

Court No. - 36

Case :- WRIT - A No. - 19842 of 2023

Petitioner :- Himanshu Dixit

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Rajeev Kumar

Counsel for Respondent :- C.S.C., Shashi Prakash Rai

Hon'ble Manjive Shukla, J.

1. Heard learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Respondent No. 1 as well as Sri Shashi Prakash Rai, learned counsel appearing for the Respondent No. 2.

2. Learned counsel appearing for the petitioner has submitted that petitioner is working on the post of Assistant Teacher in Primary School Pathrai, Block Marsaini, District Lalitpur. Petitioner's application for maternity leave has not been considered by the District Basic Education Officer, Lalitpur for the reason that there is difference of less than two years in between two maternity leaves.

3. Learned counsel appearing for the petitioner has further submitted that the question in respect of grant of maternity leave in the cases where the difference of two maternity leaves is less than two years, has already been decided by this court and is no more *res integra*. Learned counsel appearing for the petitioner has relied on the recent judgment and order dated **21.10.2022** passed by this court in **Writ-A No.9535 of 2022 (Smt. Anupam Yadav vs. State of U.P. and others)** and has argued that this court in the aforesaid judgment has considered all earlier judgments rendered by this court and has held that the provisions of Maternity Benefit Act, 1961 has overriding effect and there is no such prohibition that maternity leave cannot be granted if there is difference of less than two years in between two maternity leaves. The relevant portion of the aforesaid judgment passed by this court is extracted as under:-

"22. So far as the applicability of the provisions of the Maternity Benefit Act, 1961 is concerned, a Division Bench of this Court in the case of Dr. Rachna Chaurasiya versus State of U.P. and others [2017 (11) ADJ 399 (DB)] while considering the grant of maternity leave/child care leave to a Doctor employed as Associate Professor in MLB Medical College, Jhansi in Para 23, 24 and 25 of the decision observed as under:-

"23. The aforesaid decision of the Central Government has been adopted

by the State of U.P. for its employees vide Government Order dated 08.12.2008 and 24.03.2009. Subsequently, certain modifications being made by the Central Government, the same was also adopted by the State Government vide Government Order dated 11th April, 2011. The aforesaid Government Order is being reproduced hereunder.

"प्रेषक,
वृन्दा सरूप,
प्रमुख सचिव,
उ० प्र० शासन।

सेवा में,
समस्त विभागाध्यक्ष एवं प्रमुख कार्यालयाध्यक्ष,
उत्तर प्रदेश।
वित्त (सामान्य) अनुभाग-2 लखनऊ: दिनांक: 11 अप्रैल, 2011
विषय:- महिला सरकारी सेवकों को बाल्य देखभाल अवकाश की अनुमन्यता।

महोदय,

उपर्युक्त विषयक कार्यालय ज्ञाप संख्या-जी-2-2017/दस-2008-216-79, दिनांक 08-12-2008 तथा कार्यालय ज्ञाप संख्या जी-2-573/दस-2008-216-79, दिनांक 24-3-2009 द्वारा प्रदेश की महिला सरकारी सेवकों को केन्द्र सरकार की महिला कर्मचारियों की भांति बाल्य देखभाल अवकाश की सुविधा कतिपय शर्तों के अधीन प्रदान की गयी थी। चूंकि भारत सरकार द्वारा उक्त शर्तों में कतिपय संशोधन किए गए हैं अतः सम्यक् विचारोपरान्त श्री राज्यपाल महोदय संदर्भगत शासनादेशों में उल्लिखित शर्तों को निम्नवत् संशोधित करने की सहर्ष स्वीकृति प्रदान करते हैं:-

(1) संबंधित महिला कर्मचारी के अवकाश लेखे में उपार्जित अवकाश देय होते हुए भी बाल्य देखभाल अवकाश अनुमन्य होगा।

(2) बाल्य देखभाल अवकाश को एक कलेण्डर वर्ष के दौरान तीन बार से अधिक नहीं दिया जायेगा।

(3) बाल्य देखभाल को 15 दिनों से कम के लिए नहीं दिया जायेगा।

(4) बाल्य देखभाल अवकाश को साधारणतया परिवीक्षा अवधि के दौरान नहीं दिया जायेगा, ऐसे मामलों को छोड़कर जहाँ अवकाश देने वाला प्राधिकारी परिवीक्षार्थी की बाल्य देखभाल अवकाश की आवश्यकता के बारे में पूर्ण रूप से संतुष्ट न हो। इसे भी सुनिश्चित किया जायेगा कि परिवीक्षा अवधि के दौरान अवकाश दिया जा रहा है तो इस अवकाश की अवधि कम-से-कम हो

(5) बाल्य देखभाल अवकाश को अर्जित अवकाश के समान माना जायेगा और उसी प्रकार से स्वीकृत किया जायेगा।

2- यदि किसी महिला कर्मचारी द्वारा दिनांक 08.12.2008 के कार्यालय ज्ञाप के जारी होने के पश्चात बाल्य देखभाल के प्रयोजन हेतु अर्जित अवकाश लिया गया है तो उसके अनुरोध पर उक्त अर्जित अवकाश को बाल्य देखभाल अवकाश में समायोजित किया जा सकेगा।

3- शासनादेश संख्या जी-2-2017/दस-2008-216-79, दिनांक 08-12-2008 तथा शासनादेश संख्या जी-2-573/दस-2009-216-79 दिनांक 24-03-2009 इस सीमा तक संशोधित समझे जायेंगे।

4- संगत अवकाश नियमों में आवश्यक संशोधन यथासमय किये जायेंगे।

भवदीया,
(वृन्दा सरूप)
प्रमुख सचिव, वित्त।"

24. From a perusal of the aforesaid Government Orders, it is clear that the State Government has adopted same policy as is enforced by the Central Government for grant of Maternity Leave as well as Child Care Leave to its employees.

25. Maternity benefit is a social insurance and the Maternity Leave is given for maternal and child health and family support. On a perusal of different provisions of the Act, 1961 as well as the policy of the Central

Government to grant Child Care Leave and the Government Orders issued by the State of U.P. adopting the same for its female employees, we do not find anything contained therein which may entitle only to women employees appointed on regular basis to the benefit of Maternity Leave or Child Care Leave and not those, who are engaged on casual basis or on muster roll on daily wage basis."

23. Then again a learned Single Judge in the case of Anshu Rani versus State of U.P. and 2 others, Writ-A No. 3486 of 2019 following the dictum of the Division Bench in the case of Dr. Rachana Chaurasiya (supra) in Para 13 of the decision observed as under:-

"13. The maternity leave is a social insurance. The maternity leave is given for maternal and child health and family support. From perusal of the different provisions of the Maternity Benefit Act, 1961 as amended in the year 2017 as well as the policy of the Central Government to grant child care leave and Government orders issued by the State Governments in the State of U.P. adopting the same for its female employees, I am of the firm opinion that the female employees of the State of U.P. are entitled for the benefits of the maternity leave as contained in the Maternity Benefit Act 1961 as amended by the Maternity Benefit (Amendment) Act, 2017."

24. Thus the State of U.P. in exercise of powers granted under Section 28 has already issued Government Order dated 8.12.2008 and 24.3.2009 adopting the provisions of the Maternity Benefits Act, 1961 for the benefit of its employees. Further, the modifications made by the Central Government have also been adopted by the State of U.P. in its Government Order dated 11.4.2011 reproduced hereinabove. Once the provisions of the Maternity Benefit Act, 1961 has been adopted by the State of U.P. as held by this Court then the said Act of 1961 would apply with full force irrespective of the provisions contained in the Financial Handbook which is merely an executive instruction and would in any case be subsidiary to the legislation made by the Parliament.

25. In conclusion it can safely be said that the Maternity Benefit Act, 1961 has been enacted by the Parliament in exercise of powers under Entry 24 in List-III of the Seventh schedule of the Constitution of India and to secure the goals stated in Articles 38, 39, 42 and 43 of the Constitution of India and also to give effect to the provisions contained in Article 15 (3) of the Constitution. The provisions of Financial Handbook are merely executive instructions and would be subsidiary to the Act of the Parliament and in case of any inconsistency, the statutory enactment framed by the Parliament would prevail and hence, the provisions of the Maternity Benefit Act, 1961 would prevail over the provisions of the Financial Handbook and consequently, the provisions of Rule 153 (1) of the Financial Handbook Volume II to IV are read down with regard to the admissibility of leave to a women with regard to second pregnancy which would be governed by the Maternity Benefit Act, 1961 and not Rule 153 (1) of the Financial Handbook Volume II to IV. The State Government already having adopted the provisions of the Maternity Benefit Act, 1961 as recorded by the Division Bench of this Court and followed by the Single Bench in the case of Anshu Rani versus State of U.P. passed in Writ-A No. 3486 of 2019, it is clear that the provisions of the Maternity Benefit Act, 1961 would prevail over any law.

26. In the case at hand the maternity leave so applied by the petitioner has

been rejected simply by stating "Anumanya Nahi". Learned counsel for the respondents has submitted that the petitioner is not entitled to the maternity leave in terms of the restriction imposed by the second proviso of Rule 153(1) of the Financial Handbook to the effect that second maternity leave cannot be granted where there is difference of less than two years between the end of the first maternity leave and grant of second maternity leave. Admittedly, the first maternity leave of the petitioner was availed and she gave birth to a male child on 4.1.2021. The petitioner became pregnant again and applied again for maternity leave on 11.6.2022. The second maternity leave to the petitioner has been refused by the impugned order. However, once the 1961 Act does not contain any such stipulation, the Basic Education Officer manifestly erred in rejecting the leave to the petitioner more particularly when Section 27 of the 1961 Act provides that it is the 1961 Act which would be applicable notwithstanding anything in consistent contained in any other law or contract of service."

4. On the other hand, Sri Shashi Prakash Rai, learned counsel appearing for the Respondent No. 2 has not disputed that the issue in question has been decided by this court in the aforesaid judgment and order dated **21.10.2022** passed in **Writ-A No.9535 of 2022**.

5. In view of the aforesaid submissions, particularly keeping in view that issue in question has already been decided by this court and is no more *res integra*, this writ petition is finally **disposed of** in terms of the aforesaid judgment and order dated **21.10.2022** passed in **Writ-A No.9535 of 2022 (Smt. Anupam Yadav vs. State of U.P. and others)**. District Basic Education Officer, Lalitpur is directed to pass appropriate orders for sanctioning the maternity leave to the petitioner within a period of two weeks from the date of service of certified copy of this order.

Order Date :- 30.11.2023

A. Mandhani