



CWP-3950-2020 (O&M) -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-3950-2020 (O&M)
Date of Decision :23.07.2024

Raj Rani and others

...Petitioners

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. H.C. Arora, Advocate for the petitioner.

Mr. Amar Preet Singh Bains, AAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

In the present petition, grievance being raised by the petitioners is that the clarification issued by the Director, Department of Education, Punjab dated 25.01.2019 (Annexure P/5) is being contrary to the Maternity Benefit Act, 1961.

Learned counsel for the petitioners submits that as per the clarification given, where a lady employee availed the benefit of maternity leave on completion of 01 year and 09 months of service and the said employee was under probation for a period of 02 years, her probation be completed on the expiry of two years even if, such lady employee is on maternity leave but keeping in view Rule 8.127 of the Punjab Civil Services Rules, Volume I, a female employee is only entitled for leave salary of minimum of the pay band, which she is getting prior to proceeding on maternity leave and actual salary will be given on rejoining the duty.

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Learned counsel for the petitioners submits that once, a particular benefit has been allowed to a female employee under the Maternity Benefit Act, 1961 then upon completion of probation, an employee has to be given entitled salary even if, she is availing benefit of maternity leave during the said period, therefore, Rule 8.127 of the Punjab Civil Service Rules, Volume-I cannot be made applicable where an employee is getting benefit under the Maternity Benefit Act, 1961 and not under the Punjab Civil Service Rules.

Upon notice of motion, the respondents have filed reply wherein, reliance is being placed upon Rule 8.127 of the Punjab Civil Service Rules, Volume-I to say that where an employee is being paid leave salary in the officiating pay, the said employee will only be granted actual pay upon rejoining and not before the same and hence, order dated 25.01.2019 (Annexure P/5) is in consonance with the Punjab Civil Service Rules.

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

Under the Maternity Benefit Act, 1961, the female employees have been allowed the benefit of maternity leave and the benefits, which an employee is entitled under the service rule are to be paid during the period the said female employee avails the benefit of leave under Maternity Benefit Act, 1961 and she is to be treated in service for all intents and purposes during the period of maternity leave being available under the Maternity Benefit Act, 1961. As per the settled principle of law, even a contractual employee, is entitled to avail the benefit of maternity leave under the Maternity Benefit Act, 1961 and she is entitled for full salary during the period she availed the benefit of maternity leave. That being so, once, an employee completes the period of probation during the maternity



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leave, she is entitled for fixation of actual salary, which she gets upon confirmation. The order dated 25.01.2019 (Annexure P/5), which has been passed on the basis of Rule 8.127 of the Punjab Civil Service Rules, Volume-I cannot be made applicable where a female employee has available benefit of maternity leave under the Maternity Benefit Act, 1961.

Even otherwise, where there is a conflict between the Rules and Act, the Act will prevail and hence, once under the 1961 Act, a female employee, who availed the benefit of maternity leave will entitle for the service benefits, the same will include the actual salary in case, she is confirmed on the post in question during the period she availed the benefit of maternity leave. Hence, letter dated 25.01.2019 (Annexure P/5) is contrary to the provisions of Maternity Benefit Act, 1961 and cannot be sustained in the eyes of law and is accordingly set aside.

Keeping in view the same, any recovery being done from the petitioner is held to be illegal and any recovery already done from the petitioner be refunded back to her within a period of 08 weeks from the date of receipt of copy of this order.

At this stage, learned counsel for the petitioner submits that recovery which has been done from the petitioner should also be refunded back with interest as the amount belonging to the petitioner has been retained by the respondents for a period of 04 years.

Learned State counsel submit that the recovery has been effected from the petitioner keeping in view the order dated 25.01.2019 (Annexure P/5) passed by the respondents, which has been set aside by this Court today only hence, no interest can be paid to the petitioner.

A Coordinate Bench of this Court in of ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355***, has held that where an amount belonging to an employee, has been retained and used by the respondents,



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upon the release of the said amount, on a later date, the interest has to be given. The relevant paragraph of *J.S. Cheema's case (supra)* is as under: -

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

Keeping in view the above, the petitioner is also held entitled for the grant of benefit of interest @ 6% per annum on the recovered amount from the date the same was recovered till the actual repayment of the same.

Present petition stands allowed in above terms.

Civil miscellaneous application pending, if any is also disposed of.

July 23, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/Nor