

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

**CWP No. 6028 of 2018
Date of decision : 16.07.2018**

Babita

..Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Gaurav Rana, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G. Haryana

RITU BAHRI, J.

Petitioner-Babita who was working on the post of Computer Operation Programming Assistant on contract basis, made an application seeking maternity leave for her third child, which was duly accepted, vide order dated 11.12.2017 issued by respondent No. 2 and the maternity leave was sanctioned to the petitioner w.e.f 09.10.2017 to 06.04.2018. But vide impugned letter dated 09.01.2018 and 12.02.2018, the maternity leave already granted to the petitioner was cancelled on the basis of letter dated 04.08.2014.

The petitioner earlier also filed CWP No. 3070 of 2018 challenging the letter dated 09.01.2018 vide which her maternity leave was cancelled. This petition was ordered to be dismissed as withdrawn on 12.02.2018 as learned State counsel informed the Court that order dated 12.02.2018 rejecting the claim of the petitioner has already been passed and

the same has been conveyed to the petitioner. Hence the present writ petition has been filed challenging both the letter i.e 09.01.2018 and 12.02.2018.

On notice, a reply has been filed by learned State counsel stating therein that the benefit of maternity leave with pay to the birth of children beyond the second child is extended to the regular employees and not the contractual women employees and thus, the instructions dated 20.05.2016 and 30.08.2017 is not applicable in the case of the petitioner, who is working on contract basis. The benefit of maternity leave to contractual employees is governed by the instructions dated 04.08.2014 (Annexure R-1). As per these instruction, the benefit of maternity leave to contractual employees is available up to 2 children and not beyond 2 children.

Learned counsel for the petitioner has referred to ***CWP No. 18664-2016 titled as Lalit v. State of Haryana and others, decided on 15.11.2016*** whereby this Court was dealing with a case of a petitioner who was working on regular basis, who was denied the benefit of maternity leave on account of birth of third child. A cost of Rs.50,000/- was imposed upon the State, in view of the Division Bench judgment of this Court in a case of ***Ruksana v. State of Haryana, 2011(5) SLR 325***. In this case, the Division Bench held that the benefit of maternity leave on account of birth of third child, cannot be denied to a couple either one of whom or both are in Government service.

Learned State counsel appearing in ***Lalit's case (supra)*** states

that the decision in ***Ruksan's case supra*** has been generalized by the

Government vide letter dated 20.05.2016 and therefore, the error will not be repeated. Even the SLP filed in **Ruksana's case** was withdrawn by the State on 02.01.2012

Learned counsel for the petitioner has further referred to Section 5 of the Maternity Act, 1961, wherein there is no bar that maternity leave cannot be granted to a mother for her child and further there is no provision that only the regular employees are entitled to the maternity leave on account of birth of third child. Section 5 (3) of the Maternity Act, 1961 reads as under:-

5

Right to payment of maternity benefits.

(1)

xxx

xxx

xxx

(2)

xxx

xxx

xxx

(3)

The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery:] Provided that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

[Provided further that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.] “

Thus, once the State in in **Lalit's case (supra)** given a **statement** that the decision in **Ruksan's case supra** has been generalized by the Government vide letter dated 20.05.2016 and therefore, the error will not be repeated, thereafter, the State should also withdraw letter dated 04.08.2014, which is in violation of Section 5 of the Maternity Act.

In view of the discussions made above, the present writ petition is allowed and letters dated 04.08.2014, 09.01.2018 and 12.02.2018 are set aside and respondent-department is directed to treat of the period of the petitioner w.e.f 09.10.2017 to 06.04.2018 as a period on maternity leave and give all consequential benefits as per the Rules and the provision of Maternity Act, 1961. A cost of Rs.20,000/- is also imposed upon the State, which is also to be paid to the petitioner.

(RITU BAHRI)
JUDGE

16.07.2018
G Arora

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>