

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 26059 of 2014

DATE OF DECISION: 15.05.2015

Bhawna Chaudhary

.....Petitioner

Versus

State of Haryana and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspaper may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present:- Mr. J.P. Sharma, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana.

DAYA CHAUDHARY, J.

Petitioner-Bhawna Chaudhary, who was appointed as JBT teacher on 4.1.2011, applied for maternity leave for second time, however, for the delivery of third child. The application of the petitioner was forwarded by respondent No.4 in original to Block Education Officer, Gharaunda, who further forwarded the same to District Elementary Education Officer, Karnal, Haryana. The application of the petitioner was returned to her with an objection that she is entitled for maternity leave only for two living children.

The present petition has been filed by the petitioner for quashing of letter dated 4.12.2014 (Annexure P-2), whereby, the

application moved by the petitioner was returned in original with an objection that the benefit of maternity leave is admissible only for two living children.

Learned counsel for the petitioner contends that the impugned letter is totally non-speaking as the same has been passed without mentioning any provisions of Rule or law. The petitioner has availed maternity leave only once during her service and she cannot be denied the benefit for the second time. Learned counsel also submits that the case of the petitioner is squarely covered by the Division Bench judgment of this Court in **Ruksana Vs. State of Haryana and others** 2011 (2) SCT 789 as well as judgment dated 15.10.2012 passed in C.W.P. No. 18515 of 2011 (**Pooja Sindhu Vs. State of Haryana**).

Notice of motion was issued on 19.12.2014 and in response thereto, reply on behalf of the respondent-State has already been filed.

Learned counsel for the respondent-State submits that the petitioner is not entitled for maternity leave for the third living child. He further submits that as per letter dated 25.9.1992 issued by the Financial Commissioner and Secretary to Government Haryana, maternity leave on the birth of third living child is not allowed. He also submits that in Pooja Sindhu's case (supra), directions were issued to the respondent to treat the period of earned leave availed of by the petitioner as maternity leave to the extent of six months. He further clarified that in the present case the petitioner has already availed thirty days earned leave out of total forty days earned leave so only ten days earned leave are pending till 3.1.2015. It is also the submission of learned counsel that the petitioner has also availed 253 days leave under the head "Child Care leave" for two living children and maternity leave for one child from 15.1.2011 to 12.5.2012 and, therefore, there is no similarity of the facts with Pooja Sindhu's case

(supra).

Heard the arguments advanced by learned counsel for the petitioner as well as learned State counsel and have also perused the impugned order and other documents available on the file.

Admittedly, the petitioner is working as JBT teacher and has applied for maternity leave for the second time but on birth of third child. The application submitted by the petitioner was returned in original on the ground that maternity leave can be granted only for two living children. The controversy in the present case is squarely covered by the Division Bench judgment of this Court in **Ruksana's case (supra)**, which has further been followed in **Pooja Sindhu's case (supra)**. In **Ruksana's case (supra)**, Rule 8.127 (1) of the Punjab Civil Services Rules Volume I Part I along with Note 4 was considered viz-a-viz Section 27 of the Maternity Benefit Act, 1961, wherein, it has been held as under:-

“The Act nowhere restricts the benefit of payment of maternity benefits to birth of two children. In other words, the provisions of the Act entitle the women employee to maternity benefits for the birth of third child too. We are conscious that by Note 4 to Rule 8.127 of the Punjab Civil Services Rules Volume I Part I, the State Government intended to achieve a laudable object but such an object cannot be given effect to till the establishments of the Government are amenable to the Act. Unless an amendment is carried out in the Act, the Government cannot restrict beneficial provisions of the Act to a woman employee for the birth of a third child. Such a restriction imposed under the Rules is contrary to Section 27 of the Act and cannot sustain in the eyes of law. In *Vasu Dev and Others v. Union of India and Others* (2006) 12 Supreme Court

Cases 753, wherein the validity of Section 3 of the East Punjab Urban Rent Restriction Act, 1949 was challenged, the Hon'ble Apex Court referred to a large number of decisions on subordinate legislation and held as under:-

“118. A statute can be amended, partially repealed or wholly repealed by the legislature only. The philosophy underlying a statute or the legislative policy, with the passage of time, may be altered but therefore only the legislature has the requisite power and not the executive. The delegated legislation must be exercised, it is trite, within the parameters of essential legislative policy. The question must be considered from another angle. Delegation of essential legislative function is impermissible. It is essential for the legislature to declare its legislative policy which can be gathered from the express words used in the statute or by necessary implication, having regard to the attending circumstances. It is impermissible for the legislature to abdicate its essential legislative functions. The legislature cannot delegate its power to repeal the law or modify its essential features...”

To similar effect is the law laid in Employees' State Insurance Corporation v. HMT Limited and another (2008) 3 Supreme Court Cases 35 as their Lordships of the Hon'ble Apex Court held as under :-

“24. We agree with the said view as also for the additional reason that the subordinate legislation cannot override the principal legislative provisions...”

Thus, we are of the opinion that Note 4 to Rule 8.127 of the Punjab Civil Services Rules Volume I Part I is not in consonance with the provisions of the Act and this cannot be given effect to and the petitioner cannot be deprived of the maternity benefit for the birth of a third child.”

In view of the facts and law position as discussed above, the present petition deserves to be allowed. The impugned letter dated 4.12.2014 (Annexure P-2) is quashed and the respondents are directed to grant benefit of maternity leave to the petitioner in view of ratio of Division Bench judgment of this Court in **Ruksana’s case (supra)** followed by **Pooja Sindhu’s case (supra)**.

May 15, 2015
pooja

(DAYA CHAUDHARY)
JUDGE