

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 15.11.2016****CWP No.18664 of 2016**

Lalit

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ved Parkash, Advocate, for the petitioner.

Mr. Hitesh Pandit, Addl. AG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

This matter is squarely covered by the decision of the Division Bench of this Court rendered in Ruksana Vs. State of Haryana, 2011 (5) SLR 325, a case in point relied upon by the petitioner. The Bench held that benefit of maternity leave on account of birth of third child cannot be denied to a couple either one of whom or both are in Government service. For this, we do not need a response from the State expecting a different result.

Consequently, this petition is allowed with costs of ₹50,000/- for the Department to have compelled the petitioner to approach this Court in a human rights violation and in derogation of the law declared by this Court in a Haryana matter and contrary to the law declared in their own State against their own policy, which has been invalidated in *Ruksana*. Costs be paid to the petitioner within a period of one month from the receipt of certified copy of this order. State would be free to recover the costs from the erring officials and all those persons, who compelled the petitioner to approach this Court, but after holding departmental enquiry in accordance

with law so that the State exchequer is not burdened by the malfeasant acts of the agents of the Government paid from public money to perform their duties implementing the orders of this Court which have attained finality long ago.

At this stage, Mr. Harish Rathee, Sr. DAG, Haryana has put in appearance to defend the State against the proposed imposition of costs. He says that the decision in *Ruksana's* case has been generalized by the Government vide letter dated 20.05.2016 and therefore the error will not be repeated. Let it be known the law declared by the Court invalidating a policy of the kind in this case requires no generalization to be treated in *rem*. The policy declared bad requires only obedience and implementation. Any order generalizing relief is the obligation of the State from the date when they receive the certified copy of the order invalidating the policy, subject to appeal. In *Ruksana's* case, the State of Haryana filed a Special Leave Petition before the Supreme Court, but withdrew the same on 02.01.2012, which means that the State was waiting until the date of withdrawal of the petition as sufficient ground not to implement the law declaring denial of maternity benefit on the birth of a third child and keep the rights of the petitioner in abeyance effectively till today for the petitioner compelled to approach Court at considerable expense that litigation now involves.

Therefore, I see no good enough reason for Mr. Rathee's impressive defence against imposition of costs should not be turned down. The State has been given liberty to pay and recover from its obdurate and erring officials/officers, who may have come to believe that justice and relief can be had only from this Court and that too in a non-contentious matter where the law is settled and no longer *res integra*. After withdrawal of the

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SLP in 2012, there is absolutely no justification in not settling the case for years.

15.11.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*