

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

**C.W.P No. 19681 of 2016 (O&M)
Date of decision : 09.01.2019**

Harjinder KaurPetitioner
versus

State of Haryana and others ...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sachin Mittal, Advocate
for the petitioner.

Mr. Gaurav Jindal, Addl. A.G. Haryana

Mr. Deepak Manchanda, Advocate
for the Corporation

RITU BAHRI, J. (Oral)

The present petition has been filed by the petitioner seeking quashing of order dated 02.03.2016 (P-10) whereby the application of the petitioner for grant of maternity leave has been declined. Further the petitioner has prayed issuance of direction to the respondents not to terminate her services, as she is working since 21.03.2012 as Draftsman on contract basis in the respondent-Corporation.

In January, 2012, the respondent-Corporation invited applications for filling up posts of Assistant Draftsman (Civil) on contract basis. The petitioner gave her application on 06.03.2012 being duly qualified and was interviewed. She was subsequently appointed on 21.03.2012 for a period of six months (P-1), which was further extended from time to time. On 11.10.2013, the petitioner gave birth to daughter and was granted maternity leave for six months.

Thereafter, the service contract agreement was executed between Corporation

and petitioner for a period of six months from 04.03.2014 to 03.09.2014 (P-4), which was further extended till 03.03.2016. On 28.01.2016, the petitioner applied for grant of maternity leave as per Haryana Government Policy. The petitioner gave birth to son on 06.02.2016. However, the application of the petitioner was rejected on 02.03.2016 (P-10) and hence the present writ petition.

On notice of the petition, respondent No. 2 to 5 took a stand that petitioner was engaged as Draftsperson under policy dated 06.04.2015 (R-2/1) for a period of one year i.e 04.09.2015 to 03.09.2016, as per letter dated 17.09.2015. In this policy there was no provision for granting maternity leave to the contractual employee engaged for service. The policy dated 04.08.2014 (P-11) is not applicable to the case of the present petitioner. Further as per Part II Sub clause II of policy dated 06.04.2015 (R-2/1) , the engagement was purely contractual in nature and can be terminated any time without assigning any reason or prior notice. The person so engaged shall have no claim for regularization or any other benefit of such engagement. The terms and conditions of the policy was further agreed by the petitioner vide service agreement dated 04.09.2015.

Learned counsel while referring to 04.08.2014 (P-11) submits that once the petitioner has been granted maternity leave for the first child, she is also entitled for grant of maternity leave for the second child as well. The claim for maternity leave has been declined on the ground that the petitioner has been appointed through outsourcing agency. The Corporation is bound by the scheme dated 04.08.2014 (P-11)

At this stage, reference has been made to a division bench judgment passed by this Court in a case of ***Raj Bala vs. State of Haryana, 2002 (5) SLR 557*** whereby this Court while relying upon a judgment of Gujarat High Court in

a case of ***Dipikaben R. Parmar vs. State of Gujarat, 1999 (2) SCT 847*** has allowed the writ petitions and respondents were directed to grant the benefit of maternity leave to the petitioners, who were working on contract basis.

This issue has been considered by this Court in a case of ***Reena Singla vs. State of Punjab and others, 2014 (2) SLR 182***, the petitioner who was a teacher and was appointed under Sarav Shiksha Abhiyan Authority was held entitled to grant of 180 days of maternity leave and it was held that through under the Act, 1961, a woman is entitled to maternity leave of six weeks yet there is no bar to grant benefits over and above the said period, as specified in Section 5 of the 1961 Act. In para 14 of the judgment, it has been observed as under:-

“ 14. In the present case, the claim of the petitioner is limited to the extent of grant of maternity leave of 180 days. It is true that under the [Maternity Benefit Act, 1961](#), a woman is entitled to maternity leave of six weeks. However, there is no bar to the grant of benefits over and above the said period, as specified in [Section 5](#) of the 1961 Act. The State of Punjab as well as the Central Government having adopted the norm of 180 days to be the maternity leave, the employees, who are working in the State of Punjab under the SSA Society, would be entitled to the same benefit of 180 days. As per Rule 8.137-A of the Punjab Civil Services Rules Volume-I Part-I and the circular dated 19.10.2012 (Annexure P-5) issued by the Director Education Department (Secondary Education) Punjab, petitioner would be entitled to the grant of 180 days of maternity leave. Even under Rule 43(1) of Central Civil Services (Leave) Rules, 1972, maternity benefit has been now enhanced to 180 days from 135 days, which is in consonance with recommendations of the Sixth Central Pay Commission relating to maternity and child care leave. Government of India has itself, in its report submitted before the United Nations in its combined fourth and fifth periodic reports relating to Convention on the Elimination of All Forms of Discrimination against Women, in para 27 stated that maternity leave for

Government and public sector employees has been increased from 135 days to 180 days. In its Children's Alternative Report to UNCRC, again the Government of India has stated that the maternity leave for Government employees has been increased from 135 to 180 days. By the Government of West Bengal, Andhra Pradesh, Maharashtra, Tamil Nadu and Jharkhand, where the SSA Scheme is being run, 180 days of maternity leave is being granted to its employees. The scheme admittedly being a Central Government sponsored scheme, the employees covered under the said scheme would be entitled to the same benefits as the employees of the Government of India as far as the maternity leave is concerned because the said benefit to an employee is a beneficial scheme, which is relatable to the public policy of the Government and in consonance with the Articles 39 and 42, Part-IV of the Constitution of India containing the directive principles of State Policy. There can be no discrimination on this score with regard to the grant of maternity benefits to a female employee especially when the conditions of the scheme clearly lays down that the service conditions should be similar to that of Government school teachers. The judgments relied upon by the counsel for the respondents only deal with a situation where no maternity leave was granted at all there the Court proceeded to grant of benefit under the [Maternity Benefit Act, 1961](#) where six weeks of maternity leave stands provided and accordingly, the said benefit was granted by the Courts.

The ratio of the above said judgment is directly applicable to the facts of the present case as in the present case, the respondent-Corporation has not allowed the petitioner to join on 01.02.2017 after the birth of second child. On a specific query put by this Court to learned counsel for the petitioner, it has been stated that the petitioner has not been replaced by another set of contractual employee till date.

In view of the above factual position, the writ petition is allowed and order dated 02.03.2016 (P-10) is set aside. The respondents are directed that in

case the respondent-Corporation will appoint anyone to the post of Assistant Draftsman (Civil), the preference will be given to the petitioner, keeping in view of judgment of Hon'ble the Supreme Court in a case of *Hargurpratap Singh vs. State of Punjab and others, 2007 (13) SCC 292.*

January 09, 2019
G Arora

(RITU BAHRI)
JUDGE

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