

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6389 of 2016

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1. Dr. Puja Kumari W/o Dr. Rajeev Ranjan, R/o Kantikunj, North of Baba Chock, P.O. - Kesari Nagar, P.S. - Rajeev Nagar, District - Patna.
 2. Dr. Surabhi Roy, W/o Dr. Rajesh Kumar Singh, R/o 19, Gandhi Nagar, Besides Yamuna Apartment, Boring Road, P.S. - S.K. Puri, District - Patna.

.... Petitioner/s

Versus

1. The Union of India through the Health Secretary New Delhi.
2. The Health Secretary, Union of India, New Delhi.
3. The Director, All India Institute of Medical Science, Phulwarisharif, Patna.
4. The Deputy Director, All India Institute of Medical Science, Phulwarisharif, Patna.
5. The H.O.D. Department of Obstetrics & Gynecology, All India Institute of Medical Science, Phulwarisharif, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P. K. Shahi, Sr. Advocate Mr. Rajeev Kumar Singh
For the Respondent/s	:	Mr. S.D Sanjay (Addl. Soc. Gen.) Mr. Akshya Bahadur Mathur, CGC
For the AIIMS	:	Mr. Binay Kumar Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
CAV JUDGMENT

Date: 16-09-2016

The two writ petitioners moved the High Court together. However, Petitioner No. 2 has decided to withdraw from the writ application in view of the changed circumstances.

2. The relief sought in the writ application is for a direction upon the respondents, i.e., the authorities of All India Institute of Medical Sciences, Patna ("AIIMS" for brevity) to accept her joining w.e.f. 22.02.2016. The consequential relief for payment of arrears of salary from

September, 2015 till date has also been prayed for. The third prayer is that the respondents should treat the period of maternity leave of the petitioners as part of three years Senior Resident-ship.

3. AIIMS, Patna was set up in the year 2012. In the year 2013, an advertisement was issued for appointment of Senior Residents on the basis of an All India Competition. Petitioner applied in the department of Obstetrics and Gynecology. Petitioner was declared successful and she joined the department on 10.02.2014 as a Senior Resident. The appointment letter is Annexure – 1 to the writ application.

4. Annexure – 1 indicates that the appointment was on contract for 11 months and on direct job outsourcing basis. This tenure, however, was extendable on satisfactory annual appraisal up to a period of three years. Petitioner filed an application on 05.09.2015 before the Director, AIIMS, Patna for grant of maternity leave through proper channel. The HOD-Respondent No. 5, made a comment that ***“the present tenure ends on 09.12.2015. For necessary action as permitted by rules.”*** Annexure – 4 certifies that position.

5. Subsequently, the petitioner gave yet another application on 30.11.2015 to the Deputy Director to

avail full maternity leave. This application is Annexure – 6. Endorsement was made on the said application and it also indicates that copy of the application was marked to the Director, AIIMS.

6. On 09.12.2015, an application was given to the Director, regarding annual appraisal, for extension of the tenure. This is Annexure – 8. After the petitioner returned from maternity leave or the extended leave, as the case may be, the respondents have refused to accept her joining and pay her, her rightful due and, therefore, the writ application.

7. Learned senior counsel representing the petitioner starts on a very high note by submitting that an institution like AIIMS cannot be permitted to act in an arbitrary and irrational fashion, virtually as a dictator. The normal tenure for resident-ship is three years. May be by a unilateral, arbitrary decision, a tenure of 11 months has been fixed in terms of the appointment letter, contained in Annexure-1 but that decision cannot authorize the respondents to restrict the tenure of the petitioner as a Senior Resident. Any experience as a Senior Resident is of no avail, till the tenure of three years is completed.

8. It is also urged that since maternity leave application was authorized and granted in terms of



Annexure – 4, then by virtue of the said decision, it is presumed that the respondent-authorities were aware of the fact that the period of contract was only for 11 months, but if leave was granted beyond the period of contract, it will amount to extension of the tenure-ship by another 11 months.

9. It is also urged that the petitioner is entitled to maternity leave in terms of the CCA Rules and the respondent-authorities have an obligation being a Central Government organization to abide by the law.

10. An effort was made on part of the petitioner to paint a picture that she has been targeted by the establishment and because the authorities have an upper hand, therefore, they are being unreasonable with regard to the petitioner being on maternity leave, as well as not allowing her to join after the maternity leave was over. It was also urged, keeping in mind the stand emerging from the counter affidavit, filed on behalf of the respondents that a kind of stigma was sought to be created against the petitioner that she was neither sincere nor diligent in performing her responsibility. Such stigma is was without any prior notice or information to the petitioner and without being given any opportunity in this regard.

11. A counter affidavit as well as a rejoinder



counter affidavit has been filed on behalf of AIIMS. The respondent-authorities have denied all the allegations and insinuation against them.

12. Learned counsel, representing them takes a firm stand that whatever has been done, has been done, strictly in accordance with the terms and conditions of the engagement, contained in Annexure-1. There is a uniform standard practice, which is being followed with regard to all Senior Residents and no exception could be made with regard to the petitioner. The petitioner was entitled to 12 weeks of maternity leave in terms of Section 5 of the Maternity Benefits Act, 1961. The demand for 180 days of maternity leave is misplaced for the reason that the petitioner is not a Central Government employee and would not be governed by the CCA Rules or Maternity Leave Rules, relating to the Central Government.

13. Counsel representing the respondents draws the attention of the Court to the endorsement made by the HOD on the application of maternity leave filed by the petitioner on 10.02.2014 (Annexure – 4). The endorsement reads as ***“The present tenure ends on 09.12.2015. For necessary action as permitted by rules”***. In other words, the petitioner cannot make out a case now that if somebody within the organization granted her leave beyond the tenure



period, which ended on 09.12.2015, it had a meaning. No leave could be granted by any authority, much less the HOD, beyond the period of the tenure of Senior Resident-ship. Any relationship between the respondents and the petitioner would come to an end after the expiry of the tenure-ship granted to her, unless the same was extended, which in the present case, has not been done.

14. Counsel for the respondents also draws the attention of the Court to Annexure – 13, which is an application of the petitioner, giving her joining on 20th of February, 2016. In the said application, there is a clear endorsement that the leave was sanctioned vide letter no. 1097, dated 16.12.2015 only till 29.11.2015. Petitioner had reported only today, i.e., 20.02.2016. Tenure has not been extended, so joining not accepted.

15. Another aspect of significance pointed out by the counsel for the respondents, is that the subsequent leave which the petitioner is harping on, contained in Annexure-11, was leave granted by the Faculty Incharge. The Faculty Incharge had no business to grant leave as Faculty Incharge is not the competent authority in such matter. The matter should have been placed before the Director, AIIMS. So, obviously, the effort was to obtain a benefit from an authority, who had no power to grant leave

or extension of leave.

16. The counsel for the respondents further submits that the petitioner will be governed by the terms and conditions of her engagement, contained in Annexure-1. She cannot demand anything better or different from the terms, which binds the petitioner and the organization. Obviously, the conduct of the petitioner and the allegations made against the respondents, are figment of the imagination of the petitioner. She has tried to play hide and seek with the Director, which would be evident from reading of paragraph nos. 11 to 13 of the rejoinder of the respondents to the reply of the petitioner, which is reproduced hereinbeow for ready reference:

***“11. That in reply to the statement made in paragraph No. 14, it is respectfully stated that the standard operating procedure for the application of the maternity leave ought to have been submitted through proper channel. It is reiterated that after expiry of maternity leave on 29.11.2015 and 27.11.2015 of Dr. Puja Kumari and Dr. Surabhi Roy respectively, they did not join the institute. At that time neither the extension of maternity leave was granted nor the Head of the Department was ever informed about the extension. As mentioned previously, Head of the Department was kept in dark and out of loop for all the communications regarding extension of maternity leave.*”**

12. That in reply to the statement made in paragraph No. 15, it is stated that the Head of the department was kept in dark regarding extension of maternity leave. The application for extension was never forwarded by the Head of the Department which is a normal protocol. The allegations were not regarding concealing the date of delivery as mentioned by the petitioners in this paragraph.

13. That the statement made in paragraph No. 16 of the reply affidavit is not true. The previous application was submitted to Head of the Department. The Head forwarded the application to higher authorities for approval of extension. For the second extension a copy of application was forwarded to the Head of the Department and the original application was submitted without the remark of the Head of the Department directly to higher authorities bypassing the Head. This is open violation of Standard Operative Procedure of applying through proper channel.”

17. After having given a detailed hearing to the parties to the dispute and having perused the materials, which has emerged in the writ application, the Court comes to a considered opinion that no right has been created in favour of the petitioner for directing the respondents to accept her joining after her tenure came to an end. She would be bound by the contract. The petitioner has tried to juggle and play around with different authorities to obtain

certain benefits of extended leave and then tried to join back the organization by giving a joining letter, knowing fully well that her tenure had not been extended by the respondent-authorities by another 11 months. The allegations made against the respondents are more imaginary and more made than made out.

18. In the given facts as well as the background to the engagement, emerging from Annexure – 1, no writ can be issued to accept the joining of the petitioner, whose tenure had decisively come to an end and no extension was granted by the competent authority.

19. The Court has been informed that her entitlement for the period of authorized maternity leave granted by the competent authority has already been settled.

In view of the aforesaid facts and circumstances, the writ application is dismissed, being devoid of merit.

(Ajay Kumar Tripathi, J)

SKM/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	16.09.2016
Transmission Date	