

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(204-A)

CWP-6866-2020

Date of Decision : September 22, 2023

Dr. Sangita

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Samrat Malik, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. Present petition has been filed by the petitioner claiming the benefit of salary for the maternity leave for a period of 180 days with the further prayer that she be allowed to continue in service.

2. Certain facts may be mentioned for the correct appreciation of the issue in hand.

3. The respondents advertised a post of Ayurvedic Medical Officer (Female) to be filled on contractual basis under the RBSK Scheme. The petitioner, who was fully eligible, applied for the said post and was selected and appointed as Ayurvedic Medical Officer vide appointment letter dated 19.08.2014. The appointment was for a particular tenure, which tenure was further extended. The last extension to continue in service available with the petitioner was upto 31.03.2019.

4. Petitioner, while in service, applied for extraordinary leave from 28.12.2018 to 25.02.2019. As per the petitioner, the said letter was submitted but nothing is on record that the same was allowed. The petitioner submitted her joining report on 26.02.2019 and on the same date she applied for maternity leave for a period of 180 days. Without getting the said leave sanctioned, the petitioner again availed the said maternity leave.

5. After the expiry of 180 days, the petitioner came to join back the services but she was not allowed to do so on the ground that as the petitioner was not performing her duties since December 2018 onwards and there was no leave sanctioned in favour of the petitioner and the term of the petitioner had already expired on 31.03.2019, the respondents had already issued an advertisement again in pursuance to which a selection has already been done.

6. As the petitioner was not being allowed to join the duties, the present petition was filed claiming the benefit of maternity leave and continuity in service.

7. It may be noticed that though two reliefs are being sought in the present petition but at the time of hearing, learned counsel for the petitioner submits that the petitioner is only pressing her claim for the grant of salary for maternity leave period and is not pressing her claim for continuing in service.

8. Learned counsel for the respondents submits that the petitioner initially applied for the grant of extraordinary leave even while working on a term appointment in December 2019 and further without getting leave sanctioned, she availed the same and upon joining on 26.02.2019, the petitioner again submitted a maternity leave on the same day and without

getting it sanctioned, she again availed the same which shows that the petitioner is not interested in performing her duties, hence, the claim of the petitioner for the grant of maternity leave is not made out though, learned counsel for the respondents conceded the fact that the term of the petitioner to continue in service had an approval upto 31.03.2019.

9. I have heard learned counsel for the parties and have gone through the record with their able assistance.

10. Though, a leave can only be availed after getting the same sanctioned from the authorities concerned but as the petitioner was claiming the benefit of maternity leave, which the petitioner is entitled under law keeping in view the provisions of the Maternity Benefit Act, 1961 as well as the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No. 5010 of 2023 titled as Dr. Kavita Yadav vs. The Secretary, Ministry of Health and Family Welfare Department and others, decided on 17.08.2023***, the respondents were under obligation to consider the same and pass appropriate order, when the said application was made on 26.02.2019 during the subsistence of the appointment of the petitioner as Ayurvedic Medical Officer. Hence, once the petitioner was entitled for maternity leave under the Act coupled with the settled principle of law noticed hereinbefore, the same cannot be declined by the respondents.

11. At this stage, learned counsel for the respondents submits that within a period of one month, from the date of the application seeking maternity leave, the term of the contract between the petitioner and respondent was to expire on 31.03.2019 hence, under said circumstances, the petitioner could not have been granted maternity leave for a period of 180 days.

12. The said argument of the learned counsel for the respondents cannot be accepted in view of the settled principle of law settled by the Hon'ble Supreme Court of India according to which, even if the term of contractual employment expires between the maternity leave, still the same has to be extended. The relevant paragraph of the judgment of the Hon'ble Supreme Court of India is as under:-

“10. In our opinion, a combined reading of these provisions in the factual context of this case would lead to the conclusion that once the appellant fulfilled the entitlement criteria specified in Section 5(2) of the Act, she would be eligible for full maternity benefits even if such benefits exceed the duration of her contract. Any attempt to enforce the contract duration term within such period by the employer would constitute “discharge” and attract the embargo specified in Section 12(2)(a) of the 1961 Act. The law creates a fiction in such a case by treating her to be in employment for the sole purpose of availing maternity benefits under the 1961 Act.”

13. Hence, as the petitioner had made an application for the grant of maternity leave on 26.02.2019 and the contract of the petitioner subsisted on the said date, the respondents are under obligation to grant the petitioner the maternity leave for a period she is entitled for under the Maternity Benefit Act, 1961 and the respondents are directed to grant the said maternity leave to the petitioner and the salary for the said period.

14. As the petitioner has not pressed the claim for continuity in service, the same is disposed of as not pressed. Let the salary for which the petitioner becomes entitled for, for the maternity leave, be calculated by the respondents and be released in her favour within a period of two months from the receipt of copy of this order.

15. The present writ petition is disposed of in above terms.

September 22, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No