

A. F. R.

Court No. - 36

Case :- WRIT - A No. - 2211 of 2023

Petitioner :- Saroj Kumari

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Satyendra Chandra Tripathi

Counsel for Respondent :- C.S.C., Sanjay Kumar Srivastava

Hon'ble Ashutosh Srivastava, J.

1. Heard Sri Satyendra Chandra Tripathi, learned counsel for the petitioner, Shri Shailendra Singh, learned Standing Counsel for the State-Respondent Nos. 1 & 2 and Sri Sanjay Kumar Srivastava, learned counsel for the Respondent Nos. 3 to 6.

2. By means of the present writ petition, the petitioner has prayed for issuance of a writ of certiorari quashing the orders dated 14.11.2022 and 25.11.2022 passed by the Respondent No.4, District Basic Shiksha Adhikari, Etah whereby and whereunder the sanction of maternity leave has been turned down by stating that "*after child birth ML is not allowed and now you are eligible for CLL according rule*" and "*for ML out of date. now you can apply for CCL.*"

3. At the very outset, Sri Satyendra Chandra Tripathi learned counsel for the petitioner submits that the similar controversy, as raised in the present petition, has already been allowed by this Court in a bunch of writ petition, leading amongst them being ***Writ (A) No. 9535 of 2022 (Smt. Anupam Yadav vs. State Of U.P. And 2 Others)***.

4. Learned counsel for the petitioner prays that the present writ petition may also be decided in terms of the aforesaid decision dated 21.10.2022 passed in ***Writ (A) No. 9535 of 2022 (Smt. Anupam Yadav vs. State Of U.P. And 2 Others)***.

5. Shri Shailendra Singh, learned Standing Counsel for the State Respondents as well as Sri Sanjay Kumar Srivastava, learned counsel for the

Respondent Nos. 3 & 4, have vehemently opposed the prayer made in the petition and submits that ratio laid down by this Court in *Smt. Anupam Yadav (supra)* heavily relied upon by the counsel for the petitioner is not applicable to the case at hand.

6. I have heard learned counsel for the parties and have perused the record.

7. Before the Court proceeds to examine the case of the petitioner on merits, it deems it appropriate to clear the mist that has engulfed the parties regarding the applicability of the ratio laid down by this Court in the case of *Smt. Anupam Yadav (supra)*.

8. In the case of *Smt. Anupam Yadav (supra)* and the connected petitions the challenge laid was to order passed by the competent authority/District Basic Education Officer whereby and whereunder the sanction of maternity leave for 180 days was turned down by stating that the same was not admissible or on the ground that the period of 02 years had not elapsed from the date of expiry of the last maternity leave granted to the petitioners under the proviso to Rule 153 (1) of Chapter XIII of the U.P. Fundamental Rules in Financial Handbook Volume-II, Part 2 to 4. The moot question was regarding the applicability of the Maternity Benefit Act, 1961. There was no dispute with regard to the applicability of Fundamental Rules i.e. Rule 153 (1) of Chapter XIII of U.P. Fundamental Rules in Financial Handbook Volume-II, Part 2 to 4. The parties were at variance only with regard to the applicability of Maternity Benefit Act, 1961. The Court after appreciating the respective contentions of the learned counsels for the parties and considering the provisions of the Maternity Benefit Act, 1961 as also the relevant provisions of the Financial Hand Book, particularly Rule 153 observed that the State Government exercising powers under Section 28 of the Maternity Benefit Act, 1961 had already adopted the provisions of the Maternity Benefit Act, 1961 for the benefits of its employees. Once the provisions of the Maternity Benefit Act, 1961 had been adopted by the State of U.P. then the Act of 1961

would apply with full force irrespective of the provisions contained in the Financial Handbook which were held to be merely executive instructions and subsidiary to the legislation made by the Parliament. The Court thus held that the provisions of the Maternity Benefit Act, 1961 would prevail over the provisions of the Financial Handbook and consequently, the provisions of Rule 153 (I) of the Financial Handbook Volume II to IV were to be read down with regard to the admissibility of leave to a woman with regard to second pregnancy which would be governed by the Maternity Benefit Act, 1961 and not Rule 153 (1) of the Financial Handbook Volume II to IV. The writ petitions were allowed accordingly.

9. In view of above, the Court finds substance in the stand taken by the learned counsel for the respondent. The only benefit the petitioner may derive from the ratio of the decision in **Smt. Anupam Yadav (supra)** is that the grant of maternity leave would be governed by the provisions of the Maternity Benefit Act, 1961.

10. Now, the Court proceeds to decide the *lis* on merits.

11. The undisputed facts are that the petitioner is posted as Headmistress at Primary School, Heerapur, Block Maarhara, District Etah on the institution run by the Board of Basic Education, U.P., Prayagraj. The service conditions of the petitioner are governed by the provisions of Uttar Pradesh Basic Education (Teachers) Service Rules, 1981.

12. Perusal of the record reveals that petitioner was admitted in the hospital on 15.10.2022 and gave birth to a girl child and after discharge from the hospital, she immediately applied for maternity leave through online for the period 18.10.2022 to 15.4.2023 (for 180 days). But the same was rejected on the ground that annexures in support of maternity leave were incomplete. Thereafter, petitioner again applied for maternity leave on 30.10.2022 on the prescribed proforma, but surprisingly the same has been rejected by the District Basic Education Officer, Etah on 4.11.2022 and 25.11.2022 with remarks that "*after child birth ML is not allowed and now you are eligible*

for CLL according rule" and "for ML out of date. now you can apply for CCL," respectively. The above orders have been impugned in the instant writ petition.

13. Learned counsel for the petitioner contends that the Maternity Benefit Act, 1961 has been enacted by the Parliament to regulate the employment of women in certain establishment for certain period before and after child birth and to provide for maternity leave benefit and certain other benefits. The provisions of the Act of 1961 permit maternity benefit even after the birth of the child and as such, the denial of the maternity leave to the petitioner on the ground that the child has already been born, the petitioner is not entitled to the maternity leave is *per se* illegal and erroneous. It is also contended that the Child Care Leave is distinct to the maternity benefit and operate in different fields and relegating the petitioner to avail Child Care Leave is totally unwarranted. It is also contended that the respondents have also stopped the salary of the petitioner since November and December, 2022 which is also unwarranted.

14. Learned counsel for the respondent have tried to justify the impugned orders by submitting that the orders are just and proper and do not suffer from any infirmity or illegality warranting any interference by this Court.

15. Having heard the learned counsel for the parties and having perused the record, the Court deems it appropriate to refer to certain provisions of the Maternity Benefit Act, 1961 which are being reproduced below:

Section 3(h) of 1961 Act defines "maternity benefit" to mean the payment referred to in sub section (1) of section 5.

Section 5 of 1961 Act reads as under:-

"5. Right to payment of maternity benefit.-

(1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than [eighty days] in the twelve months

immediately preceding the date of her expected delivery:

Provided that the qualifying period of [eighty days] aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be [Twenty six weeks of which not more than eight weeks] shall precede the date of her expected delivery:-

Provided that the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery:

[Provided further that] where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death: [Provided also that] where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.

(4) *A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be]*

(5) *In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period an on such conditions as the employer and the woman may mutually agree]"*

16. The preamble of the Maternity Benefit Act, 1961 (Act No. 53 of 1961) reads as under:-

“An Act to regulate the employment of women in certain establishment for certain periods before and after child-birth and to provide for maternity benefit and certain other benefits.”

17. Sub-section (1) of Section 5 of the Act confers and entitlement on a woman to the payment of maternity benefits at a stipulated rate for the period of her actual absence beginning from the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day. Sub-section (3) specifies the maximum period for which any woman shall be entitled to maternity benefit. These provisions have been made by Parliament to ensure that the absence of a woman away from the place of work occasioned by the delivery of a child does not hinder her entitlement to receive wages for that period or for that

matter for the period during which she should be granted leave in order to look after her child after the birth takes place.

18. The Act of 1961 was enacted to secure women's right to pregnancy and maternity leave and to afford women with as much flexibility as possible to live an autonomous life, both as a mother and as a worker, if they so desire.

19. From the perusal of the Preamble of the Act, Section 5 (1), third proviso to sub-section 3 of Section 5, sub-section 4 of Section 5, it is more than apparent that the Maternity Benefit can be extended even after birth of a child. It can even be extended in a case of a legal adoption of a child or less than three months. The only restriction being that the maternity leave may not be granted for entire 180 days or 26 weeks. Further, in the opinion of the Court, availability of Child Care Leave to the petitioner or grant of the same cannot dis-entitle the petitioner for grant of maternity benefit. Maternity benefit and Child Care Leave both operate in different fields and are mutually exclusive. The Apex Court in a recent case reported in ***AIR 2022 SC 4108 (Deepika Singh versus Central Administrative Tribunal and others)*** held that independent of the grant of maternity leave, a women is also entitled to the grant of Child Care Leave for taking care of her two eldest surviving children whether for rearing or for looking after any of their needs, such as education, sickness and the like. Child Care Leave can be availed of not only at the point when the child is born but at any subsequent period. Both constitute distinct entitlements. A purposive interpretation is required to be adopted. The object and intent of the grant of maternity leave would stand defeated. The grant of maternity leave is intended to facilitate the continuance of women in the work place. It is a harsh reality that but for such provisions many women would be compelled by social circumstances to give up work on the birth of the child if they are not granted leave and other facilitative measures. No employer can perceive child birth as detracting from the purpose of employment. Child birth has to be construed in the context of employment as a natural incident of life and the provisions

of the Maternity Benefit Act are required to be construed in that perspective.

20. This Court is of the opinion that the District Basic Education Officer, Etah while rejecting the claim of the petitioner has overlooked the provisions of Maternity Benefit Act, 1961. In view of above, the impugned orders dated 14.11.2022 and 25.11.2022 passed by the Respondent No.4, District Basic Shiksha Adhikari, Etah is not sustainable in the eyes of law and are set aside. The writ petition is ***allowed***.

21. The District Basic Education Officer, Etah is directed to pass fresh orders keeping in mind the provisions of the Maternity Benefit Act, 1961, within a period of two weeks from the date of production of certified copy of this order.

22. The District Basic Education Officer, Etah is further directed to release the arrears of salary and pay the salary month to month to the petitioner as and when the same falls due.

Order Date :- 14.3.2023

Ravi Prakash