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2023:PHHC:152389

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

**CWP-29421-2017
DECIDED ON: 30.11.2023**

RUBINA ANSARI

.....PETITIONER

VERSUS

STATE OF HARYANA AND ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. R.K. Hooda, Advocate
for the petitioner.

Mr. Sandeep S. Mann, Addl. AG, Haryana.

Mr. Randeep Tanwar, Advocate for
Mr. Padamkant Dwivedi, Advocate
for respondent No.2.

Mr. Pardeep, Advocate for
Mr. Anand Kumar Bishnoi, Advocate
for respondent No.3.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* calling for the records of respondents concerning Annexures P-1 to P-4 for sanctioning the 26 weeks maternity leave alongwith pay with all other financial benefits.

2. The case set up by the petitioner starts from his engagement as Book Keeper-cum-Receptionist on 07.04.2008 with respondent No.2-Haryana State Road and Bridges Development Corporation Limited (hereinafter referred to as

respondent-Corporation), who was subsequently engaged as Clerk-cum- Computer Operator on 09.07.2009 thereafter, she was selected to the post of Clerk-cum- Computer Operator after following due process of law by way of interview held on 12.04.2010. It is also the assertion made in the present petition that on 30.08.2011, the petitioner served an advance notice for leaving the department on account of having selected in another department but she was not allowed to leave the office of the respondent-Corporation. Thereafter, on 27.09.2011, she was taken to the post of Junior Accountant (Tally) and while working as such, an application seeking Maternity Leave was moved and she was granted three months leave on 26.12.2012.

3. The petitioner also submits that after availing the Maternity Leave, she joined back the duties on 26.03.2013 but on 28.03.2013 her services were dispensed with stating that it is no more required and on her request she was allowed to work on the post of Clerk-cum-Computer Operator through service provider, to which she joined though under protest.

4. In the meantime, a policy was issued on 18.06.2014, as amended on 14.07.2014 to the effect that the services of such employees will be regularized who have completed the service of three years on contract basis as on 30.06.2014. The said policy was made applicable on the Boards, Corporation and other statutory bodies of the State Government. The petitioner for the second time had sought Maternity Leave for a period of 26 weeks along-with pay and gave birth to a baby boy on 23.01.2017. Thereafter, on 25.01.2017 another letter was sent to the respondent-Corporation for the grant of 26 weeks Maternity Leave along-with pay. The husband of the petitioner also stated to have sent e-mail to the respondent-Corporation on 11.04.2017 for grant of Maternity Leave along-with pay but in vain.

5. The instant petition has been preferred to urge that the petitioner is entitled for Maternity Leave as per Government Instructions dated 20.02.2014, which stipulates that a women employee in any establishment where workers strength is ten or more or were employed on any day of the preceding twelve months and a woman must have actually worked in establishment of the employer for a period of not less than eight days in the twelve months immediately preceding the date of her expected delivery to enable her to claim the benefit from the said employer. The said notification/policy of the Government of Haryana is in consonance with The Maternity Benefit Act, 1961.

6. The petitioner, thereafter, is stated to have joined the duties after 26 weeks in the Month of July 2017 but having grievance on account of neither sanctioning the Maternity Leave for 26 weeks nor paying the salary for that period despite her representation to the respondent-Corporation, has approached this Court by way of filing of the present petition.

7. Lastly, the contention raised by learned counsel for the petitioner primarily on the strength of Instruction issued by the Finance Department, Government of Haryana letter No. 11/8/2014-3FR/11887 dated 04.08.2014.

8. After having issued notice of motion, respondent-Corporation is represented through Mr. Padamkant Dwivedi, Advocate, who has filed reply contesting the claim raised by the petitioner and prays for dismissal of present petition on the ground that she was engaged through a service provider-respondent No.3-Zeus Consultant. It is also denied that the petitioner joined the services on 04.09.2013 under protest. Rather she requested at her own to continue in a job at least as a Clerk-cum-Computer Operator. Lastly, he prayed for dismissal of the present petition stating the case for regularization cannot be considered in the light

of the judgment pronounced by a Division Bench of this Court in CWP-17206-2014 titled **“Yogesh Tyagi and another vs. State of Haryana and others”**; whereby, the policy for regularization dated 18.06.2014 stands quashed. Further, he vehemently argues that the order dated 19.06.2015 is just, legal and fair, which has been passed after duly considering the representation made by the petitioner and as such she is not found entitled to the benefit of Maternity Leave with pay.

9. Having heard learned counsel for the respective parties and on examination of record, this Court can culminate the issue involved in the instant petition to the effect that the petitioner who is seeking benefit of Maternity Leave with pay, is being denied by the respondent-Corporation primarily on the ground that she is engaged on contract basis through service provider-respondent No.3 and is not in service on regular cadre.

10. Be that as it may, a letter produced before this Court dated 20.02.2014 issued by the Chief Secretary to Government of Haryana i.e. in fact a policy for engaging/outsourcing of services/activities-Guidelines for compliance of labour laws, which itself envisages that labour laws are strictly adhered to by the Government Departments and its other bodies, Corporations, public undertakings and are duty bound with their liability under Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970, which reads as under:-

21. Responsibility for payment of wages.-

(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor any contract as a debt payable by the contractor.”

11. It is also specified in the said instructions that service provider must pay at least minimum rates of wages notified by the Government under the Minimum Wages Act, 1948, without any illegal deduction as specified in the Payment of Wages act, 1936, which comprises a basic rate revised from time to time and the DA which is recalculated after every six months on the basis of increase or decrease of consumer price index-this minimum rate of wages is not permitted to be segregated further in any other manner. Clause 9 of the instructions reads as under:-

“9. The Maternity Benefit Act, 1961 will apply in every establishment where ten or more persons are employed or were employed on any day of the preceding twelve months and a woman must have actually worked in establishment of the employer for a period of not less than eight days in the twelve months immediately preceding the date of her expected delivery to enable her to claim the benefit from the said employer.”

12. Apart from that this Court cannot be ignorant of the Government of Haryana instructions issued by the General Administration Department dated 09.12.2019 i.e. the policy for engaging/outsourcing of services/activities-Grant the benefit of maternity leave to the women employees engaged Under Outsourcing Policy of Government of Haryana. Outsourcing Policy Part-1 and II ensure that

Maternity Leave to a female employee of Haryana engaged under outsourcing policy will be granted in the light of Instructions issued by the Finance Department dated 22.06.2009, as amended thereafter on 04.08.2014 and Instruction No. 11/05/2019-3FR/29101 dated 31.05.2019.

13. A cumulative and collective reading of Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970, Minimum Wages Act, 1948, Payment of Wages act, 1936 and The Maternity Benefit Act, 1961, which are basis of the Government of Haryana instruction dated 09.12.2019, makes it ample clear its object and intent of the legislation that female employee shall not be to any disadvantageous position during the maternity period for which the statute had made specific provision, keeping in view all the aspects and time frame for such Maternity Leave. None of the legislation or Government Instructions which have been discussed hereinabove indicate by any means for deduction of pay during that period and in fact actually Maternity Leave with pay is a statutory/legal right for a female employee which ought to have been given due care and attention while adjudicating the representation made by the petitioner, which has not been followed by the respondent-Corporation in letter and spirit and lastly the claim has been declined on flimsy account giving no justifiable and plausible reason.

14. In the light of the afore-said discussion, this Court has no hesitation to hold that the petitioner being female employee is entitled for Maternity Leave with pay being here legal right and therefore, respondent-Corporation is directed to sanction the Maternity Leave, as prayed for in the representation along-with pay. This Court is also oblivious of the fact that the claim raised by the petitioner through representation, which relates back to the date i.e. 02.01.2017 which was well in advance for seeking Maternity Leave for 26 weeks w.e.f. 06.02.2017 and

pay for the said period shall also be released forthwith preferably within a period of one month from the date of receipt of certified copy of this order along-with interest @9% per annum from the date which it became due till the date of its realization, as denial of said relief is not attributable to the petitioner in any manner whatsoever who staked her claim without any delay rather well in time.

15. In the afore-said terms, the present petition is allowed.

30.11.2023
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(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>