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

+ W.P.(C) 9092/2019 & CM APPL. No. 37555/2019

GOVT. OF NCT OF DELHI AND ANR. Petitioners

Through: Mr. Nitesh Kumar Singh, Adv.

versus

SMT. DR. PRIYANKA MITTAL Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **23.01.2020**

Learned counsel for the petitioners submits that this case is covered on facts and law by two orders dated 10.12.2018 and 19.08.2019 respectively rendered by this Court in the case of *Dr. Deepasha Garg vs. Govind Bhallabh Pant Institute of Postgraduate Medical Education and Research & Ors.*, W.P.(C) No. 13231/2018 and *Dr. Kavita Yadav vs. The Secretary, Ministry of Health and Family Welfare Department & Ors.*, W.P.(C) No. 8884/2019.

2. Notice was issued in this matter on 05.09.2019 returnable on 20.01.2019.

3. Despite service, no one has appeared for the respondent, despite the matter being passed-over once.

4. The respondent had approached the Tribunal seeking a direction to grant remaining maternity leave of 138 days due to her. It is the respondent's contention that she would be entitled to 180 days of leave as

per Central Civil Services (Leave) Rules, 1972 whereas she has been granted only 42 days of maternity leave.

5. The respondent had joined the Deen Dayal Upadhyay Hospital on 12.05.2015 as a Senior Resident on contract basis *vide* order dated 07.05.2015 for a period of 89 days. During the continuance of her service, she came to be in the family way; and accordingly she submitted an application on 06.02.2016 for grant of maternity leave for 180 days w.e.f. 08.02.2016 to 05.08.2016. The respondent was blessed with a daughter on 22.02.2016.

6. Knowing that her tenure of 89 days was about to expire on 20.03.2016, the respondent applied for extension of her tenure for further 89 days. The tenure was not extended since she was employed on contract basis; nor was her maternity leave extended beyond the period of 89 days.

7. The respondent approached the Tribunal, which has allowed the O.A. and that order has led to the filing of the present writ petition.

8. Learned counsel for the petitioners submits that the maximum period for which a Resident Doctor can be engaged on contractual basis as an *ad-hoc* employee is three years. However, in the present case, the respondent's contract could not have been extended since no post was vacant. It is urged that the issue raised by the respondent before the Tribunal is covered by the aforesaid two judgments of Coordinate Benches of this court.

9. In our view, the judgments apply squarely to the facts of the respondent's case. Moreover, we are unable to conceive of a situation where the "leave" granted to an employee, in this case maternity leave, can extend beyond the period of contractual employment itself. We are also unable

to visualize a situation where a contractual employee seeks extension of the contract itself only on the basis that she is entitled to extension of maternity leave to cover the entire term of such leave provided under the Maternity Benefit Act, 1961.

10. In the above view of the matter, we find no merit in the respondent's stand. Order of the Tribunal is set-aside. Writ petition is disposed of accordingly.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

JANUARY 23, 2020/uj