

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10121-2018 (O&M)
Date of decision : 02.11.2019

Jagpal Kaur

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. S.S. Kamboj, Advocate
for the petitioner.

Mr. Maherdeep Singh, AAG, Punjab

ARUN MONGA, J (ORAL)

Inter alia, issuance of a writ in the nature of certiorari has been sought to quash order dated 15.06.2017 (Annexure P-5), whereby maternity leave to the petitioner was declined. The petitioner is a physician and at the relevant time was doing her senior residency with the Department of Pathology, Government Medical College, Amritsar.

2. Instead of granting maternity leave, the petitioner was given 'extra ordinary leave without pay' with a further stipulation that she would have to serve the department equivalent to the period of leave granted to her, i.e. 6 months.

3. I have heard the rival contention of the learned counsels and have gone through the pleadings alongwith relevant record thereto.

4. Before adverting to the merits of the case, it would be apposite to reproduce the relevant statutory provisions entitling maternity leave to a female employee:-

A Maternity Benefit Act, 1961

“5. Right to payment of maternity benefit. -- (1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.”

B Punjab Civil Services Rules (Vol.1 Part 1)

“8.137(A) [(1) The competent authority under Rule 8.23 may grant to a female Government employee maternity leave on full pay for a period not exceeding 180 days without the necessity of production of a medical certificate and the grant of such a leave, shall be so regulated that the date of confinement falls within the period of this leave and the leave:

Provided that no leave under this sub-rule shall be granted to a female Government employee who has three or more living children.

Note 1.—Extension in leave, if any, beyond 180 days shall, however, be permissible by the grant of leave of the kind due.

Note 2.—Maternity leave will not be debited against the leave account of the concerned female Government employee].

Note 1.—During such period she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave. The term “pay” in this rule includes officiating pay provided the authority sanctioning the leave certifies that the Government employee would have continued to officiate had she not proceeded on leave.”

5. In the backdrop of the above provisions, the order dated 15.06.2017 (Annexure P-5) passed by respondent No.3 has been assailed herein. The relevant para is reproduced herein, is as under:-

“ By this office order, the leave of Dr. Jagpal Kaur (Fresh) Senior Resident, Pathology Department, Government Medical College, Amritsar is hereby sanctioned without pay from 24.03.2017 to 19.09.2017 under Punjab Civil Services Rules 8.121.

It is informed to you that there is no provision for maternity leave for doctors under fresh quota. For the leave of six months without pay, further equal time services will be taken.”

6. A conjoint perusal of the relevant provisions of law aforesaid, would leave no manner of doubt that an employee is entitled to maternity leave alongwith pay. Notwithstanding, the petitioner was granted maternity leave without pay vide the impugned order. On this short ground alone, the impugned order does not stand scrutiny of law and is liable to be set aside. However, it seems that realizing the fallacy, a notification dated 10.04.2018 (Annexure R-2) was issued, which is subsequent to the passing of the impugned order whereby it was decided as below:

“ 6. Maternity leave will be given to the female Senior Residents of all categories as per the Maternity Benefit Act, 1961 (Amended in 2017). After availing this Maternity leave benefit, the Senior Residency of the concerned doctor will be extended equivalent to leave period. However, no honorarium will be paid for extended period if the period extended is beyond 60 days.”

7. In accordance with the above notification, the petitioner has been paid, 'Pay for the period of maternity leave'. What survives

adjudication now is the non-payment of her salary for the additional six months the petitioner was made to work, being the stipulation of grant of maternity leave to her vide impugned order dated 15.06.2017 (Annexure P-5).

8. I am not able to persuade myself with the argument of the learned counsel for the respondents that the petitioner cannot be paid for the period she worked beyond the period of 60 days as per clause 6 of the notification, *ibid*. On the very first principles of service jurisprudence, a welfare state cannot force an employee to work without pay.

9. To contend that since the maternity leave was granted to the petitioner and, therefore, she had to work for equivalent period 'without pay' in order to avail herself for the said benefit runs concurrent to the statutory rights of an employee as contained in the Maternity Benefit Act read with Punjab Civil Services Rules. That being her position in law, the petitioner is entitled to payment of her salary for six months in view of the maternity leave.

10. In the aforesaid premise, the respondents are directed to pay the petitioner for 6 months pay in view of the maternity leave. Let the arrears of salary be calculated and paid with interest @ 7% per annum within a period of three months from the date of certified copy of this order.

11. The present petition is accordingly disposed of and impugned order dated 15.06.2017 (Annexure P-5), is hereby set aside.

(ARUN MONGA)
JUDGE

02.11.2019

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No