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

+ **W.P.(C) 2399/2020, CM APPL. 8387/2020**

CAPT SURUCHI KATIYAR

..... Petitioner

Through: Mr. Praveen Kumar, Adv. along with
the Petitioner.

versus

THE CHIEF OF THE ARMY STAFF AND ORS. Respondents

Through: Mr. Nirvikar Verma and Mr. Arjun,
Advs. for R-1 to 3 with Lt. Alokesh
Roy.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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03.03.2020

CM APPL. 8388-8389/2020 (exemptions)

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.

W.P.(C) 2399/2020

3. Issue notice. Learned counsel for the Respondents accepts notice.
4. The Petitioner, who is serving as Military Nursing Officer (MNS) with the Indian Army, has preferred the present writ petition to seek a direction to the Respondents to grant her 180 days maternity leave on account of being blessed with her child on 11.01.2020.

5. The case of the Petitioner is that she joined the Indian Army on 14.11.2014. Prior to her joining the force, she had been blessed with one child. Thereafter, she was blessed with the second child on 09.10.2017. On that occasion, she availed her maternity leave of 180 days. The Petitioner claims that during her recent pregnancy, she applied for maternity leave, however, the same was not sanctioned. She then made a written application to the Principle Matron, Army Hospital (R & R) Delhi Cantt. on 08.01.2020 where she was posted at relevant time, however the same was not accepted. In the meantime, she went into labour and delivered her third child on 11.01.2020. Vide order dated 27.12.2019, the Petitioner was posted at MH, Jalandhar w.e.f. 27.01.2020, however, we are informed that the movement order came to be issued on 14.01.2020 i.e. just three days after she had delivered her third child. Since she was not sanctioned maternity leave, from 15.01.2020, the Petitioner is on 58 days Annual Leave. The Petitioner sent her application for maternity leave on 10.02.2020.

6. The submission of the learned counsel for the Respondents who appears on advance notice is that the Petitioner did not made an application for maternity leave at MH, Jalandhar and her application had been made at AH (R& R), Delhi Cantt.

7. Learned counsel for the Petitioner on the other hand, submits that it is in the aforesaid circumstances that the Petitioner had posted to Jalandhar and that her application was made on 10.02.2020. He also submits that verbally, the Petitioner has been informed that she would not be entitled to maternity leave, in view of the communication dated 16.03.2009 issued by the Government of India, Ministry of Defence, New Delhi on the subject

“RECOMMENDATIONS OF THE SIXTH CENTRAL PAY COMMISSION RELATING TO ENHANCEMENT OF THE QUANTUM OF MATERNITY LEAVE IN RESPECT OF THE WOMEN SERVICE OFFICERS IN DEFENCE FORCES”. The said communication conveyed the sanction of the president “*to revising the ceiling on Maternity Leave for women officers in Defence Forces from existing 60 days to 180 days on full pay for each confinement subject to maximum of two confinements/two surviving children.*” According to the Petitioner, the Respondents are proceedings on the basis that since the Petitioner has given birth to third surviving child, she could not have availed the second maternity leave of 180 days.

8. Having heard learned counsels, we are firstly of the view that in the circumstances of the case, Respondents may not be justified in raising the technical plea that the application for maternity leave has not been made at MH, Jalandhar. In any event, the Respondents are now aware of the fact that the Petitioner has made an application for maternity leave and, therefore, we direct to Respondents to forward the Petitioner’s application to the competent officer for consideration. At the same time, we may also observe that the clear purport of the communication dated 16.03.2009 is that maternity leave can be availed by a serving women officer for 180 days each on two occasions. This is clear from the use of the expression “*subject to maximum of two confinements/two surviving children.*” in the aforesaid communication.

9. Since the first child was born to the Petitioner on 10.02.2010 i.e. before she joined the force, she could not have possibly availed maternity leave on

that occasion. Therefore in our view, she cannot be denied maternity leave for the second time even though, she may have given birth to her third child. The provision for grant of maternity leave is a beneficiary provision and has to be construed to advance the object of granting of maternity leave, which is to enable the serving women officers to look after and bring up the infants. We, therefore, direct the Respondents to decide the Petitioner's maternity leave application within next three days in the light of this order. Accordingly, the petition stands disposed of in above terms.

10. Copy of this order be given *dasti* to the parties.

VIPIN SANGHI, J

SANJEEV NARULA, J

MARCH 03, 2020

Pallavi