

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 18.07.2018****CWP No.6169 of 2016**

Shivani

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Lalit Rishi, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Satish Singla, Advocate, for respondent No.2.

RAJIV NARAIN RAINA, J. (ORAL)

The petitioner has approached this Court for payment of maternity benefit claiming under the Maternity Benefit Act, 1961.

The petitioner was appointed on contractual basis as Information -cum- Office -cum- Library Manager in Sarva Shiksha Abhiyan (SSA) vide appointment letter dated 10.01.2013. The contractual period was extended w.e.f. 21.01.2014 to 20.01.2015 vide office order dated 14.08.2014 (Annex P-2). On 29.11.2014, the petitioner applied for maternity leave w.e.f. 01.12.2014 to 28.02.2015. However, by order dated 01.01.2015, the petitioner was sanctioned maternity leave with pay only for a period of 50 days w.e.f. 01.12.2014 to 20.01.2015 i.e. up-till the last date of contract period. Meaning thereby, the request was allowed co-terminus with the

expiry of the period of contract. However, the Doctor advised her rest since the birth was by caesarean section. On 20.01.2015, the petitioner applied for extending the maternity leave w.e.f. 21.01.2015 to 29.05.2015 (totaling six months). Meanwhile, the contract period of the petitioner along with other employees was further extended up to 30.06.2015. After availing maternity leave for six months, the petitioner joined her services on 29.05.2015. The contract period was further extended to 31.03.2016 and the petitioner continued in service without any break till date. In this background, the petitioner claims unpaid salary for the period of maternity leave.

On 31.07.2015, the District Project Coordinator, Sirsa forwarded the case of the petitioner for necessary sanction on request for maternity leave absence period w.e.f. 01.12.2014 to 20.01.2015 and w.e.f. 21.01.2015 to 29.05.2015, but the same has not been accepted or acted upon. Thereafter, the Principal, Government Senior Secondary School, Madhosinghana, Sirsa had sent the salary arrears bill in respect of maternity leave period of the petitioner to the Block Elementary Education Officer, Sirsa, but no action has been taken thereon. Hence, is brought the present petition for directions.

During the course of hearing, it is pointed out that the petitioner is not in service anymore as there is no extension of contract of service beyond 08.06.2016.

I have heard learned counsel for the parties at considerable length and perused the record carefully. Mr. Lalit Rishi, learned counsel for the petitioner, relies on the decision of the Supreme Court in Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) & another, (2000) 3 SCC 224, wherein Female Workers (Muster Roll) have been allowed the

benefit of maternity leave by the Supreme Court in deference to valuable rights under the maternity benefit law. The Supreme Court observed that India is a signatory to various International covenants and treaties. The Universal Declaration of Human Rights adopted by the United Nations on 10.12.1948 setting in motion the universal thinking that human rights are supreme which are to be preserved at all costs. On 18.12.1979, the United Nations adopted the “Convention on the Elimination of all forms of discrimination against women”. The Supreme Court referred to Article 11 of the Convention and engrafted it into the law of the land and the directions of the Supreme Court have been ordered to be read into the contract of services for employees to immediately become entitled to all the benefits conceived under the Maternity Benefit Act, 1961.

On the other hand, the prayer is opposed by the learned counsel representing respondent No.2 referring to the instructions of the Haryana Government dated 04.08.2014. A clause is pointed out there in which prescribe that maternity benefit is available for a period of six months or till the expiry of contract. I do not think how this argument helps the respondent when once the right to maternity benefit is admitted for six months, then it should not be curtailed by the expiry of the period of contract, or which of the two may be earlier. The contention is not sustainable when extensions were granted by the SSA without break till June 2016, while the period claimed is restricted from 01.12.2014 to 20.01.2015 and w.e.f. 21.01.2015 to 29.05.2015.

In view thereof and keeping in view the letter and spirit of the order in *Female Workers (Muster Roll)* case, the instant petition is allowed. The respondents are directed to disburse the benefit of salary to the

petitioner for the period claimed within a period of two months from the date of receiving of certified copy of this order.

18.07.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>