

Court No. - 4

Case :- WRIT - A No. - 6451 of 2024

Petitioner :- Rachna Rathore

Respondent :- State Of U.P. Thru. Prin. Secy./Addl. Chief Secy. Finance
Deptt. Lko. And 4 Others

Counsel for Petitioner :- Amrendra Nath Tripathi, Ranjeet Kumar Pal

Counsel for Respondent :- C.S.C.

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Mridul Bhatt, holding brief of Sri Amrendra Nath Tripathi, learned counsel for the petitioner and Sri Sandeep Chandra, learned Standing Counsel for the State-opposite parties.

2. By means of this petition, the petitioner has prayed following reliefs:-

"(i) Issue a writ, order or direction in the nature of Certiorari, quashing the impugned proviso of Government Order No. G. 4-484/X-90-216-79, issued by the state Government dated 03.05.1990 (Annexure No.1) by means of which proviso to Rule 153(1) Khand-II, Part 2 to 4 of the Financial Hand Book which provides that no maternity leave is admissible within 2 years of earlier maternity leave granted under the rules;

(ii) Issue a writ, order or direction in the nature of Certiorari, quashing the impugned order passed by the Respondent No.4 dated 27.07.2024 (Annexure No.2), passed on the basis of the Government Order whereby by the maternity leave applications of the Petitioner has been rejected;

(iii) Issue a writ, order or direction in the nature of Mandamus, commanding the Respondents to grant maternity leave to the Petitioner from 15.07.2024 till 10.01.2025 on her application dated 11.07.2024 vide reference No. 26301576, forthwith with all the consequential benefits;

(iv) Issue a writ, order or direction in the nature of Mandamus, commanding the Respondents to convert the medical leave or any other leave which has been granted to the petitioner, from 15.07.2024 till 10.01.2025 into maternity leave with all the consequential benefits;

(v) Any other writ, order or direction which this Hon'ble Court may deems just and proper in the circumstances of the case;

(vi) Allow the writ petition with costs in favour of the petitioner."

3. Learned counsel for the petitioner has drawn attention of this Court towards the judgment and order dated 11.12.2019 passed by this Court in **Service Single No.32394 of 2019, Smt. Richa Shukla Vs. State of U.P. and others**, by submitting that the identical controversy has been considered by this Court and allowed the said writ petition vide judgment and order dated 11.12.2019, which is being reproduced herein below:-

"1. Heard learned counsel for the petitioner, learned Standing Counsel appearing for respondent nos. 1 and 3, Sri Ajay Kumar, learned counsel appearing for respondent no.2, and Sri Kartikey Dixit holding brief of Ms. Jyoti Sikka, learned counsel appearing for respondent nos.4 and 5.

2. Learned counsels for the respondents contend that as only a short question of law is involved in the present petition as such they do not intend to file any counter affidavit and submit that the matter may be decided finally.

3. Under challenge is the order dated 13.11.2019 passed by respondent no.5 on the application of the petitioner, a copy of which is Annexure-1 to the writ petition. Also under challenge is the order dated 27.11.2019 passed by respondent no.4, a copy of which is Annexure5 to the writ petition, by which the claim of the petitioner for grant of maternity leave has been rejected.

4. Learned counsel for the petitioner while seeking to challenge the aforesaid orders contends that the rejection of the claim of the petitioner has been made on the ground that in terms of Rule 153(1) of the Financial Handbook Volume 2 Part 2 to 4 and Rule 101, the maternity leave due to the petitioner would only be admissible in case there is a difference of at least two years between the end of first maternity leave and grant of second maternity leave. It has also been indicated in the order dated 27.11.2019 that as the first maternity leave of the petitioner ended on 30.12.2017 and the second leave has been applied w.e.f. 18.11.2019, as such, placing reliance on the aforesaid rules, the claim of the petitioner for grant of maternity leave for the period from 18.11.2019 to 15.05.2020 has been rejected.

5. Learned counsel for the petitioner contends that the said order would run contrary to the mandatory provisions of the Maternity Benefit Act, 1961 (hereinafter referred to as the '1961 Act'). He contends that Section 3 (h) of 1961 Act defines maternity benefit as the payment referred to in sub-section (1) of Section 5 while Section 5 (3) of 1961 Act provides that the maximum period for which any woman would be entitled to maternity benefit shall be 26 weeks. It is also contended that Section 6(4) of 1961 Act categorically provides that on receipt of the notice for maternity leave, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.

6. It is contended that taking into consideration the mandatory provisions of 1961 Act once the petitioner had applied for maternity leave for the aforesaid period consequently there was no occasion for respondent no.5 and respondent no.4 to reject her application.

7. As regards the reliance that has been placed on Rule 153(1) of the Financial Handbook, learned counsel for the petitioner contends that Section 27 of 1961 Act categorically provides that the provisions of 1961 Act shall have the effect notwithstanding anything inconsistent therewith contained in any other law whether made before or after the coming into force of 1961 Act. Learned counsel for the petitioner contends that taking into consideration the aforesaid mandatory provisions of 1961 Act more particularly when Rule 153(1) of the Financial Handbook runs contrary to the mandatory provisions of 1961 Act then considering the provisions of

Section 27 of 1961 Act Rule 153(1) would have to be read down and it is the provisions of 1961 Act which would prevail.

8. On the other hand, Sri Kartikey Dixit, learned counsel appearing for the respondent nos.4 and 5 and Sri Ajay Kumar, learned counsel appearing for respondent no.2, have supported the impugned orders by contending that once Rule 153(1) of the Financial Handbook categorically stipulates that no such leave would be admissible prior to expiry of two years from the date of end of the first maternity leave consequently there would not be any occasion for the respondents to grant maternity leave to the petitioner and hence there is no illegality or infirmity in the impugned orders.

9. Heard learned counsel for the contesting parties and perused the records.

10. The relevant provisions of 1961 Act which would have a direct bearing on the present case are being reproduced below for the sake of convenience:-

Section 3(h) of 1961 Act reads as under:-

(h) "**maternity benefit**" means the payment referred to in sub-section (1) of section 5.

Section 5 of 1961 Act reads 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:

Provided that the qualifying period of [eighty days] aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

[(3) The maximum period for which any woman shall be entitled to maternity benefit shall be [Twenty six weeks of which not more than eight weeks] shall precede the date of her expected delivery:]

[Provided that the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery]

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

[(4) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be]

[(5) In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period as on such conditions as the employer and the woman may mutually agree]
Section 6 of 1961 Act reads as under:-

6. Notice of claim for maternity benefit and payment thereof.- (1) Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in such form as may be prescribed, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.

(2) In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery.

(3) Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.

[(4) On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.]

(5) The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof as may be prescribed that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed that the woman has been delivered of a child.

(6) The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Act if she is otherwise entitled to such benefit or amount and in any such case an Inspector may either of his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order.

Section 27 of 1961 Act reads as under:-

27. *Effect of laws and agreements inconsistent with this Act.*- (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act:

Provided that where under any such award, agreement, contract of service or otherwise, a woman is entitled to benefits in respect of any matter which are more favourable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that she is entitled to receive benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed to preclude a woman from entering into an agreement with her employer for granting her rights or privileges in respect of any matter which are more favourable to her than those to which she would be entitled under this Act.

11. From perusal of Section 3(h) of 1961 Act, it clearly comes out that maternity benefit means the payment referred to in sub-section (1) of Section 5 of 1961 Act. Section 5 of 1961 Act provides that every woman shall be entitled to and an employer shall be liable for the payment of maternity benefit at a certain rate. Sub-section (3) of Section 5 of 1961 Act provides that the maximum period for which any woman shall be entitled to maternity benefit shall be 26 weeks. Section 6 of 1961 Act provides that any woman employed in an establishment and entitled to any maternity benefit under the provisions of 1961 Act may give notice in writing to her employer stating that her maternity benefit be paid to her or to such person as she may nominate in the notice. Sub-section (4) of Section 6 of 1961 Act provides that on receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.

12. A perusal of the aforesaid provisions of 1961 Act thus indicate that a woman would be entitled to give notice in writing for grant of maternity benefit and on receipt of notice the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit. The 1961 Act does not contain any such stipulation of the time difference between grant of maternity benefit for the first and second child as stipulated in Rule 153 (1) of the Financial Handbook. Section 27 of 1961 Act categorically provides that the provisions of 1961 Act shall have effect notwithstanding anything inconsistent therewith contained in any other law whether made before or after coming into force of 1961 Act. The proviso to Section 27 of 1961 Act provides that in case a woman is entitled to benefits in respect of any matter which are more favourable to her than those to which she would be entitled under 1961 Act, the woman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that she would be entitled to receive benefits in respect of other matters under 1961 Act, meaning thereby that additional benefits that a woman would be entitled in terms of agreement or contract of service would be admissible to her notwithstanding anything contained in 1961 Act. Thus, it is the additional benefits which have not been precluded but in case there is anything contrary or inconsistent to the provisions of 1961 Act pertaining to maternity benefit then it would be the 1961 Act which would be applicable.

13. In the instant case, the maternity leave as applied by the petitioner has been rejected by placing reliance on Rule 153(1) of the Financial Handbook by contending that the same contains a restriction that the second maternity leave cannot be granted and would be admissible in case 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 ended on 30.12.2017 and thus the respondents have rejected the claim of the petitioner for grant of second maternity leave. However, once 1961 Act does not contain any such stipulation accordingly it is apparent that the respondents have patently erred in placing reliance on Rule 153(1) of the Financial Handbook in rejecting the application of the petitioner for grant of maternity leave more particularly when Section 27 of 1961 Act provides that it is 1961 Act which would be applicable notwithstanding anything inconsistent contained in any other law or contract of service.

14. Keeping in view the aforesaid discussion, the writ petition deserves to be allowed and is allowed. A writ of certiorari is issued quashing the orders dated 13.11.2019 and 27.11.2019, copies of which are Annexures 1 and 5 to the writ petition. A writ of mandamus is issued directing respondent no.4 to consider the case of the petitioner for grant of maternity leave, taking into consideration the observations made above, within a period of ten days from the date of receipt of a certified copy of this order."

4. This fact has not been disputed that the identical controversy has been dealt by this Court vide judgment and order passed in case of **Smt. Richa Shukla** (supra). Therefore, the present writ petition is being decided finally in terms of judgment and order dated 11.12.2019 passed in case of **Smt. Richa Shukla** (supra).

5. Accordingly, a writ of certiorari is issued quashing the impugned order/ decision dated 27.07.2024 passed by opposite party no.4, which is contained in Annexure No.2 to the writ petition. A writ of mandamus is issued commanding the opposite parties to grant maternity leave to the petitioner w.e.f. 15.07.2024 to 10.01.2025 with all consequential benefits, expeditiously, preferably within a period of one month from the date of production of certified copy of this order.

6. Thus, the writ petition is **allowed**.

7. No order as to costs.

[Rajesh Singh Chauhan,J.]

Order Date :- 13.8.2024

RBS/-