* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order:21st September, 2023**

\+ W.P.(C) 2959/2023

NEELAM KUMARI ..... Petitioner

Through: Ms. Chandrika Mishra, Ms. Prashasti Singh and Ms. Richa Rajesh, Advocates

versus

THE UNIVERSITY OF DELHI & ORS. ..... Respondents

Through: Mr. Rajesh Gogna, CGSC with Ms. Priya Singh, Advocate for R-1
Mr. Ankur Chhibber, Advocate for R-3 to R-5

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition has been filed on behalf of the petitioner under Article 226 of the Constitution of India, praying for the following reliefs:

> *" (a) The respondents to reinstate the petitioner on her job as she was discharged/terminated from the employment in arbitrary and unlawful manner without issuance of any show cause notice and without providing any opportunity of hearing and/or*
> *(b) The respondents to pay the amount of Rs. 1,44,120 as six month salary alongwith the interest which she is legally entitled to receive and the same has not been paid by the respondents*

during the period of maternity leave which has to be paid by the employer/respondents under the Maternity Benefit Act, 1961 and/or

(c) The respondents to abide by the Notification dated 04.01.22 issued by the Registrar of University of Delhi in regard to the compliance of UGC letter no. F.25- 42007(CU) dated 12.09.2012 regarding grant of Maternity Benefit as per provision of Maternity Benefit Act (Amendment), 2017 to ad-hoc/contractual staff of the University and its colleges and/or

(d) The respondents to pay the compensation/damages for the mental pain, harassment and agony suffered by the petitioner due to the misconduct of respondent authorities and/or

(e) Pass any such other order or direction as it deems fit in the facts of the present case and in the interest of justice."

2. The brief facts for the present petition have been recapitulated herein:

a) The petitioner is posted as a female attendant at Geetanjali Hostel, South Campus, Delhi University (hereinafter "respondent institution"). She was appointed on an ad-hoc basis, for an initial period of six months, beginning from 4th July 2018.

b) The petitioner applied for maternity leave with effect from 5th May 2022 to 4th November 2022. The same was communicated to the respondent institution *vide* letter dated 19th April 2022, which was subsequently approved.

c) The officer-in-charge of the respondent institution, *vide* letter dated 21st June 2022, renewed the petitioner's contractual term for a period of six months w.e.f., 2nd July 2022 till 31st December 2022.

d) It is stated that the petitioner did not receive the salary during her maternity leave period i.e., from July 2022 to November 2022.

e) Upon rejoining the services of the respondent institution, the petitioner was apprised of the fact that her services had been terminated and she had been permanently replaced.

f) The petitioner made several representations to the respondents and other concerned authorities, however there was no action on behalf of the authorities.

g) In furtherance of the representations made, the petitioner served a legal notice dated 23rd November 2022 to the respondents, in order to direct them to take action against the non-payment of salary during the period of maternity leave.

h) Aggrieved by the sudden termination as well as the non-payment of salary during the petitioner's maternity period, the petitioner has preferred the present petition.

3. Learned Counsel appearing on behalf of the petitioner submitted that the petitioner was entitled to a paid maternity leave of 26 weeks, however the same was not complied with by the respondents.It is also submitted that the respondent institution terminated the services of the petitioner without providing a cogent reason or issuing a show cause notice.

4. It is submitted that Section 12 of the Maternity Benefit Act, 1961 (hereinafter referred to as "The Act, 1961") lays down a specific provision whereby dismissal of a female employee during absence or pregnancy from

work is prohibited, therefore, the action of the respondent institution is unlawful and arbitrary.

5. It is submitted that as per Section 11 of the University Non-Teaching Employees (Terms and Conditions of Service) Rules, 2013 (hereinafter referred to as Rules, 2013), a temporary employee is entitled to receive a notice of one month prior to his/her termination.

6. It is further submitted that the Act, 1961, provides for paid leave and benefits regardless of the nature of the employment. It is also submitted that the University of Delhi i.e., respondent no.1, has not complied with its own notification dated 4th January 2022, whereby, maternity benefit was granted to ad-hoc/contractual staff of the University and its colleges.

7. In view of the foregoing submissions, learned counsel appearing on behalf of the petitioner prays that the present petition may be allowed.

8. *Per Contra*, learned counsel appearing on behalf of the respondents have vehemently opposed the arguments advanced on behalf of the petitioner, submitting to the effect that the petitioner was entitled to avail maternity leave within a specific period of her fixed-term engagement i.e., 30th June 2022.

9. It is submitted that the petitioner placed reliance on letters dated 26th April 2022 and 21st June 2022 by way of which the petitioner was demanding salary till completion of her alleged maternity period, however, the said letters were mere internal note-sheets for internal usage of the respondent institution, therefore cannot be viewed as Office Orders.

10. It is submitted that the in order to be reappointed, the petitioner was required to report on the last date of completion of her previous term, the same was not done by the petitioner and hence, her contract was not renewed.

11. It is further submitted that so far as Notification dated 4th January 2022, issued by Delhi University is concerned, the duration of the paid maternity leave was aligned with the duration of the fixed term engagement of the petitioner, which ended on 30th June 2022.

12. It is therefore submitted that the present petition is devoid of merit and may be dismissed.

13. Heard the learned counsels appearing on behalf of the parties and perused the record.

14. It is the case of the petitioner that she was engaged as a female attendant by the respondent institution, on a contractual basis since 4th July 2018 with an initial appointment of six months, subject to further extension. It is contended that the petitioner applied for maternity leave w.e.f., 5th May 2022 till 4th November 2022, which was subsequently approved by the respondent institution. It is further contended that the respondent institution, found a replacement for the position of the petitioner for 6 months, i.e., the period of maternity leave.

15. It is also contended that the petitioner's contract was renewed for a period of six months w.e.f, 2nd July 2022 till 31st December 2022, however once the petitioner rejoined the respondent institution, she was apprised of the fact that her services had been concluded. It is further contended that the

respondent institution failed to pay the petitioner's salary for the period of July 2022 to November 2022.

16. In rival contentions the respondent has contended that the petitioner was entitled to avail maternity leave within a specific period of her fixed-term engagement i.e., 30th June 2022. It is further contended that as per Notification dated 4th January 2022, issued by Delhi University, the duration of the paid maternity leave was aligned with the duration of the fixed term engagement of the petitioner, which ended on 30th June 2022.

17. Now adverting to the adjudication of the present petition. This Court has perused the material on record, including all the notification dated 4th January 2022, issued by Delhi University. The relevant paragraphs of the same has been reproduced herein:

> *"Accordingly, Paid maternity leave may he granted to such ad-hoc, contractual women teaching and non-teaching employees engaged for a fixed term by the University/Colleges for a maximum period of 26 week's within the specified period of such fixed term engagement. Further, in line with the letter from the UGC to the University dated September 12, 2108 the eligibility for maternity leave may be made available for women with less than two surviving children.*
> *It was further resolved that the implementation of the benefits of maternity leave would not put Adhoc/ Contractual staff of the university and its colleges to a disadvantageous position."*

18. A bare perusal of the above stated notification makes it evident that paid maternity leave of 26 weeks should be granted to women who are employed with the University on a contractual/ad-hoc basis. Moreover, the

said maternity leave be applicable on women with less than two surviving children.

19. Bearing in mind the documents on record including the letters dated 19th April 2022 and 21st June 2022 which makes it evident that the petitioner was in fact employed on a contractual basis and her term was further extended, thereby making the aforestated notification applicable to her.

20. The issues that are to be decided by this Court can be summarised as follows; *firstly* if the respondent institution could have terminated the petitioner's serviced without notice and *secondly* if the respondent institution is bound to pay the petitioner the salary for the period of the maternity leave of the petitioner.

21. It is a well settled principle that contractual employees cannot be terminated without being given a notice. In a recent judgment passed by the High Court of Kerala in case titled ***Tinku K &Anr vs. UOI W.P.(C) No.26934/2022*****dated 2nd December 2022,** whereby it was held that contractual employees cannot be terminated without notice. The relevant paragraph of the said judgment is reproduced herein:

> *"**8**…However, the question with regard to their claim for continuance was what was directed to be considered. The Panchayat evidently took a stand that they were terminated because of deficiencies in their services. This was accepted by the Director in Exhibit P19 as well. The primary reason for termination of the petitioners' service as evident from Exhibit P19 appears to be that their services were found to be unsatisfactory. If that be so, even though the petitioners are contractual employees, they were entitled to a notice with regard to the unsatisfactory nature of their service and their*

services could have been terminated only on a finding being rendered on the same. In the instant case, such findings are conspicuous by their absence. Even in case the contention of the respondents is that the petitioners were not appointed after full process of selection was carried out, it is not in dispute that they have been continuing in service on contract basis from 2010 and 2016 onwards and the contention that they can be sent out of service on the specific ground of unsatisfactory performance without any notice or finding to that effect, according to me, is a perversive."

22. Moreover, the petitioner's case pertains to termination while being on maternity leave. The same principle has been reiterated by the Hon'bleSupreme Court in case titled ***Kavita Yadav v. Ministry of Health & Family Welfare Department,* 2023 SCC OnLine SC 1067,** whereby it was established that female contractual employees are entitled to maternity benefits even if it exceeds their contract period. The relevant paragraphs of the same as reproduced herein:

*"**6.** We have reproduced earlier in this judgment the provisions of Section 12(2)(a) of the 1961 Act. The aforesaid provision contemplates entitlement to the benefits under the 1961 Act even for an employee who is dismissed or discharged at any time during her pregnancy if the woman, but for such discharge or dismissal, would have been entitled to maternity benefits or medical bonus. Thus, continuation of maternity benefits is in-built in the statute itself, where the benefits would survive and continue despite the cessation of employment. In our opinion, what this legislation envisages is entitlement to maternity benefits, which accrues on fulfillment of the conditions specified in Section 5(2) thereof, and such benefits can travel beyond the term of employment also. It is not co-terminus with the employment tenure. A two Judge Bench of this Court in the case*

of Municipal Corporation of Delhi v. Female Workers (Muster Roll) [(2000) 3 SCC 224], while dealing with a similar claim by female muster roll workers who were employed on daily wages, opined that the provisions relating to maternity benefits in the 1961 Act would be applicable in their cases as well. That dispute had reached this Court through the Industrial Tribunal and the High Court. Before both these fora, the Union espousing the cause of the female workers was successful. In that case, point of discrimination was highlighted as regular women employees were extended the benefits of the said Act but not those who were employed on casual basis or on muster roll on daily wage basis. This Court observed, in paragraph 27 of the said judgment:—

"27. The provisions of the Act which have been set out above would indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other articles, specially Article 42. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery. We have scanned the different provisions of the Act, but we do not find anything contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis or on muster roll on daily-wage basis.

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***8.** In the light of the ratio laid down in the aforesaid two authorities and having regard to Section 27 of the 1961 Act, which gives overriding effect to the statute on any award, agreement or contract of service, in our opinion, the High Court erred in law in holding that the appellant was not entitled to maternity benefits beyond 11th June 2017.*

9. *The respondents sought to distinguish the present dispute from the case of Female Workers (Muster Roll) (supra) on the ground that the said case arose from an award of the Industrial Tribunal and that there was a finding by the Tribunal that the muster roll lady workers were working for a long period of time. But the fact remains that in law, daily-wage workers cannot be said to have continuity of service for an unlimited period. The effect of that judgment was that their tenure also stood notionally extended so far as application of maternity benefits under the 1961 Act was concerned.*

10. *Our independent analysis of the provisions of the 1961 Act does not lead to an interpretation that the maternity benefits cannot survive or go beyond the duration of employment of the applicant thereof. The expression employed in the legislation is maternity benefits [in Section 2(h)] and not leave. Section 5(2) of the statute, which we have quoted above, stipulates the conditions on the fulfilment of which such benefits would accrue. Section 5(3) lays down the maximum period for which such benefits could be granted. The last proviso to Section 5(3) makes the benefits applicable even in a case where the applicant woman dies after delivery of the child, for the entire period she would have been otherwise entitled to. Further, there is an embargo on the employer from dismissing or discharging a woman who absents herself from work in accordance with the provisions of the Act during her absence. This embargo has been imposed under Section 12(2)(a) of the Act. The expression "discharge" is of wide import, and it would include "discharge on conclusion of the contractual period". Further, by virtue of operation of Section 27, the Act overrides any agreement or contract of service found inconsistent with the 1961 Act.*

11. *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."

23. A similar principle was reiterated by the Odisha High Court in case titled ***Bichitrananda Barik vs State of Odisha and others*** **W.P.(C) No. 10146 of 2018 dated 21st February 2023** whereby it was held that principle of natural justice is to be followed even in the case of a contractual employee, simply stating that no rules or procedures are to be followed while terminating a contractual employee is not valid. Therefore, in view f the aforesaid discussions, it can be concluded that the respondent institution's action of terminating the petitioner without so much as a notice is arbitrary.

24. Adverting to the second issue i.e., payment of salary during the petitioner's maternity leave period it is a well established fact that the benefits of the Maternity Benefit Act shall be applicable to workers belonging to every category. The said principle has been reiterated by the Hon'ble Supreme Court in case titled ***Municipal Corpn. of Delhi v. Female Workers (Muster Roll),*** **(2000) 3 SCC 224.** The relevant paragraph of the said judgment are reproduced herein:

"33. *A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment*

of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work, they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre-or post-natal period."

25. Having gone through the material on record and the settled principle by the Hon'ble Supreme Court and other High Courts, this Court is of the opinion that the respondent institution had wrongly terminated the petitioner, as there was no notice issued to the petitioner before her services were concluded. Moreover, the petitioner was apprised of the sudden conclusion of her services only when she rejoined the respondent institution upon lapse of her maternity period. This Court in a catena of judgments has time and again reiterated that maternity benefits cannot be denied to a female employee merely because the nature of such employment is contractual. Denial of the said benefits is inhumane and in violation of Fundamental Rights. Maternity rights are not something that is based on a statute but stands to be an integral part

of the identity of a woman. Denial of such rights is in fact standing in the way of a woman choosing to bring life into the world, thereby violating her fundamental right to life. Such denial is indeed against the principle of social justice.

26. Bearing in mind the above discussions, the instant petition is allowed and the respondents are directed to reinstate the petitioner on her previous post or any other post as per her eligibility. It is also directed to pay the maternity benefits as per the Act, 1961 within four weeks from today. Applying the principle of 'no work no pay', this Court deems it fit to grant compensation to the petitioner, as she was illegally terminated and therefore, it is also directed to pay the amount of Rs.50,000/- as compensation to the petitioner.

27. It is, however, made clear that the decision as aforesaid has been made in peculiar facts and circumstances of the instant case and shall not be treated as a precedent.

28. With the aforesaid directions, the instant petition along with the pending applications, if any, stands disposed of.

29. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 21, 2023
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