

**ORISSA HIGH COURT: CUTTACK**

**WPC (OAC) NO. 1680 OF 2017**

In the matter of an application under Articles 226 and 227 of the Constitution of India.

**AFR**

Smt. Anindita Mishra ..... Petitioner

-Versus-

State of Odisha and another ..... Opp. Parties

For Petitioner : M/s P.K. Rath,  
R.N. Parija, A.K. Rout,  
S.K. Pattnaik and A. Behera,  
Advocates

For Opp. Parties : Mr. S. Rath,  
Addl. Standing Counsel

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI**

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**Date of hearing and judgment: 30.08.2022**

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**DR. B.R. SARANGI, J.** By means of this writ petition, the petitioner seeks to quash the order dated 07.06.2017 passed by the Under Secretary to Government, Health and Family Welfare Department, Govt. of Odisha, under

Annexure-1, by which sanction of maternity leave has been denied on the ground that she is not entitled to get such benefit in terms of the Agreement executed with the Department for her professional service.

2. The factual matrix of the case, in a nutshell, is that the Government in General Administrative Department issued an Office Memorandum in the nature of advertisement in daily newspaper inviting applications from various eligible candidates for the post of Young Professionals (YPs) to be engaged in the Administrative Department or they may authorize their sub-ordinate offices for engagement. Pursuant to such advertisement, the petitioner, being eligible, applied for the post of Young Professionals. After following due procedure of selection, she was selected and was appointed as Young Professional. The name of the petitioner was sponsored by the G.A. Department to be posted under the Health and Family Welfare Department. Accordingly, she joined under the Health and Family Welfare Department on

20.05.2014. The Health and Family Welfare Department initially entered into an agreement with the petitioner for engagement as Young Professional for one year and, as such, on completion of one year, being satisfied with the performance of the petitioner, her service was further extended and un-interruptedly the petitioner was continued as Young Professional under the opposite parties. While she was continuing as such, she was blessed with a female child. On 17.08.2016, the petitioner submitted a leave application before opposite party no.2 for the period from 17.08.2016 to 12.02.2017 on maternity ground incorporating the certificate of doctor, as well as Finance Department Instructions. But, the same was rejected by opposite party no.2 without assigning any reason vide Annexure-1 dated 07.06.2017 stating that she is not entitled to get such benefit in terms of the Agreement executed with the Department for her professional service. Hence, this application.

3. Mr. P.K. Rath, learned counsel for the petitioner contended that the petitioner, having been engaged as contractual employee, can also avail the maternity leave of 180 days. Therefore, there is no justification at all for denying the claim of the petitioner to avail maternity leave, which is admissible to the petitioner, particularly when the contract is in existence. It is further contended that the State, being a model employer, cannot deny the benefit of maternity leave to the contractual employees, else there will be breach of Articles 14 and 16 of the Constitution of India. It is further contended that the contractual employees are entitled to get the maternity leave at par with their counterparts in the regular establishment and, as such, the benefit so admissible cannot be denied to such employees. More so, Maternity Benefit Act, 1961 entitles the said benefit to the petitioner and, as such, the same having been rejected, the petitioner has approached this Court by filing the present writ petition.

To substantiate his contention, learned counsel for the petitioner has relied upon the judgment of the apex Court in the case of ***Municipal Corporation of Delhi v. Female Workers (Muster Roll)***, (2000) 3 SCC 224: 2000 SCC (L&S) 331.

4. Mr. S. Rath, learned Addl. Standing Counsel appearing for the State-opposite parties vehemently contended that since the petitioner was engaged by the opposite parties in terms of the General Administration Department Office Memorandum dated 02.05.2013, by which a policy has been formulated for the purpose of Young Professionals, which clearly indicates the objectives, terms of engagement, scope of work, tenure and compensation for such Young Professionals and, as such, nowhere the entitlement of maternity leave has been indicated in the said memorandum, the petitioner is not entitled to get such benefit. It is further contended that the petitioner is neither regular nor contractual employee to avail such leave, as she is a Sui-generis. Therefore, the

claim of the petitioner, that she is entitled to the benefit of maternity leave, cannot be sustained in the eye of law and, as such, the relief sought by the petitioner cannot be granted to her. Consequentially, he seeks for dismissal of the writ petition.

5. This Court heard Mr. P.K. Rath, learned counsel appearing for the petitioner and Mr. S. Rath, learned Addl. Standing Counsel appearing for the State- Opposite Parties by virtual mode, and perused the records. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

6. The undisputed fact being that the petitioner was selected and appointed as Young Professional by following due process of selection, pursuant to which, she joined under the Health and Family Welfare Department on contractual basis by executing an agreement. The object of engagement of such Young Professional is to

ensure timely availability of skilled manpower of a fixed tenure to government offices in order to assist the offices in planning, organizing, budgeting, implementing, monitoring, auditing, evaluating and adapting of their programmes, schemes, activities and functions so that they are able to discharge their roles and responsibilities more effectively. The programme aims at bringing technological advances in government in management methods by application of innovations and best practices will be an important endeavour under the programme. All these will ultimately aim to improve governance, public service delivery and satisfaction of citizens. The Young Professional are being paid with a consolidated remuneration of Rs.25,000/- per month and, as such, by virtue of the agreement, it creates relationships between the parties. More so, the agreement was effective for a period of one year, unless sooner terminated if their performance was not good or unless extended by agreement of the parties but not beyond a period of five

years. As per clause-10 of such agreement, the Young Professionals shall be eligible for 8 (eight) days leave in a calendar year on pro-rata basis. He/She shall not draw any remuneration in case of his/her absence beyond 8 (eight) days per year and un-availed leave in a calendar year shall not be carried forward to next calendar year. As such, their services shall be terminated in case of their absence for more than 15 days beyond the entitled leave in a calendar year or any unauthorized leave on the part of the Young Professionals. This being the condition stipulated in the agreement itself, pursuant to such agreement, the petitioner was discharging her duties and, as such, her performance was satisfactory for the period from 20.05.2015 to 19.05.2016.

7.           Thereafter, performance of Young Professionals were reviewed by the Review Committee on 27.05.2016 and on the recommendation of the Committee their services were extended without any performance bonus for another one year with effect from 20.05.2016 to

19.05.2017 with the same terms and conditions mentioned in the agreement made during the year 2014, vide Annexure-7 dated 02.06.2016, where the petitioner's name finds place at sl.no.1. Needless to say, when the period was extended for the period from 20.05.2016 to 19.05.2017, the petitioner remained absent for the period from 17.08.2016 to 12.02.2017, on the ground of maternity leave. But the benefit admissible to the petitioner was denied by the authority. It is pertinent to mention here that the Government in Finance Department issued memorandum dated 31.03.2012, by which the Government has been pleased to decide to extend the benefit of absence from duty on maternity ground by Female Contractual Employees engaged in different Departments of Government, the relevant part of which is extracted hereunder:-

*"..... Government have enhanced the ceiling of 90 (ninety) days of maternity leave provided under sub-rule(b) of Rule -194 of Orissa Service Code to 180 days in Finance Department O.M No. 51856/F., Dt.7.12.2011 in respect of State Government employees.*

*After careful consideration Government have been pleased to decide that in respect of all female employees engaged in Government establishment on contract basis with consolidated remuneration the existing ceiling of 90days of absence from duty on maternity ground is enhanced to 180 days subject to condition that the tenure of maternity leave will be within the contractual period in maximum.”*

8. As it appears, when the petitioner sought the benefit of maternity leave, the same was denied vide letter dated 07.06.2017 in Annexure-1 simply stating that she is not entitled to get such benefit in terms of the agreement executed with the Department for her professional service. As such, there is no other reason mentioned in the order impugned dated 07.06.2017 vide Annexure-1, save and except stating that as per the terms and conditions of the agreement, she is not entitled to get such benefit, which cannot suffice the dispute. Law is well settled that administrative officer has to give reason while accepting or rejecting the claim of the person concerned.

9. Reasons being a necessary concomitant to passing an order, the Appellate Authority can thus

discharge his duty in a meaningful manner either by furnishing the same expressly or by necessary reference to those given by the original Authority.

10. In ***Travancore Rayons Ltd. V. The Union of India***, AIR 1971 SC 862, the apex Court observed that the necessity to give sufficient reasons, which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached in cases where a non-judicial Authority exercises judicial functions is obvious. When judicial power is exercised by an Authority normally performing executive or administrative functions, the Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency. The Court insists upon disclosure of reasons in support of the order on two grounds: one that the party aggrieved in a proceeding before the Court has the opportunity to demonstrate that the reasons which persuaded the

Authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the Executive Authority invested with the judicial power.

11. In **S.N. Mukherjee v. Union of India** (1990) 4 SCC 594, the apex Court held that keeping in view the expanding horizon of Principles of Natural Justice, the requirement to record reasons can be regarded as one of the Principles of Natural Justice, which governs exercise of power by administrative Authorities. Except in cases where the requirement has been dispensed with expressly or by necessary implication, an Administrative Authority is required to record reasons for its decision.

12. In **Menaka Gandhi v. Union of India**, AIR 1978 SC 597, the apex Court observed that the reasons, if disclosed, being open to judicial scrutiny for ascertaining their nexus with the order, the refusal to disclose the reasons would equally be open to the scrutiny of the court; or else, the wholesome power of a dispassionate

judicial examination of executive orders could with impunity be set naught by an obdurate determination to suppress the reasons.

13. In ***Union of India v. Mohan Lal Capoor***, AIR 1974 SC 87, it has been held that reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial and reveal a rational nexus between the facts considered and conclusions reached. The reasons assure an inbuilt support to the conclusion and decision reached. Recording of reasons is also an assurance that the authority concerned applied its mind to the facts on record. It is vital for the purpose of showing a person that he is receiving justice.

Similar view has also been taken by the apex Court in ***Uma Charan v. State of Madhya Pradesh***, AIR 1981 SC 1915, and by this Court in ***Patitapaban Pala v.***

**Orissa Forest Development Corporation Ltd.**, 2017 (I) OLR 5 and in **Banambar Parida v. Orissa Forest Development Corporation Limited**, 2017 (I) OLR 625.

Therefore, in absence of any reason in the order impugned dated 07.06.2017 in Annexure-1, denying the benefit of maternity leave, cannot be sustained in the eye of law.

14. In **Municipal Corporation of Delhi** (supra), while considering the case of the workmen, including those employed on muster roll for carrying out such activities, the apex Court taking into consideration the provisions contained in Maternity Benefit Act, 1961 read with Constitutional mandate under Article 42 observed that in exercise of power of judicial review of administrative action, the benefit of maternity leave admissible to the muster roll female workmen cannot be denied. In view of doctrine of social justice and universal declaration of Human Rights, 1948 and Convention on the Elimination of all forms of industrial dispute between

such workmen and the Corporation, would have to be tackled as an industrial dispute in the light of industrial law, including the Maternity Benefit Act. By observing so, the apex Court in paragraph-37 of the said judgment, held as under:

*“37. Delhi is the capital of India. No other city or corporation would be more conscious than the city of Delhi that India is a signatory to various international covenants and treaties. The Universal Declaration of Human rights, adopted by the United Nations on 10-12-1948, set in motion the universal thinking that Human Rights, adopted by the United Nations on 10-12-1948, set in motion the universal thinking that human rights are supreme and ought to be preserved at all costs. This was followed by a series of conventions. On 18-12-1979, the United Nations adopted the “Convention on the Elimination of all Forms of Discrimination against Women”. Article 11 of this Convention provides as under:*

Article 11

1. States/parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, particular:
  - (a) the right to work as an inalienable right of all human beings;
  - (b) the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

- (c) the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;*
  - (d) the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;*
  - (e) the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;*
  - (f) the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.*
- 2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, Stats/parties shall take appropriate measures:*
- (a) to prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;*
  - (b) to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;*
  - (c) to encourage the provision of the necessary supporting social services to enable parent to combine family obligations with work*

*responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;*

*(d) to provide special protection to women during pregnancy in types of work proved to be harmful to them.*

*3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.*

*(emphasis supplied)”*

15. There is no iota of doubt that the petitioner was discharging her duties and responsibilities as Young Professional and, thereby, the benefit of maternity leave cannot be denied to her, in view of the judgments mentioned supra. Therefore, applying the aforesaid law laid down by the apex Court in the present context, this Court is of the considered view that denial of the benefit of maternity leave to the petitioner, vide impugned order dated 07.06.2017 in Annexure-1, is without assigning any reason and thus cannot be sustained in the eye of law and the same is liable to be quashed. Accordingly, the order dated 07.06.2017 under Annexure-1 is hereby

quashed. The opposite parties are directed to extend the benefit of maternity leave to the petitioner, as admissible to her in accordance with law, as expeditiously as possible, preferably within a period of three months from the date of communication/production of certified copy of this judgment.

16. In the result, the writ petition is allowed. However, there shall be no order as to cost.

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**DR. B.R. SARANGI,**  
**JUDGE**

**Orissa High Court, Cuttack**  
**The 30<sup>th</sup> August, 2022, Ashok/GDS**