

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

CWP-6501-2021

Date of Decision: 31.03.2021

Neha Malik

...Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARUN MONGA

Present: - Mr. Shreenath A. Khemka, Advocate, for the petitioner.

Ms. Mamta Talwar, DAG, Haryana.

ARUN MONGA, J. (ORAL)

1. Petitioner herein, serving in the Guest Faculty of respondent No.3 as Assistant Professor, is before this Court seeking, *inter alia*, issuance of a writ in the nature of certiorari for setting aside an order/letter received by her vide email dated 10.3.2021 (Annexure P-6) whereby her claim for maternity benefits has been rejected ostensibly on the ground that being from Guest Faculty, she is not entitled to the same.

2. Learned counsel for the petitioner strenuously argues that the impugned order/email dated 10.3.2021 flies in the face of instructions dated 27.12.2010 (Annexure P-1) issued by the State Government which clearly envisages that female employee including the Guest Faculty working in any State institute, be a self financed or financed by the State, is entitled the three months maternity leave. For reference relevant extract of the instructions *ibid* is reproduced hereunder:

“I am directed to invite your attention to this department memorandum No.11/126/2007-IFR, dated 22.6.2009 on the subject noted above vide which female employee, employed on contract basis working in Haryana

Government were made eligible for maternity leave for a period of three months on the conditions laid down in the said letter. On further consideration it has been decided that the Female Guest Teachers working in the Haryana Govt. shall also be eligible for maternity leave for a period of three months on the terms & conditions mentioned in the memorandum referred to above provided that she have completed three months continuous service. The condition of three months continuous service shall also be applicable on the employee working on contract basis.”

3. On perusal of the above, it seems that request of the petitioner has been wrongly rejected without granting her the benefit of maternity in accordance with Maternity Benefit Act, 1961 to which she is entitled pursuant to the notification *ibid*.

4. That apart, I am in agreement with the learned counsel for the petitioner that issue in hand is no more *res integra* as the same has been put to rest by single bench judgment rendered by my learned Brother A.G. Masih, J. in case titled as Pooja Devi Vs. State of Haryana¹. Relevant thereof is as below:-

“It appears from the instructions dated 27.12.2010 that female employees on contract basis working in Haryana Government are eligible for maternity leave for a period of three months. Female Guest Teachers have also been held entitled to a period of three months maternity leave. However, a rider has been imposed that they must have completed three months continuous service. It does not specify that it should be for the contract, which is in progress or on the date, when the maternity leave was availed of.

*In the present case, it is not in dispute that initially the petitioner was appointed on 27.12.2010 and served the respondents till 15.05.2011. Thereafter, as there was no academic working because of the examinations held in the College, there was a notional break in service of the petitioner. On commencement of the new session, she had been engaged again on the post of Computer Attendant from 01.08.2011 to 30.04.2012 vide letter dated 28.07.2011. This appointment of the petitioner although is on contract basis but the condition imposed in the instructions dated 27.12.2010 cannot be *stricto sensu* made applicable to the case of the petitioner as virtually there is no break in service except that she being dealing with the*

teaching was disengaged for a short period because of seizure of teaching during the period when the examinations were over, which was followed by vacations. If seen in this context, the objection, which has been raised by the respondents, cannot sustain.

In view of the above, the present petition is allowed.

Petitioner is held entitled to maternity leave for three months commencing from 04.09.2011. The salary for this period be released to the petitioner within a period of two months from the date of receipt of certified copy of this order.”

5. On query of the Court, learned Counsel for the petitioner submits that the petitioner has been working in the Guest Faculty in the respondent No.3 since 06.09.2019 and therefore, there is no reason that the benefit of notification was not to be accorded to her on the premise that she has to be in continuous service for not less than 3 months.

6. As an up shot of the aforesaid, writ petition is allowed. Official respondents herein are directed to ensure that the benefit in terms of instructions dated 27.12.2010 read with judgment *ibid* is accorded to the petitioner in terms of the Maternity Benefit Act, 1961.

(ARUN MONGA)
JUDGE

31.03.2021

Vivek

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No