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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 10216/2016

11th January, 2017

SUMITA WADHWA

..... Petitioner

Through: Mr. Avijit Singh, Advocate.

versus

INSTITUTE OF HUMAN BEHAVIOUR AND ALLIED SCIENCES

..... Respondents

Through: Mr. S.D.Singh and Mr. Rahul
Kr. Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner impugns the order dated 11.2.2013 passed by the respondent/employer confining the maternity leave benefit to the petitioner for 84 days i.e 12 weeks. Petitioner claims that she is entitled to maternity leave of 180 days.

2. A person is entitled to maternity leave either under the Maternity Benefit Act, 1961 or as per Rules of the employer/organization which may entitle higher maternity leaves days. In the present case, there is no issue that the maternity leaves granted of 84 days is in accordance with

Section 5(3) of the Maternity Benefit Act and which provides that the maternity leave benefit shall be of a period of 12 weeks. The issue then is that whether the respondent/employer should grant larger benefit of 6 months/180 days as prayed by the petitioner.

3. The only way in which the petitioner can get benefit of 180 days is that if there are rules of the respondent/employer entitling every employee of the respondent/employer to maternity leave benefit of 180 days. There is no rule or circular or any other guideline of the respondent/employer pleaded in the writ petition or filed with the writ petition to show entitlement of employees of the respondent/employer to maternity leave benefit of 180 days and not of 12 weeks as per the Maternity Benefit Act. Therefore, petitioner having already got benefit of the provision of law under the Maternity Benefit Act of maternity leave of 12 weeks, petitioner hence cannot claim any benefit of maternity leave of 180 days.

4. Learned counsel for the petitioner argues that petitioner so far as her first child was concerned was granted a maternity leave of 135 days as was then applicable and even other employees of the respondent/employer have got 180 days, however, it is settled law that Article 14 of the Constitution of India applies for positive equality and not

for negative equality i.e Article 14 of the Constitution of India cannot be used for the purpose of pressing a claim which cannot be legally granted on the ground that once the petitioner and also some others have been illegally granted the claim/relief as prayed for.

5. Reliance placed by the petitioner on the judgment of a Division Bench of this Court in the case of ***Government of N.C.T. Delhi & Ors. Vs. Shweta Tripathi and Anr.*** W.P.(C) 3089/2014 decided on 9.12.2014 is misplaced inasmuch as the Division Bench in that case was dealing with the employees of the Govt. of NCT of Delhi who in spite of the provision of Section 5(3) of the Maternity Benefit Act were governed by Rule 43 of the Central Civil Services (Leave) Rules, 1972 and which provided for maternity leave of 135 days, and therefore, in the case of ***Shweta Tripathi (supra)***, the Division Bench of this Court held that there cannot be discrimination inter-se employees of the Govt. of NCT of Delhi, whether they be contractual employees or regular employees, and all employees of Govt. of NCT of Delhi should, in view of the provisions of Rule 43 of the CCS (Leave) Rules, be granted maternity leave of 135 days.

6. In my opinion, the writ petition also does not lie on the ground that the same is barred by time, and therefore inviting and calling for the application of doctrine of delay and *laches*. The writ petition impugns the

order of the respondent dated 11.2.2013 and the writ petition has been filed on 22.10.2016 i.e after three years. What cannot be done by filing of a suit cannot be done by filing of a writ petition under Article 226 of the Constitution of India because this Court under Article 226 of the Constitution of India enforces the law and does not pass orders to breach the law. The principles of Limitation Act though directly not applicable to the writ proceedings under Article 226 of the Constitution of India, the principles of limitation apply by application of the doctrine of delay and *laches*. This is no longer *res integra* and so is held by the Supreme Court in the case of *State of Orissa and Another Vs. Mamata Mohanty, (2011) 3 SCC 436*. Paras 52 to 54 of the judgment in the case of *Mamata Mohanty (supra)* are relevant and these paras read as under:-

“52. In the very first appeal, the respondent filed writ petition on 11.11.2005 claiming relief under the Notification dated 6.10.1989 w.e.f. 1.1.1986 without furnishing any explanation for such inordinate delay and on laches on her part. Section 3 of the Limitation Act 1963, makes it obligatory on the part of the court to dismiss the Suit or appeal if made after the prescribed period even though the limitation is not set up as a defence and there is no plea to raise the issue of limitation even at appellate stage because in some of the cases it may go to the root of the matter.

53. Needless to say that Limitation Act 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the Respondent claimed the relief from 1.1.1986 by filing a petition on 11.11.2005 but the High Court

for some unexplained reason granted the relief w.e.f. 1.6.1984, though even the Notification dated 6.10.1989 makes it applicable w.e.f. 1.1.1986.

54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time.”

7. It is therefore clear that the present writ petition cannot also be entertained on the ground of delay and *laches* and by applying the ratio of the judgment in the case of *Mamata Mohanty (supra)*.

8. In view of the above, the writ petition is dismissed, leaving the parties to bear their own costs.

JANUARY 11, 2017
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VALMIKI J. MEHTA, J