

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: February 08, 2018

+ **W.P.(C) 10514/2017**

DR. ARTIBEN R. THAKKAR Petitioner
Through: Mr. M.A. Niyazi, Advocate

Versus

DELHI PHARMACEUTICAL SCIENCES AND RESEARCH
UNIVERSITY AND ANR. Respondents
Through: Ms. Sana Ansari, Advocate for
Ms.Zubeda Begum, Advocate for respondent
No.1 with Dr. J. Swaminathan, Asst. Registrar
Ms. Prabhsahay Kaur, Advocate for respondent
No.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Enforcement/Implementation of *The Maternity Benefit (Amendment) Act, 2017* and clarification of 12th April, 2017 (*Annexure P-8*) issued by Ministry of Labour & Employment of Government of India and grant of maternity leave of twenty six weeks with salary for the said period, is sought by petitioner, who was working in contractual employment with first respondent.
2. It is matter of record that petitioner's contractual employment came to an end on 15th May, 2017. Respondent No. 1 in its counter affidavit asserts that though petitioner's contractual employment came to an end on 15th May, 2017, but to facilitate petitioner to avail of twelve weeks of

maternity leave, the contractual employment was extended upto 30th June, 2017 and thereafter, petitioner's contractual employment was neither renewed nor any fresh contract was entered into with petitioner. Denial of grant of twenty six weeks' maternity leave is justified by respondents' counsel on the ground that benefit of maternity leave can be extended only to existing employees.

3. Learned counsel for petitioner submits that regarding *The Maternity Benefit (Amendment) Act, 2017*, a clarification of 12th April, 2017 was issued by Ministry of Labour & Employment of Government of India to the effect that benefit of twenty six weeks of maternity leave is to be extended to contractual employees and also to consultant women. So, it is submitted that petitioner's entitlement to 26 weeks of maternity leave accrued to petitioner when the amending Act came into force on 1st April, 2017. Learned counsel for petitioner asserts that it was not the intention of the legislature that the benefit of *The Maternity Benefit (Amendment) Act, 2017* would be co-terminus with the employment and had it been so, then this would have been so provided.

4. Learned counsel for first respondent submits that on humanitarian grounds, petitioner's contractual employment was extended upto the end of current academic session, which came to an end on 30th June, 2017 and it could not have been extended to a new academic session, and that no other person in place of petitioner has been employed.

5. Upon hearing and on perusal of the material on record, I find that though the amendment in *The Maternity Benefits Act, 1961* came into force during the period of petitioner's employment but benefit of full maternity leave of twenty six weeks in terms of *The Maternity Benefit*

(Amendment) Act, 2017 could not be extended to petitioner because her contractual period had come to an end and as a special case, her contractual period was extended till the end of academic session. Neither there is any precedent nor any justification to extend the benefit of full maternity leave of twenty six weeks to a contractual employee, whose contractual service has come to an end.

6. It is not the case of petitioner that in her place, some other person has been appointed on contractual basis. In such a situation, first respondent cannot be called upon to extend the contractual period to ensure that petitioner avails of full period of maternity leave.

7. It is elementary rule of service jurisprudence that benefits attached to a service comes to an end once the service tenure is completed. So, it would be neither prudent nor reasonable to assume or presume that benefit of social enactment would flow even after the service tenure comes to an end. In the aforesaid view of the matter, finding no substance in this petition, it is dismissed.

(SUNIL GAUR)
JUDGE

FEBRUARY 08, 2018

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