

\$~43

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 6383/2016 and CM Nos. 26113/2016 & 26115/2016

%

Judgment Dated: 25th July, 2016

SAGARIKA DAS

..... Petitioner

Through

Mr. Abir Phukan and Mr. Surya Prakash,
Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through

Ms. Shiva Lakshmi, CGSC with
Ms. Nidhi Parshar, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S.MEHTA

G.S.SISTANI, J (ORAL)

CM No. 26114/2016

1. Exemption allowed subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 6383/2016

3. The instant writ petition has been filed by the petitioner against the order dated 23.05.2016 by which the OA No. 556/2013 filed by the petitioner was dismissed.
4. Counsel for the respondent has put in appearance on an advance copy.
5. The necessary facts, which are required to be noticed for disposal of the present writ petition, are that the petitioner was working at Central Institute of Psychiatry. The petitioner was appointed as a Staff Nurse on 28.01.2001. Pursuant to grant of study leave, she completed M.Sc.(Nursing). The petitioner resumed her duty on

16.07.2011 despite her being high risk of pregnancy. On account of deterioration of her condition, the petitioner was referred to Central Coalfields Limited Hospital where she was advised rest for one week. The petitioner thereafter applied for maternity leave from 19.07.2011. She gave birth to a child on 20.08.2011 through caesarean section. The child of the petitioner was born preterm, underweight and was in constant need of care and medical attention. The petitioner also claimed that she was medically unfit to resume her duty. The petitioner sought extension of maternity leave on 10.01.2012 under Rule 43 (4) (b) of the CCS (leave) Rule, 1972. This application of the petitioner seeking extension of Maternity Leave was rejected on 01.02.2012. The petitioner thereafter made several representations seeking extension of maternity leave, however, all the representations were rejected. Thereafter the petitioner was served with two memorandums dated 09.07.2012 and 17.07.2012 on the ground of her leave being unauthorised from 15.01.2012 onwards. A Show Cause Notice was also issued to the petitioner and thereafter a charge sheet was served upon her. Aggrieved by the same, the petitioner filed OA No.556/2013 (hereinafter referred to as the '*first OA*') *inter alia* seeking extension of maternity leave in terms of Rule 43 (4) (b) of the CCS (leave) Rule, 1972. The said OA was dismissed by an order dated 12.05.2015. Thereafter, the petitioner filed writ petition bearing W.P. (C) 7113/2015. When the writ petition came up for hearing, the counsel for the petitioner had urged before this court that the Tribunal has dismissed the OA on the ground that the petitioner would have to challenge order by filing an appeal. The petitioner was aggrieved by the fact that her extension of maternity

leave had been rejected illegally and thus, the Tribunal should be directed to decide this issue. After the matter was remanded back, the Tribunal passed order dated 23.05.2016 relevant portion of which reads as under:

“5. It appears that the Hon’ble court has directed this Tribunal to decide the OA on merits on the understanding (given by the petitioner’s counsel) that the point of rejection of the applicant’s request for leave in continuation of maternity leave under Rule 43 (4) (b) of the CCS (Leave) Rules 1972 was not a subject matter of the disciplinary proceedings initiated against her. The learned counsel for the applicant, at the initial stage of the arguments before us, also submitted that the OA be confined to the relief in respect of the said point. The period of leave in question was from 15.01.2012 to 24.11.2013.

6. However, it is seen that the Inquiry Report dated 30.04.2014 and the disciplinary authority’s order dated 06.04.2015 both have duly considered the applicant’s plea with reference to the aforesaid rule 43 (4) (b). The Inquiry Report has also noted the Delhi High Court’s judgment in Seema Gupta Vs. Guru Nanak Institute of Management [135 (2006) DLT 404].”

6. The Tribunal has not decided the issue regarding Rule 43 (4) (b) of the CCS (leave) Rule, 1972 in the impugned order on the ground that the question of Rule 43 (4) (b) of the CCS (leave) Rule, 1972 was a subject matter of the disciplinary proceedings.
7. Today, learned counsel for the petitioner agrees that a final order has been passed which has been challenged by the petitioner by filing another OA No. 1006/2016 which is pending before the Tribunal.
8. Learned counsel for the petitioner submits that the petitioner apprehends that the issue raised by the petitioner with regard to

extension of her maternity leave in terms of Rule 43 (4) (b) of the CCS (Leave) Rules, 1972 has not been decided in the first OA and at the time of hearing of the second OA the order passed by the Tribunal dated 23.05.2016 and 12.05.2015 may stand in his way and since the issue of extension of maternity leave has not been decided by any forum and in fact has not even been decided by the disciplinary authority or the appellant authority.

9. At this stage, learned counsel for the petitioner seeks leave to withdraw this petition but prays for a direction to the Tribunal to decide the matter expeditiously and also decide all the issues in the OA including the issue qua Rule 43 (4) (b) of the CCS (Leave) Rules, 1972.
10. Heard. The writ petition is dismissed as withdrawn, however, we request the Tribunal that OA No. 1006/2016 filed by the petitioner pending before the Tribunal shall be decided expeditiously considering that the first matter pertained to the year 2013 and on account of acute hardship being faced by the petitioner. We also direct the Tribunal to decide the issue qua Rule 43 (4) (b) of the CCS (leave) Rule, 1972 raised by the petitioner.
11. Writ petition stands accordingly disposed of.
12. The order passed by this Court shall be brought to the notice of the Tribunal.

G.S.SISTANI, J

I.S.MEHTA, J

JULY 25, 2016

b