

Court No. - 6

Case :- WRIT - A No. - 11200 of 2024

Petitioner :- Smt. Rashmi Singh

Respondent :- State Of U.P. Thru. Addl. Chief Secy. U.P.

Animal Husbandry Deptt. Lko. And 3 Others

Counsel for Petitioner :- Mohd. Mansoor, Mohammad Danish

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Mohd. Mansoor and Mohd. Danish, learned counsels for the petitioner as well as learned Standing counsel for the State -respondents.

2. The grievance raised in the present writ petition is with regard to rejection of maternity leave by the opposite parties by means of order dated 04.10.2024 passed by Director (Administration and Development) Animal Husbandry, Department, U.P., Lucknow.

3. It has been submitted by learned counsel for the petitioner that the petitioner is working on the post of Junior Assistant, Intensive Poultry Project Kanpur, Animal Husbandry Department and applied for maternity leave from 01.08.2022 to 27.01.2023 which was granted by the opposite parties. The second time when the petitioner sought maternity leave from 22.7.2024 till 17.01.2025 it has been rejected by the opposite parties by means of impugned order which has been challenged by means of the present writ petition.

4. Learned counsel for the petitioner has submitted that according to Maternity Benefit Act, 1961 which has been enacted by the Parliament there is no condition restricting grant of leave on the second occasion even before the period of two years and, hence, the petitioner is fully eligible to be granted the maternity leave under the Maternity Benefit Act, 1961. It is submitted that the opposite parties are relying upon proviso of Rule 153 (1) of Financial Handbook Part 2 to 4 for rejecting the maternity leave stating that there is restrictive clause in the Financial Handbook wherein the said leave cannot be granted before expiry of two years from the last date of grant of leave on the previous occasion.

5. It is further submitted that the Maternity Benefit Act, 1961 would in any case prevail over the provisions contained in Financial Hand Book volume II to IV inasmuch as the Maternity Benefit Act, 1961 is a piece of legislature framed by

the Parliament while the Financial Hand Book is a mere executive order.

6. He further submits that this Court has considered this aspect of the matter by means of judgment and order dated 11.12.2019 passed in **Service Single No. 32394 of 2019 (Smt. Richa Shukla Vs. State of U.P. & Ors.)**, the relevant portion of which is quoted as under:-

"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 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."

7. Accordingly, the present writ petition is **allowed**. The order dated 04.10.2024 passed by respondent No.2 is hereby quashed.

Respondent no.2 is directed 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.

Order Date :- 26.11.2024

A. Verma

(Alok Mathur, J.)