

**HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No.1368 of 2016 (O&M)

Date of Decision: 13.08.2018

Sunil Sukhija

...Appellant

VS.

State of Punjab & Ors.

... Respondents

**Coram : Hon'ble Mr.Justice Surya Kant
Hon'ble Mr.Justice Sudip Ahluwalia**

Present: Mr. Narinder Sharma, Advocate for the appellant

Mr. Rajesh Bhardwaj, Sr.DAG Punjab

Mr. Anupam Singla, Advocate for respondents No.2 to 4

SURYA KANT J. (Oral)

(1) In this Letters Patent Appeal, challenging the order dated 24.02.2016 passed by learned Single Judge, the question which falls for consideration is whether or not the appellant is entitled to maternity leave with salary, and if so, for how many days?

(2) The facts are not in dispute.

(3) The appellant is working as a contractual Teacher since 29.07.2014. She delivered a child on 17.11.2015. She was granted maternity leave for 90 days but without pay as per Rules and Regulations of the respondent-Society. The appellant sought maternity leave for 180 days as per the Rules of Punjab Government and her claim has been allowed by learned Single Judge vide order under appeal to the extent a direction has been issued to grant her further maternity leave but again without salary for the unexpired period.

(4) We have heard learned counsel for the parties and are of the considered view that regardless of the Rules and Regulations formulated by

the Society, the appellant is entitled to 90 days' maternity leave with full pay in accordance with Section 5 of the Maternity Benefit Act, 1961. The statutory mandate shall have overriding effect on the Rules and Regulations, if any, formulated by the respondent-Society. As regard to the leave beyond 90 days i.e. for 180 days, as has been granted by learned Single Judge, the appellant will be entitled to avail such additional maternity leave without any pay. Somewhat similar situation arose before us in **LPA No.1308 of 2013 (Sarav Sikhiya Abhiyan Authority, Punjab vs. Reena Singla and others)** decided on 23.08.2016 in which this Court held as follows:-

*“This is what precisely the authorities did in the case in hand also. We thus respectfully follow the distinction drawn by this Court in **Kiran @ Dr.Kiran Bajaj** (supra) between a daily wager/contractual employees viz-a-viz the regular incumbent and hold the respondent entitled to maternity leave for 12 weeks as per Section 5(3) of the 1961 Act.*

For the reasons afore-stated, the appeal is allowed in part; order of learned Single Judge is set aside/modified and it is held that respondent No.1 is entitled to avail 12 weeks maternity leave in accordance with Section 5(3) of the 1961 Act. The payment, if not released so far, shall be released to her accordingly.”

- (5) We see no reason to take a different view in the case in hand.
- (6) The appeal is accordingly allowed; the order dated 24.02.2016 is modified and the respondents are directed to release salary to the appellant for the period of 90 days' maternity leave, and if she applies, to grant her

further maternity leave total upto 180 days but the additional leave shall be without any pay.

(7) Ordered accordingly.

(Surya Kant)
Judge

13.08.2018
vishal shonkar

(Sudip Ahluwalia)
Judge

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | No |