, she applied for medical leave which has been duly sanctioned by the respondents (Annexure R-1 and R-

2). He further states that the respondents vide order Court No.5 (item No.52) dated 24.05.2022 informed the applicant that her tenure as under adhoc employment beyond 14.11.2021 would not be extended further. This order has not been challenged by the applicant. After 24.05.2022, the applicant has not made any effort to challenge the said order and to continue in adhoc appointment or extend the maternity leave beyond 14.11.2021. 5.1 In view of the above, the learned counsel for the respondents avers that there is no illegality of issuing the impugned order 24.05.2022 sanctioning medical as well as maternity leave for 14 days. As the applicant is not entitled for maternity leave beyond the period of engagement when the period of engagement ended on 14.11.2022.

6. I have perused the records of the case and heard the arguments forwarded by both the counsels. 6.1 In the instant case, the sole relevant issue is:

Whether the maternity benefits, as contemplated in the Maternity Benefit Act., 1961 would apply to a lady employee appointed on contract if the period for which she claims such benefits overshoots the contractual period?

Court No.5 (item No.52) 6.2 The Respondents have placed reliance on the circulars' dated 14.3.2018. issued by the Department of Health and Family Welfare, GNCTD . This circular states that :

"As per Section 5(2) of the Maternity Benefit Act., 1961, no woman shall be entitled to maternity benefits unless she has actually worked in establishment of the employer from who she claims maternity benefits for a period of not less than none hundred and sixty days in the twelve months immediately preceding the date of her expected delivery.

It has been decided that the Resident doctors (SRs/JRs/SR(Adhoc) & JR (Adhoc) shall be entitled for maternity leaves of 26 weeks and miscarriage leave of 06 weeks as per Maternity Benefit Act. 1961 and Maternity Benefit (Amendment) Act., 2017 in accordance with Section 5(2) of the Maternity Benefit Act., 1961 subject to the condition that no leave shall be granted after the completion / expiry of tenure of the doctor concerned."

7. The circular dated 14.11.2018 has further clarified that the period of actual work is reduced to 80 days. In the instant case, the applicant has completed actual work of more than 160 days prior to applying for maternity leave. Hence, she is entitled for maternity leave, which the respondents have admitted and granted maternity leave, though for only 14 days. The Court No.5 (item No.52) stipulation in the circular dated 14.3.2018, no Maternity Leave shall be granted after the completion/ expiry of the tenure of the doctor concerned. This stipulation has been held ultra virus of the statutory provision contained in the Maternity Benefit Act, 1961. Henceforth, Maternity Act., 1961, as it has been rightly argued and cited by the learned counsel for the applicant that the Delhi

High Court in Dr.Krati Mehrotra (supra) case has conclusively held that the circular would have no applicability for granting maternity benefit as it goes beyond the provisions of the Maternity benefit Act 1961. The Hon'ble High court held that once conception occurs before the tenure of the contract executed between a female employee and her employer expires , she should be entitled maternity benefit as per the said Act. However, the Delhi High Court order in Dr. Krati Meherotra case has not clearly states that, the maternity benefit period would extend beyond the contact period of employment of the employee. However, this issue has been squarely addressed by the Hon'ble Apex Court in Dr. Kavita Yadav v Ministry of Health and Family Welfare Court No.5 (item No.52) Department, 2023 SCC Online SC 1067, decided on 17-08-2023.

8. The Apex court learned the true interpretation of Section 12(2)(a) Maternity Benefit Act.,1961 and held that continuation of maternity benefits is inbuilt in the statute itself, where the benefits would survive and continue despite the cessation of employment. Further, the Court opined that once an employee is eligible to get maternity benefit, such benefits can travel beyond the term of employment also. It is not co-terminus with the employment tenure. After placing reliance on Municipal Corpn. of Delhi v. Female Workers (Muster Roll), (2000) 3 SCC 224 and Deepika Singh v. Central Administrative Tribunal, 2022 SCC Online SC 1088, it held that the maternity benefits could survive or go beyond the duration of employment of the employee. Further, the Court after interpreting the relevant provisions of the Maternity Benefit Act., 1961 noted that under Section 12(2)(a) there is an embargo on the employer from dismissing or discharging a woman during her pregnancy, who absents herself from work. The expression "discharge" is of wide import, and it would include "discharge on conclusion Court No.5 (item No.52) of the contractual period". Further, by virtue of the operation of Section 27, the Act overrides any agreement or contract of service found inconsistent with it. Further, it said that once the employee had fulfilled the entitlement criteria specified in Section 5(2) of the Maternity Benefit (MB) Act.,1961 he/she would be eligible for full maternity benefits even if such benefits exceed the duration of her contract. Any attempt to enforce the contract duration term within such period by the employer would constitute "discharge" and attract the embargo specified in Section 12(2)(a) of the Maternity Benefit Act., 1961.

9. In view of the above, the action of the respondents to terminate the contractual employment of the present applicant vide their communication dated 24.5.2022 in stating that her contractual employment shall not be extended beyond 14.11.2021 is against this settle law as set by the Apex court in Dr Kavita Yadav (supra) case.

10. In view of the above, the OA is allowed. The impugned order dated 24.5.2022 by the respondents is quashed. The respondents are directed to grant the benefit of maternity leave for a period of 26 weeks to Court No.5 (item No.52) the applicant from 01.11.2021, as requested by the applicant in her application dated 18.11.2021. This exercise shall be completed by the competent authority amongst the respondents within 8 weeks from receipt of certified copy of this order. No order as to the costs.

(Dr. Chhabilendra Roul) Member (A) /mk/