

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 24.02.2016

CWP No.1997 of 2016 (O&M)

Sunil Sukhija

...Petitioner

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Narinder Sharma, Advocate, for the petitioner.

Mr. Inqulab Nagpal, AAG, Punjab.

Mr. Anupam Singla, Advocate, for respondents No.2 & 4.

RAJIV NARAIN RAINA, J. (ORAL)

1. Having regard to the status and character of the respondent – Meritorious School governed by a Memorandum of Association and the school being registered as a charitable society under the Societies Registration Act, 1860, created by Government for imparting quality education and rendering assistance to the poor and meritorious students in Punjab; and having regard to the fact that the State exercises deep and pervasive control over the functioning of the Society known as the “Society for the Promotion of Quality Education for Poor and Meritorious Students of Punjab” headed by the Chief Minister, Punjab with high powered Members including the Chief Secretary and Principal Secretaries of various Departments, the petitioner enjoys a special status as a mother even though she is in contractual employment, the contract expiring in the year 2018.

2. Initially, the petitioner was appointed as contractual teacher on 29.07.2014, which contract was for one year, but it has been lastly extended from 30.07.2015 to 29.07.2018. The petitioner delivered a child on 17.11.2015. She conceived after appointment. She sought and was granted maternity leave by the Society for 90 days without pay as per the rules and regulations, which learned counsel for the Society submits were binding term on both the petitioner and the Society. He would refer to Clause 5 of the Contract of the employment, which provides that the policy, instructions and rules of the Society issued from time to time will be applicable to the petitioner during service and she shall be bound to accept them. Her request for further 90 days of maternity leave has been turned down citing rules.

3. It is however not disputed that the maternity benefit rules of the Punjab Government allow 180 days of maternity leave to those applying, but it is contended on behalf of the Society that the petitioner is a contractual employee of the society and not an employee of the State Government and thus the Punjab rules are inapplicable. The rules of the Society on the subject of granting leave to teachers/employees appointed on contract basis in Meritorious Schools are contained in document dated 04.09.2014 (Annex P-10) of which the relevant provision is at Sr.No.3, which prescribes that maternity leave of three months without pay will be granted so that temporary teacher can be appointed in place of the one on leave by diverting the salary to the substitute. From this provision it is argued that maternity leave can extend only up to three months and not beyond.

4. While this may appear at first sight to be a good argument, but on a closer reading of Clause 3 and understanding it, no such outer limit appears inflexibly laid down therein. Since Clause 3 envisages a temporary arrangement for three months by paying the substitute teacher appointed to

carry out the work of the employee on leave, but this would not mean that the arrangement cannot continue any further as the consequences are not spelled out in the provision relied upon by the School in its written statement filed to contest the petition.

5. The petitioner claims that she may be granted the benefit of 180 days toward maternity leave by court directions and if allowed she would continue to be on maternity leave up to 13.05.2016. Since the present is not a service matter involving termination, dismissal, promotion, seniority etc., but a case of maternity leave, then it would not be open to the respondents to curtail rights of the petitioner based on principles of contract of personal service with the Society where the society is not amenable to writ jurisdiction. The society qualifies as “other authority” in Article 226. This legal position was not disputed before me.

6. If the Government grants to its employees maternity leave benefit including to its contract employees of a total of 180 days then it deserves to treat the Society and its employees as its own having given birth to Society. Government funds the society, controls and guides the society and remains vicariously liable to pay the salary of the remaining three months i.e. for the balance period. The petitioner is a married woman who has a fundamental right to bear child. The arrangement in this order would balance out the interest of the petitioner of the right to nurture child at home full time for 180 days bringing her at par with counterpart employees serving in Government departments so as to fulfill the special needs of a growing baby and the constant attention demanded by a new born baby.

7. For the foregoing reasons, this petition is allowed. A direction is issued to the respondents to grant further maternity leave to the petitioner without salary for the unexpired period. Salary for the remaining period i.e. till

expiry of 180 days to substitute teacher will be paid by the State Government to remove unreasonable discrimination. The amount will be paid to the substitute Chemistry Teacher in the first instance with direction to the State is to reimburse the Society so that it recoups.

[RAJIV NARAIN RAINA]
JUDGE

24.02.2016
Vimal