

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 3652 of 2015

DATE OF DECISION: 15.05.2015

Jyoti Suhag

.....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. A.K. Sharma, Advocate
for the petitioner.

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

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside letter dated 20.2.2015 (Annexure P-7), vide which, the application moved by the petitioner for grant of maternity leave has been declined.

Briefly, the facts of the case are that the marriage of the petitioner was solemnized on 5.5.2001 with one Sanjay Kumar. After marriage, first daughter, namely, Sakshi Arya was born on 1.5.2002 and second daughter, namely, Sumedha Arya was born on 2.2.2005.

Thereafter, the petitioner again gave birth to third daughter on 25.1.2015.

She moved an application for earned leave, which was granted on 30.1.2015. During the period of earned leave, the petitioner came to know that she was entitled for maternity leave for third child also. Accordingly, she applied for grant of maternity leave but the same was declined on the ground that the petitioner is not entitled for maternity leave for the third child as per CSR Vol. I Rule 8.127 (1) Note (4). The said letter of declining maternity leave is subject matter of challenge in the present petition.

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 not availed any maternity leave during her service as her two daughters were born prior to her joining Government job. The case of the petitioner has wrongly been declined, whereas, she is entitled for maternity leave for the third child. 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**).

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 the judgments in Ruksana's case and Pooja Sindhu's case (supra) are not applicable to this case keeping in view the facts and circumstances of the present case.

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 a teacher and she applied for maternity leave for the first time but on birth of third child. The application submitted by the petitioner was declined 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 20.2.2015 (Annexure P-7) 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