



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-13383-2019
Decided on : 07.05.2024

Haryana State Aids Control Society
Versus
Ms. Indu Rani and another
... Petitioner(s)
... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Praveen Chander Goyal, Addl. AG, Haryana.

Mr. Naveen Dariyal, Advocate and
Mr. R.K. Dhiman, Advocate
for respondent No.1.

SANJAY VASHISTH, J. (Oral)

1. Petitioner – Haryana State AIDS Control Society (Management) has filed the instant writ petition, by challenging the award dated 22.02.2019 (Annexure P-17), passed by respondent No.2 – Presiding Officer, Labour Court, Ambala, whereby, Reference No.110/2018, under Section 10(1)(C) of the Industrial Disputes Act, 1947 (for brevity, 'ID Act'), has been partly answered in favour of respondent No.1 – Ms. Indu Rani (work-lady).
2. Learned Labour Court has ordered for reinstatement of the work-lady in service from the date of termination along with continuity of service, but without back-wages.
3. Pleaded case of the work-lady (respondent No.1 herein) is that she was appointed by the Haryana State AIDS Control Society, Office of Director General, Health Services, Haryana, as Finance Assistant w.e.f. 29.08.2011 on monthly salary of Rs.21,250/-, besides, other statutory



benefits. Since the performance and service was satisfactory, she was never subjected to any disciplinary action.

4. Petitioner had applied for maternity leave of 12 weeks, but on account of not granting of maternity leave, she had been treated to be absent from the service, and therefore, respondents (Management) terminated her on account of not coming to the office of the Management.

5. In the written statement filed by the Management, it is pleaded that work-lady was appointed on the post of finance assistant w.e.f. 29.08.2011. Her contract was extended on yearly basis. Her last contract was executed w.e.f. 01.04.2016 to 31.03.2017 and she was drawing consolidated salary @ Rs.22,250/- per month, at the time of her termination, has also been admitted by the Management in the written statement.

Thus, more or less, service conditions are not in dispute in the present case.

6. While in service, work-lady had requested for grant of adoption leave as per norms w.e.f. 04.07.2016 with full pay. She proceeded on leave w.e.f. 04.07.2016 without getting prior approval/sanction of leave from the competent authority. Thus, Management has considered it as willful absence from the duty w.e.f. 04.07.2016.

7. Management further clarified that work-lady was working in the office on the basis of guidelines issued by National AIDS Control Organization (NACO), which had issued guidelines vide letter No.T-11020/64/2004-NACO (ART), dated 20.03.2008, in which, entitlement of leave to the contractual staff, engaged in the State AIDS Control Society (SACS) has been provided including maternity leave. Thereafter, vide letter No. F.No. A11011/93/2007-NACO(A) dated 01.09.2014, amendment has



been made, in which maternity leave, has been extended upto 12 weeks w.e.f. 01.08.2014, however, provision of adoption leave has not been made in the said letter.

Broadly, Management pleaded that there is no provision of adoption leave in the said letter. Therefore claim of the work-lady for grant of adoption leave cannot be exceeded, because the instructions/letters issued by the NACO pertains to maternity leave only.

8. Learned Labour Court held that as per the witnesses, it is an admitted position that never any charge-sheet or inquiry etc., was conducted, and therefore, the termination order dated 30.11.2016 was set-aside. For reference, findings recorded by learned Labour Court in the impugned award, in paragraphs No.15, 16, 17, 18 & 19, are reproduced as under:-

“15. It has been further argued that the management granted the leave to other employee namely Dr. Satyawati Sharma without pay not granting leave without pay to the application is discriminatory and terminating the service is illegal. The termination order dated 30.11.16 is illegal, vague and indefinite and the termination order was passed on the basis of misconduct for which the enquiry is necessary and even the termination order is not passed on the basis of absence.

*16. The witness of the management herself admitted that no charge sheet was issued and no enquiry was conducted, on this score alone the termination order is set aside. For this reliance is placed on the authority in the case titled **The Punjab State and other Vs Sukhwinder Singh 2001 (2) RSJ 32 (P&H) in which** it was held that respondent a probationer thrown out of job on the ground of absence from duty. Hence, it was held by the Hon'ble Punjab and Haryana High Court as envisaged in Rule 16.24 (IX) of the Rules. Hence, order of discharge passed under Rule 12.21 cannot be sustained. Similar reliance is placed on the following authorities :*



Guru Nanak Dev University, Amritsar Vs. Jaspal Singh 2011 (2) RSJ 699 Jaspal Singh Vs. GNDU , Amritsar 2011 (4) RSJ 105, Saraswati Industrial Syndicate Ltd. Vs. Jai Bhagwan Jain 1994 (3) RSJ 250 and The State of Haryana through Collector, Distt. Faridabad Vs. Santosh Kurnari 1993 RSJ 786 (P&H)

17. *Learned counsel for the respondent has argued that after adoption of daughter claimant Indu Rani proceeded on leave without prior sanction of leave which amounts to absence from duty. Therefore, her services were terminated by the respondent.*

18. *Learned counsel for the worker has argued that vide ExW7 Government of India, Ministry of Health & Family Welfare National AIDS Control Organization has mentioned the maternity leave entitlement for female staff engaged on contractual basis at NACO/SACS/ District/ Facility. Vide these instructions dated 10.5.2018 issued by the Government of India it has been stated that maternity leave entitlement for female staff engaged on contractual basis at NACO/SACS/District/Facility has been revised w.e.f. 1.4.2017 is given to female staff working to 26 weeks as full pay and clause-II of these-instructions allows extension of 12 weeks of maternity leave benefit to the commissioning mother and the adopting mother from the date the child is handed over. Meaning thereby maternity leave is granted to the commissioning mother and the adopting mother from the date the child is handed over but these instructions are enforceable w.e.f. 1.4.2017 while the claimant Indu Rani has applied leave (maternity) in the year 2016. Hence, leave is directed to be allowed to her without pay for the period from 4.7.2016 to 30.11.2016, when she adopted female child.*

19. *Claimant Indu Rani is ordered to be reinstated from the date of her termination alongwith continuity of service but without back wages w.e.f. 4.7.2016 till the date of her joining. Her seat is still lying vacant as informed by the respondent in Court.”*

9.

In addition to the findings recorded, Mr. Naveen Dariyal,



Advocate along with Mr. R.K. Dhiman, Advocate, appearing for for respondent No.1, relies upon the order dated **22.08.2022**, passed by the Coordinate Bench of this Court (Punjab and Haryana High Court) in **CWP-23079-2018 (O&M)**, titled as, “**Minakshi Yadav vs. State of Haryana and others**”, wherein, in similar circumstances, benefits envisaged under the Maternity Benefit Act, 1961, have been discussed. The relevant part of the order dated 22.08.2022, is reproduced here-under:-

“2. *From the record and the pleadings, what emerges is that the petitioner was concededly appointed on contract basis under the Haryana AIDS Control Society, initially on 21.09.2006 and her contract was renewed from time to time thereafter. In between, owing to her maternity requirements, she could not report for work though she had submitted representation dated 18.05.2018 (Annexure P-16) to be taken back, after she was able to report for the work, but she was not taken back into service.*

3. *I am of the view that the petitioner being a contractual employee certainly can not as a matter of right claim her stake to continue on contract in perpetuity. However, at the same time to terminate the services on the ground of maternity goes against the very spirit and intent of the Maternity Benefit Act, 1961 which is applicable equally to the contractual employees. Being so, petitioner was rightly taken back on contract on the post of Female Counsellor, though under the orders of this Court passed on 11.09.2018.*

4. *Be that as it may, she continues to work since then. To that extent, her claim in the petition is rendered infructuous. Interim dated 11.09.2018 is made absolute, subject to the condition that as long as there is requirement of services on the post in question, petitioner shall be allowed to continue, subject of-course, to the right of the respondents to proceed in accordance with law, in case, they so wish to make any regular appointments.*

5. *Needless to say, petitioner shall also be at liberty to*



compete for regular appointment. Passing of the above order is not be construed, including meaning that merely to dispense with the services of the petitioner on contract, the respondents are supposed to make regular appointment. Petitioner shall thus be allowed to continue and her services shall not be substituted with another contractual employee.

6. *Before parting with the order, it is also made clear that as per the benefits envisaged under the Maternity Benefit Act *ibid*, petitioner shall also be accorded the salary as per her entitlement, in case, the same has not been disbursed to her for the maternity period.*

7. *Disposed of.”*

10. Besides above, during the course of hearing, Court was also informed that respondent No.1 – work-lady, had been appointed by the petitioner – Management, in compliance to the direction issued in the impugned award dated 22.02.2019 (P-17).

11. Regarding change of view taken by the learned Labour Court, no evidence or submission could be provided by the learned State counsel – Mr. P.C. Goyal, Addl. AG, Haryana. Therefore, while maintaining the impugned award (P-17), the writ petition is hereby **dismissed**.

(SANJAY VASHISTH)
JUDGE

May 07, 2024

J.Ram

Whether speaking/reasoned: ✓ Yes/~~No~~

Whether Reportable: ✓ Yes/~~No~~