

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 34073 of 2019
Date of decision: 22.11.2019

Sunita	Versus	 Petitioner
State of Haryana and another		Respondents

Before : Hon'ble Mr. Justice B.S.Walia.

Present : Mr. Robin Singh Hooda, Advocate for the petitioner.

B.S. WALIA, J. (ORAL)

[1] Prayer in the writ petition is for the issuance of a writ in the nature of Certiorari for quashing order Annexure P/6 dated 05.11.2019 denying maternity leave to the petitioner on the ground of her having more than two living children. Prayer is also for the issuance of directions to the respondents to grant her maternity leave for a period of six months in terms of Rule 9.19 of the Haryana Civil Services (Leave) Rules, 2016 (for short 'the Rules, 2016').

[2] Learned counsel for the petitioner contends that the matter in issue is squarely covered by the decision in **Bhawna Chaudhary vs. State of Haryana and other, 2016 (3) RSJ 99** which was allowed by the Coordinate Bench and the respondents were directed to grant maternity leave to the petitioner in view of ratio of law laid down in **Ruksana vs. State of Haryana and others 2011 (2) SCT 789**. Learned counsel further contends that Rule

8.127(a) of the Punjab Civil Services Rules Volume-I, Part-I, as earlier applicable to the State of Haryana, which restricted grant of maternity leave to a female government employee having more than two living children was held to be contrary to Section 27 of the Maternity Benefit Act, 1961 in **Ruksana vs. State of Haryana and others 2011 (2) SCT 789**

[3] Learned counsel contends that although the petitioner already has two living children yet she did not avail maternity leave on earlier two occasions and it is only on the birth of the 3rd child that the petitioner has applied for maternity leave for the first time. Learned counsel has also relied upon a decision of Hon'ble the Madhya Pradesh High Court in **Archana Pandey vs. State of M.P. and others 2017(2) RSJ 299.**

[4] Notice of motion.

[5] Mr. Harish Rathee, learned Senior Deputy Advocate General, Haryana, accepts notice and states that he does not wish to file reply as apparently the impugned order Annexure P/6 dated 05.11.2019 has been passed in the context of Rule 8.127 of the Punjab Civil Services Rules, Volume 1, Part 1 oblivious of Rule 9(19) of the Haryana Civil Services (Leave) Rules, 2016.

[6] I have considered the submissions of learned counsel for the parties.

[7] In **Bhawna Chaudhary's case (supra)** the writ petition was filed for quashing decision denying maternity leave on the ground that the same was applicable only for two living children. The Coordinate Bench held that the petitioner therein had availed maternity leave only once during her service and she could not be denied the benefit of maternity leave for the second time in view of the decision of Hon'ble the Division Bench of this Court in

Ruksana's case (supra) as well as judgment dated 15.10.2012 in CWP No. 18515 of 2011 in case titled as Pooja Sindhu vs State of Haryana which was allowed by observing that the petitioner had applied for maternity leave for the second time though on the birth of 3rd child and the controversy in question was squarely covered by the Division Bench judgment of this Court in **Ruksana's case (supra)** in which Rule 8.127 (1) of the Punjab Civil Services Rules Volume I Part I along with note 4 was considered viz-a-viz Section 27 of the Maternity Benefit Act, 1961. Relevant extract of the same is reproduced as under:-

“The Act nowhere restricts the benefit of payment of maternity benefits to birth of two children. In other words, the provisions of the Act entitle the women employee to maternity benefits for the birth of third child too. We are conscious that by Note 4 to Rule 8.127 of the Punjab Civil Services Rules Volume I Part I, the State Government intended to achieve a laudable object but such an object cannot be given effect to till the establishments of the Government are amenable to the Act. Unless an amendment is carried out in the Act, the Government cannot restrict beneficial provisions of the Act to a woman employee for the birth of a third child. Such a restriction imposed under the Rules is contrary to Section 27 of the Act and cannot sustain in the eyes of law. In Vasu Dev and Others v. Union of India and Others (2006) 12 Supreme Court Cases 753, wherein the validity of Section 3 of the East Punjab Urban Rent Restriction Act, 1949 was challenged, the Hon'ble Apex Court referred to a large number of decisions on subordinate legislation and held as under:-

“118. A statute can be amended, partially repealed or wholly repealed by the legislature only. The philosophy underlying a statute or the legislative policy, with the passage of time, may be altered but therefore only the legislature has the requisite power and not the executive. The delegated legislation must be

exercised, it is trite, within the parameters of essential legislative policy. The question must be considered from another angle. Delegation of essential legislative function is impermissible. It is essential for the legislature to declare its legislative policy which can be gathered from the express words used in the statute or by necessary implication, having regard to the attending circumstances. It is impermissible for the legislature to abdicate its essential legislative functions. The legislature cannot delegate its power to repeal the law or modify its essential features...”

[8] In the light of the position as noted above, the writ petition is allowed. Impugned order Annexure P-6 dated 5.11.2019 is quashed with no order as to costs. Respondents are directed to consider and grant the benefit of maternity leave to the petitioner as per the Haryana Civil Services (Leave) Rules, 2016 in the light of ratio of law laid down in **Ruksana's case (supra)** as followed in **Bhawna Chaudhary's case (supra)** and **Pooja Sindhu 's case (supra)** as expeditiously as possible, preferably within a period of one week from the date of receipt of certified copy of this order.

(B.S. Walia)
Judge

22.11.2019
dinesh/rajesh

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.