

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
AURANGABAD BENCH, AURANGABAD.
ORIGINAL APPLICATION NO.671/2016.

Smt. Vandana Madhukar Kharmale,
Aged Major,8
Occ-Tehsildar,
R/o C/o Tehsil Office, Shrigonda,
Distt. Ahmednagar.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Additional Chief Secretary,
Department of Revenue and Forests,
E-3, World Trade Centre, 32nd floor,
Cowf, Parel, Mumbai.

Respondents

Shri V.B. Wagh, Ld. Counsel for the applicant.
Shri I.S. Thorat, learned P.O. for the respondent.

Coram:- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).

JUDGMENT

(Delivered on this 16th day of August 2017.)

Heard Shri V.B. Wagh, the learned counsel for the applicant and Shri I.S. Thorat, the learned P.O. for the respondents.

2. The applicant Smt. Vandana Madhukar Kharmale has claimed a declaration that she is entitled to maternity leave for the

period from 27.3.2009 to 22.9.2009 (180 days) and extraordinary leave from 23.9.2009 to 30.10.2009 (38 days) and that the respondents be directed to release the salary for entitlement of leave period forthwith.

3. From the admitted facts on record, it seems that the applicant was selected for the post of Tehsildar and was posted under the Collectorate, Thane a probationary Tehsildar on 26.3.2009. Immediately after joining the post, the applicant filed an application for maternity leave w.e.f. 27.3.2009 to 30.10.2009. She was permitted to join on production of medical certificate on 31.10.2009.

4. After joining the duty, the applicant was sent for training at YASHADA, Pune during the period from 1.11.2009 to 16.12.2009 and thereafter she was transferred to the office of Divisional Commissioner, Nashik during the period from 17.12.2009 to 17.2.2010. She joined the office of Divisional Commissioner, Nashik on 18.2.2010. Subsequently, the applicant was sent for training at Ahmednagar during the period from 19.2.2010 to 11.7.2010 and then she was posted as Resident Naib-Tehsildar at Rahuri from 9.7.2010 to 8.1.2011. Thereafter she was posted as Tehsildar at Pathardi during the period from 9.1.2010 to 18.2.2014 and thereafter as Tehsildar (Election) in the office of Collector, Nashik from 20.2.2014 to

4.11.2015. Vide order dated 4.11.2015, the applicant was transferred and posted as Tehsildar, Shrigonda, District Ahmednagar.

5. According to the applicant on 13.11.2014, respondent No.1 called for information as regards applicant's leave period from Collectorate, Nashik and the said information was supplied as per letter dated 16.12.2014. ON 30.12.2014, the Divisional Commissioner, Nashik Division, Nashik recommended for sanction of maternity leave and extraordinary leave to the applicant. According to the applicant, she is entitled to claim maternity leave and extraordinary leave for the said period in view of judgment delivered by this Tribunal in O.A. No. 492/2013 on 1.10.2014 and the O.A. No. 40/2015 vide order dated 11.3.2015 and hence this O.A.

6. Respondent No.1 has filed affidavit in reply and submitted that immediately after joining the service on 26.3.2009, the applicant proceeded on maternity leave for the period from 27.3.2009 to 22.9.2009 which was further extended. As per the provisions of Rule 74 (2) of the Maharashtra Civil Services (Leave) Rules, 1981 (hereinafter referred to as ,+Leave Rules+), the applicant was on service for less than one year before proceeding on leave and, therefore, she is not entitled to maternity leave. Her case was, therefore, considered as per the provisions of Rule 70 (4) of the Leave Rules and

extraordinary leave was granted to her. It is stated that, vide G.R. dated 15.1.2016, the Government has taken a decision to delete the condition of completion of one year service for claiming maternity leave. But the said G.R. is not retrospective and as such not applicable to the applicant's case.

7. Shri Wagh, the learned counsel for the applicant has invited my attention to the judgment delivered by this Tribunal as already referred. I have carefully gone through this judgment. In **O.A. No. 40/2015 in case of Dr. Sonali Bhausheb Sayamber V/s State of Maharashtra and others**, this Tribunal has interpreted the provisions of M.C.S. (Leave) Rules, 1981 and was pleased to observe that the provisions of maternity leave are made applicable even to the temporary employee and the order rejecting such claim of the applicant in that O.A. was quashed and set aside. In the said case, the applicant was initially appointed for 120 days and continued in service for 364 days in a year after a technical break of one day and she was in continuous service for number of years and, therefore, the facts of the said case are not applicable to the present set of facts.

8. The learned counsel for the applicant has also placed reliance on the judgment delivered by this Tribunal in **O.A. No. 492/2013 (Dr. Aparna Somnathappa Girwalkar V/s State of**

Maharashtra and two others dated 1.10.2014). In the said case also, the applicant was appointed initially for a temporary period of 120 days, but continued in service for number of years. None of the cases referred by the applicant are analogous with the present set of facts. In the present case, the applicant joined the service on 26.3.2009 and immediately on the next date i.e. on 27.3.2009, she proceeded on maternity leave.

9. The learned counsel for the applicant has placed reliance on the judgment delivered in **S.L.P. (C) No. 12797/1998 decided on 8.3.2000 in case of Municipal Corporation of Delhi V/s Female Workers (Muster Roll) and another**. The learned counsel for the applicant has submitted that in the said case, the Hon'ble Supreme Court has observed that, women workers in Muster Roll and even the daily wage workers should have been given benefit of Maternity Benefit Act, 1961. I have carefully gone through the said judgment. In the said judgment, directions issued by the Industrial Court to the Municipal Corporation of Delhi that the Corporation shall give benefit of the Maternity Benefit Act, 1961 to the women employees (Muster Roll), was upheld and it was directed that the benefit under the said Act shall be provided to the women (Muster Roll) employees of the Corporation who have been working with them on daily wages. In

the said judgment, the entire scheme under the Maternity Benefit Act, 1961 has been interpreted. In the present case, however, case of the applicant has been considered as per the provisions of the Leave Rules, 1981. Apart from that, it has to be considered as to whether the applicant is entitled to claim benefit of even maternity leave under the Maternity Benefit Act, 1961. It is because such relief can be granted only if the applicant is entitled to claim as per the provisions of the said Act.

10. Section 5 of the Maternity Benefit Act, 1961 states about the right of payment of maternity benefit and Section 5 (1) and (2) are material for considering the applicant's case. The said rule reads as under:-

5. Right to payment of maternity leave:-

- (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.

Explanation- For the purpose of this Sub-Section, the average of the woman's wage payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself

on account of maternity, the minimum rates of wages fixed or revised under the Minimum Wages Act, 1984 or ten rupees, whichever is the highest.

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from who 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.

Explanation- For the purpose of calculating under this sub-section the days on which a woman has actually worked in the establishment, the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages during the period do twelve months immediately preceding the date of her expected delivery shall be taken into account.

(3) The maximum period from which any woman shall be entitled to maternity benefit shall be twelve weeks which not more than six weeks shall precede the date of her expected delivery.+

11. Plain reading of Section 5 (2) and proviso thereto makes it crystal clear that unless the woman employee actually worked in the establishment, for a period not less than 80 days in 12 months immediately preceding the date of expected delivery, she is not entitled to claim under the Maternity Benefit Act, 1961. In the present case, the applicant has served only one day and on the very next day she proceeded on maternity leave and, therefore, she is not entitled to

claim maternity leave benefit even as per the provisions of Maternity Benefit Act, 1961.

12. As already stated, case of the applicant has been dealt with by the competent authority as per the provisions of Rule 74 of the Leave Rules, 1981. The relevant provision so far as this case is concerned is Rule 74 (1) to (6) of the Leave Rules, 1981 and said Rule reads as under:-

74. Maternity Leave:-- (1) A competent authority may, subject to the provisions of this rule, grant to a female Govt. servant in permanent employ, who does not have three or more living children on the date of the application, maternity leave for a period of (180) days from the date of its commencement. During such period, she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave. Such leave shall not be debited to the leave account.

(2) A female Govt. servant not in permanent employ, who has put in at least one year of continuous service shall also, subject to the provisions of this rule, be eligible for maternity leave referred to in sub-rule (1), subject to the condition that the leave salary admissible during the period of maternity leave shall be regulated as follows, that is to say:-

(a) In the case of a female Govt. servant who has put in two or more yearsq continuous service, the leave salary admissible shall be as provided in sub-rule (1) of Rule 70 of these rules, and

(b) In the case of a female Govt. servant who has put in continuous service, for a period exceeding one year, but less than two years,

the leave salary admissible shall be as provided in sub-rule (2) of Rule 70 of these rules.

- (3) The application for maternity leave should invariably be supported by medical opinion as to the probable date of confinement, and an undertaking to the effect that the Govt. servant shall report the date of confinement supported by a medical certificate. In case of a Class-IV Govt. servant in which insistence on a regular medical certificate is likely to cause hardship, the authority competent to grant leave may accept such certificate as it may deem sufficient.
- (4) A female Govt. servant may be allowed leave of the kind due, including commuted leave, if she so desires, in continuation of the maternity leave, up to a maximum of 60 days without production of a medical certificate.
- (5) Leave under this rule shall be admissible in a case of miscarriage or abortion, including abortion induced under the Medical Termination of Pregnancy Act, 1971, subject to the following conditions:-
 - (a) the leave does not exceed six weeks, and
 - (b) The application for the leave is supported by a medical certificate.
- (6) Heads of Departments may subject to the provisions of this rule, grant to a female Govt. servant borne on the work charged establishment or remunerated by piece rates or daily wages who does not have three or more living children on the date of application, maternity leave for 90 days for the date of its commencement, subject to the provisions of sub-rules (3) & (5) above, subject to the following further conditions:-

- (a) She must have put in continuous service for at least 33 months (inclusive of any period of authorised leave) previous to the date of requiring the maternity leave and must furnish a guarantee with at least one security that she will return to duty for a period of at least 6 months after the expiry of the leave, if her services are required.
- (b) The leave salary admissible shall be equal to the emoluments drawn for the months immediately before proceeding on leave.+

13. Chapter VI is a special chapter for special kind of leave other than study leave and Rule 74 of the Leave Rules, 1981 deals with maternity leave. As per Rule 74 (2) of the Leave Rules, 1981, a female Govt. servant not in permanent employment who has put in at least one year of continuous service, is eligible for maternity leave. In fact, this Tribunal seems to be in contravention of Section 5 (2) of the Maternity Benefit Act, 1961. As per the Maternity Benefit Act, 1961, an employee who has completed 80 days of service in 12 months immediately preceding the date of her expected delivery, is only entitled to the said leave. However, since now vide G.R. dated 15.1.2016, this embargo has been withdrawn and hence anomaly has been rectified.

14. The Ld. P.O. has invited my attention to the impugned communication whereby the applicant claimed for maternity

leave, has been rejected. The said communication dated 29.10.2010 is at Page No.16 of the O.A. and it reads as under:-

मीमती वंदना मधुकर खरमाळे, पत्राधिकार तहसीलदार यांनी शासनकालावधीत खाजगी सुट्टीपूर्व सुट्टीसाठी व बालसंगोपानाथ द. २७.३.२००९ ते ३०.१०.२००९ या कालावधीच्या एकूण २१८ दिवसांच्या रजेची मागणीसाठी आवेदन पत्रे संबंधित वैयक्तिक मागणीसह सादर केली आहेत.

२. मीमती खरमाळे या महसूल विभागात द. २६.३.२००९ रोजी (मं.पू.) शासनासाठी जूझ्या असून यांनी सुट्टीपूर्व सुट्टीसाठी व बालसंगोपानाथ रजा मंजूर बाबतची मागणी केली असले तरी यांची सेवा १ वर्षांपेक्षा कमी झाल्यामुळे महाराष्ट्र नागरिक सेवा (रजा) नियम, १९८१ चे नियम ७४ (२) नुसार यांना सुट्टी राजा देय नाही.

शाखा मुख लेख शाखा यांनी मीमती खरमाळे या द. २६.३.२००९ (मं.पू.) हजार होऊन याच दिवशी हणजेच दिनांक २६.३.२००९ रोजी (मं.नं.) रजेवर गेलेल्याने रजेवर जाणेपूर्वी यांचे रजा लेखामध्ये अजिप्त/अधाषेतनी राजा शासक नसल्याचे कळविले आहे.

३. यानुसार महाराष्ट्र नागरिक सेवा (रजा) नियम, १९८१ चे नियम २९, ६३ व ६४ लगत शासन, विविध विभाग नियम . अरजा -२४९३/५९/सेवा-९ द. १६.७.१९९४ नुसार विभाग मुख हणून मला दान करण्यात आलेल्या अधिकाराचा वापर करून मीमती वंदना मधुकर खरमाळे, पत्राधिकार तहसीलदार यांना या रजेवर जाणेपूर्वी यांचे राजाखाती कोणतीही अजिप्त/ अधाषेतनी राजा शासक नसल्याने यांची द. २७.३.२००९ ते द. २२.९.२००९ या कालावधीची एकूण १८० दिवसाचे मर्यादित असाधारण रजा (विनावेतन) हणून खाजगी, सुट्टी कारणात व बाळ संगोपनासाठी कायदा मंजूर करण्यात येत आहे."

15. From the aforesaid impugned letter, it is clear that the applicant was not held entitled to claim maternity leave in view of the provisions of Rule 74 (2) of the Leave Rules, 1981.

16. The learned counsel for the applicant has placed reliance on one G.R. dated 15.1.2016 issued by Govt. of Maharashtra copies of which are placed on record by the respondents at page Nos. 57 to 59 (both inclusive) (Annexure R-2). Vide the said G.R., the Government has taken a decision to delete the time limit stated in Rule 74 (2) of the Leave Rules, 1981 and, therefore, if any female employee decided to obtain maternity leave, it is not necessary that she shall put in two or more years of continuous service. However, for the said purpose, she has to give a bond equivalent to six months pay. The exact decision taken by the respondents in this regard is as under:-

“शासन नणथ:-

महाराा नागरा सेवा (रजा) नयम, १९८१ मधील नयम ७४ (२)(ए) व (बी) मधील क्रमान सेवेची अट राद करयात येत असून राय शासनाया सेवेत भरतीया मायताात मायमाने ँजू झालेया शासकाय महला कमळायास संदभाधीन द. २४.८.२००९ या शासन नणथातील तरतुदांनुसार असलेल ँसूती रजा अनुेय राहल व ँसूती रजेया कालावधीत रजेवर जायाया लगतपुव तला जेवढे वेतन ँळत असेल यामाणे राजा वेतन अनुेय राहल. अशी रजा, रजा खाती खच टाकयात येणार नाह तथापी, दोन वर्षाषे ँ कमी सेवा झालेया शासकाय महला कमळायास सदर ँसूती रजा व रजा वेतन खालल शतया अधीन राहून अनुेय राहल.

१. ँसूती रजा मंजूर करयापूर्व ६ महयाया वेतनाइतया रकमेचा बॉड अशा शासकाय महला कमळायाकडून घेयात यावा, तदनंतरच उपरोत नमूद केयामाणे ँसूती रजा व रजा वेतन अनुेय करयात यावे.

२. अशा शासकप्रमहला कमहलाप्रमहलाने ँसूती रजा संपवून शासन सेवेत ँजू झ्णानंतर ँक्रमान दोन वषराय शासनाची सेवा करणे बांधणकारक राहल. सेवेचा दोन वषाळा कालावधी पूण होयापूव ँसूती रजा कालावधीत / ँसूती रजेनंतर ँजू न होता/ ँसूती रजा संपवून ँजी झ्णायवर, राय शासनाप्रयत्तत / रायाया एकत ँधीतून वेतनावरल खचभागवला जात नाह ँशा इतर सेवेत जायाकरता ँकरणपरवे कायमुत ँहावयाचे झ्णायस / राजीनामा यावयाचा झ्णायस अथवा ँय कारणातव राजीनामा यावयाचा झ्णायस अशा शासकप्रमहला कमहलाप्रमहलाने घेतलेया ँसूती रजा कालावधीत देय झ्णालेया वेतनाइतके वेतन राय शासनास अदा केयानंतरच अशा शासकप्रमहला कमहलाप्रमहलास राय शासनाया सेवेचा राजीनामा देता येईल ँवा कायमुत होता येईल.

२ या सुवधेचा लाभ आदेश ँगात झ्णायया ँनांकापासून लागू राहल.

३ या शासन ँणशातील ततुदपुरते महारा ँ नागर सेवा (रजा) ँयम, १९८१ मधील यासंबंधीया ँयमान तरतुद सुधारयात आया आहेत,, असे मानयात यावे. उपरोत ँयमामये रससर सुधारणा यथावकाश करयात येईल.

४ सदर शासन ँणश राय शासनाया www.maharashtra.gov.in या वेबसाईटवर उपलध करयात आला असून याचा संगणक संकेतांक २०१६०११६११२०९४६०९ असा आहे. हा शासन ँणश ँजिटल वाने सा ँकित क ँन काढयात येत आहे.

महारााचे रायपाल यांया आदेशानुसार व नावाने.”

17. Clause (2) of the aforesaid G.R., however, clearly states that the said G.R. will be applicable from the date of issuance of

the G.R. i.e. from 15.1.2016. Thus in no case, the said G.R. can be made applicable retrospectively. The learned counsel for the applicant submits that the Maternity Benefit Act, 1961 and rules regarding extraordinary leave in lieu of maternity leave are beneficial legislation and it has a wide social impact and, therefore, the respondents ought to have granted maternity leave and the maternity leave benefits to the applicant. It is material to note that, the applicant has been appointed on the post of Tehsildar which is a Class-I post. It cannot be said that, she was not knowing the law prevailing at the relevant time when she joined service. Possibility that the applicant deliberately joined the service only in order to get immediate benefit of maternity leave, cannot be ruled out. As already stated, a woman employee is basically entitled to the benefit of maternity leave and financial benefits therefor only as per the provisions of the maternity Benefit Act, 1961 and if the said Act clearly states that a woman employee must complete particular period of service before proceeding on maternity leave, the applicant cannot take the benefit of the said Act, unless she fulfils the pre-requisite condition of getting such benefit.

18. From the impugned communication, it seems that even though the applicant proceeded on leave from 27.3.2009 i.e. immediately after joining her post on 26.3.2009, her application for

maternity leave has been decided on 29.10.2010 vide impugned communication dated 29.10.2010. She has been granted extraordinary leave without pay for the period from 27.3.2009 to 22.9.2009, as no leave was on her credit. The learned counsel for the applicant has invited my attention to a letter issued by the Divisional Commissioner, Nashik to the Additional Chief Secretary, Department of Revenue and Forests, Govt. of Maharashtra, Mantralaya, Mumbai dated 30.12.2014. The said letter is at Page Nos. 18 to 22 (both inclusive). In the said letter, it is mentioned that the earned leave fo 139 days and half pay leave of 115 days are on her credit and, therefore, this leave should have been considered.

19. I have perused the provisions under the Leave Rules, 1981. Rule 62 of the Leave Rules, 1981 states that the Government may grant any permanent employee leave not due, if the condition under Rule 62 exists. There is a provision of Rule 14 of the M.C.S. (Leave) Rules, 1981 which states that at the request of the Govt. servant, the authority which granted him leave, may commute it retrospectively into leave of different kind which was due and admissible to him at the time the leave was granted. It is a provision which gives right to the Government servant only and the Govt. cannot on its own, convert such leave. The note to the said rule 14 says that

the extraordinary leave granted on medical certificate or otherwise may be commuted retrospectively into leave not due subject to the provisions of Rule 62 of the Leave Rules, 1981.

20. In my opinion, if the applicant is aggrieved by grant of extraordinary leave only, she may be at liberty to file representation to the Government to convert her extraordinary leave considering the admissible leave on her credit on the date of sanction of leave. But in any case, she cannot claim the benefit of maternity leave either under the Maternity Benefit Act, 1961 or Rule 74 of the Leave Rules, 1981. If the said representation is filed, the respondent authority shall consider her case as per rules without being influenced by any of the observations made in this order.

21. On a conspectus of discussion in foregoing paras, I proceed to pass the following order:-

ORDER

The O.A. is dismissed with no order as to costs.

(J.D.Kulkarni)
Vice-Chairman (J)

