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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (CIVIL) No. 11869/2015**

Date of decision: 18th January, 2017

NATIONAL CAPITAL TERRITORY OF DELHI & ANR.

..... Petitioners

Through Mr. D. Verma, Advocate.

versus

VEENU GROVER Respondent
Through Ms. Arati Mahajan Shedha, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

The Government of NCT of Delhi (GNCTD, for short) and the Medical Superintendent, Janak Puri Super Speciality Hospital challenge grant of maternity benefit vide the order dated 14th February, 2014 passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) whereby OA No. 3843/2013, *Veenu Grover versus GNCTD*, has been allowed. Veenu Grover the respondent before us, it has been held, was entitled to maternity leave of 180 days, the period stipulated in Rule 43 of the Central Civil Service (Leave) Rules, 1972.

2. The contention of the GNCTD is that the respondent being a contractual employee is entitled to maternity leave of 84 days/ 12 weeks as per the Maternity Benefits Act, 1971, for the CCS (Leave) Rules, 1972 are

not applicable to contractual employees.

3. We are not inclined to interfere with the impugned order for several reasons. The issue of minimum emoluments payable to contractual employees working as staff nurses has been the subject-matter of numerous litigation in the High Court of Delhi. In W.P.(C) No. 8476/2009, **GNCTD and Others versus Dipika S. Kumar** heard with W.P.(C) No. 8764/2008 **GNCTD and Others versus Victoria Massey** and other cases decided on 22nd May, 2009, it has been held that contractual employees are entitled to minimum of the scale paid to regular employees, including all allowances, except annual increments. In W.P. (C) No. 2915/2013, **Chief Secretary, GNCTD & Anr. versus Satish Kumar & Ors.**, delivered on 1st November, 2013, after referring to earlier judgments including **Victoria Massey** (supra), it was observed that maternity benefit had to be provided to all employees, irrespective of their nature of employment, tenure, status, etc. However as there were no pleadings on the applicability of the Maternity Benefits Act, 1971, the issue was left open to be decided by the GNCTD, who were required to apply the law on the subject interpreting the word “*Establishment*” under the aforesaid Act. The same Division Bench in a subsequent judgment dated 6th November, 2013 in W.P.(C) No. 6798/2002, **Sonia Gandhi & Ors. versus GNCTD & Ors.**, referred to the Office Order dated 29th November, 2000 of the GNCTD that a woman contractual employee was entitled to maternity leave of 135 days for delivery. This

Office Order, it was observed, was not brought to the notice of the Court in the earlier matters.

4. The Tribunal in the impugned order has referred to their decision in OA No. 4212/2012, *Shweta Tripathy and another versus GNCTD*, decided on 17.9.2013 wherein it has held that contractual employees should be granted benefit of maternity leave as per CCS (Leave) Rules, 1972 after referring to DOP&T OMs dated 12.4.1985, 5.7.1990 and 12.7.1999. These OMs have not been filed before us, to examine whether the contention of the respondent is correct.

5. It is always open to Authorities who are model employees to grant greater benefits to employees with respect to maternity leave

6. In the present case, by interim order dated 6th December, 2013 the respondent was permitted to remain on maternity leave for 180 days with effect from 18th August, 2013. It is also an undisputed position that the respondent on an earlier occasion was granted maternity leave for 167 days at the time of the birth of her first child. The petitioner now claims that the said leave was granted under an error/ by mistake and orders have been issued on 29th February, 2013 to recover the salary and allowances for 83 days. A contractual employee is paid minimum amount of the scale of pay applicable to a regular employee. We do not think it would be just or proper for us to direct recovery of past arrears, as per the ratio in *State of Punjab versus Rafiq Masih*, (2015) 4 SCC 334, looking at and considering

the total amount of salary payable, which is substantially lower than the salary paid to regular employees. Pertinently, the proposed amendments to the Maternity Benefits Act, 1971 postulate grant of 180 days of maternity leave.

7. We would, therefore, not like to examine the contention as an academic exercise and interfere with the impugned order.

8. For the aforesaid reasons, we exercise our discretion and dismiss the present writ petition. No order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

JANUARY 18, 2017
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