

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 95 of 2020 (S.B.)

Asmita Kesharao Telang,
Age 33 years, Occ. Assistant Teacher,
R/o Qtr. No.4, Yoga-Yog Building, Irrigation Colony,
Civil Lines, Gondia-441 601.

Applicant.

Versus

- 1) The Secretary,
Department of Social Welfare,
Mantralaya, Mumbai-32.
- 2) The Commissioner,
Department of Social Welfare,
3, Church Road, Pune-01.
- 3) The Regional Commissioner,
Department of Social Welfare,
Opposite Govt. ITI, near Deeksha Bhoomi, Nagpur.
- 4) The Assistant Commissioner,
Department of Social Welfare, Gondia.

Respondents.

Shri S.M. Khan, Advocate for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 14/07/2022.

JUDGMENT

Heard Shri S.M. Khan, Id. counsel for the applicant and
Shri V.A. Kulkarni, Id. P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was appointed as Shikshan Sevak as per order dated 31/3/2012. The applicant has completed her fixed period of service on 15/4/2015 including the maternity leave period. She was due to be absorbed on regular and permanent service w.e.f. 16/4/2015, however, the respondents have given the regular appointment w.e.f. 24/11/2015.

3. It is submitted that during the service period, she had proceeded on maternity leave. The maternity leave was granted, but salary was not paid, therefore, the applicant approached to this Tribunal by filing O.A.146/2019. This Tribunal has passed the following order –

“2. It is submitted that the Applicant was on maternity leave from 1st November, 2013 to 29th April, 2014. The Respondents have committed breach of the directions in the G.R. dated 8th March, 2010 and rectified G.R. dated 25th March, 2013. The G.R. dated 25th March, 2013 was issued to clarify that the condition no.4 in G.R. dated 8th March, 2010 was violating the principles’ of equality and social justice so far as ladies were concerned, and consequently, the condition no.4 was withdrawn. It appears that though the Applicant was entitled for the benefit of G.R. dated 8th March, 2010 and she was entitled for maternity leave, the Respondents have not paid the salary of this period to the Applicant. Therefore, in my opinion, the action of the Respondents is illegal. Hence the following order.

ORDER

(A) The Respondents do pay the salary of maternity leave period from 01.11.2013 to 29.04.2013 to the Applicant within a period of sixty days from the date of this order.

(B) The Applicant is permitted to file afresh O.A. so far as relief claimed in Para 7(ii) is concerned.

(C) No order as to costs.”

4. The applicant made representation to consider her maternity leave period as a duty period, but her representation was not considered. It is submitted that as per Govt. G.R. dated 25/3/2010, the Government of Maharashtra has taken a decision that the maternity leave period of 180 days shall not extend the period of Shikshan Sevak. It is submitted that the respondents have not considered the G.R. dated 25/03/2013, therefore, the applicant approached to this Tribunal for the following reliefs –

“ (i) To absorb on regular / permanent pay scale w.e.f. 16/04/2015.

(ii) To pay arrears of salary accordingly with interest thereon.

(iii) Grant any or further relief including costs as may be deemed fit and proper in the circumstances of the case.”

5. The respondents have strongly objected the O.A. on the ground that as per the G.R. dated 29/02/2016, the applicant is not entitled to count her maternity leave as a duty period and therefore the respondents have taken a conscious decision to extend the period of Shikshan Sevak. Hence, the O.A. is without any merit and liable to be dismissed.

6. Heard Shri S.M. Khan, learned counsel for the applicant. He has pointed out the Govt. G.R. dated 24/8/2009 by which the

Government has taken a decision to grant 180 days maternity leave to the woman employees. He has pointed out Govt. G.R. dated 8/3/2010 by which the Government has taken a decision that period of maternity leave shall not count as a duty period. This condition laid down in the G.R. dated 8/3/2010 was corrected by the Government of Maharashtra vide G.R. dated 25/3/2013 and Clause IV of the G.R. dated 8/3/2010 was cancelled.

7. The applicant was appointed as a Shikshan Sevak. Her period of Shikshan Sevak was to be completed on 15/04/2015, but it was extended because of her maternity leave and she was regularised in service from 24/11/2015. It is pertinent to note that initially the respondents granted the maternity leave, but salary of that period was not paid to the applicant, therefore, the applicant approached to this Tribunal by filing O.A.146/2019. As per order dated 22/01/2020 (P-35), this Tribunal has granted the following reliefs –

“(A) The Respondents do pay the salary of maternity leave period from 01.11.2013 to 29.04.2013 to the Applicant within a period of sixty days from the date of this order.

(B) The Applicant is permitted to file afresh O.A. so far as relief claimed in Para 7(ii) is concerned.

(C) No order as to costs.”

8. As per the Govt. G.R. dated 24/8/2009 the woman employees are entitled to get maternity leave of 180 days. Thereafter, Government of Maharashtra issued G.R. dated 8/3/2010 and put the condition no.4 as under –

“ (४) महिला शिक्षण सेवकांना तसेच महिला शिक्षकेतर कर्मचा-यांच्या बाबतीत त्यांचा शिक्षण सेवक कालावधी पूर्ण करीत असताना प्रसूती रजा घ्यावी लागल्यास **शिक्षण सेवक पदाचा कालावधी त्या प्रमाणात वाढविणे आवश्यक आहे.**”

9. After this G.R., the Government of Maharashtra has taken a decision by issuing G.R. dated 25/03/2013. As per this G.R., it was decided to cancel Clause no.4 of G.R. dated 8/3/2010 and following decision was taken –

“ **प्रस्तावना -**

राज्यातील मान्यताप्राप्त खाजगी प्राथमिक / माध्यमिक / उच्च माध्यमिक शाळांतील शिक्षिका व महिला शिक्षकेतर कर्मचारी यांच्या प्रसूती रजेबाबतच्या तरतूदी महाराष्ट्र खाजगी शाळांतील कर्मचारी (सेवेच्या शर्ती) नियमावली १९८१ मधील नियम १६ मधील पोट नियम १४ (अ) व (ब) तसेच पोट नियम १५,१६ व १७ मध्ये विहित केलेल्या आहेत. संदर्भाधीन दिनांक ८ मार्च, २०१० च्या शासन निर्णयातील अट क्र.४ मधील तरतूद ही संविधानातील समानता आणि सामाजिक न्यायाच्या भूमिकेशी व विविध तरतूदीशी विसंगत असून सदर तरतूद वगळण्याबाबत सातत्याने होणारा पाठपुरावा विचारात घेवून तसेच राज्य शासनाचे महिला सक्षमीकरणाचे धोरण विचारात घेता महिलांना प्राप्त निसर्गदत्त अधिकारानुसार प्रसूती रजेबाबतच्या संदर्भाधीन क्र.१ च्या दिनांक ८ मार्च, २०१० च्या शासन निर्णयातील **अट क्र.४ रद्द करण्याची बाब शासनाच्या विचाराधीन होती.**

शासन शुध्दीपत्रक -

उपरोक्त बाबी विचारात घेता संदर्भाधीन दिनांक ८ मार्च, २०१० च्या शासन निर्णयातील अट क्र.४ या शुध्दीपत्रकाच्या दिनांकापासुन रद्द करण्यात येत आहे.

२. यापुढे महिला शिक्षण सेवकांना अनुज्ञेय असणारी १८० दिवसांची प्रसूती रजा मंजूर केल्यास त्यांचा शिक्षण सेवक पदाचा कालावधी त्या प्रमाणात वाढणार नाही. ”

10. More particularly, the clause no.2 of the G.R. 25/3/2013 is very clear. As per this G.R., the maternity leave of 180 days shall not extend the period of Shikshan Sevak. It appears that the respondents have not considered this G.R. while regularization of service of applicant.

11. The Id. P.O. has pointed out G.R .dated 29/02/2016. This G.R. is applicable to all the employees. The Id. P.O. has submitted that the G.Rs. dated 8/3/2010 and 25/3/2013 are issued by the Government for Shikshan Sevak working in the Private School. Those G.Rs. are not applicable to the Govt. School. There is nothing in the G.R. to show that it is not applicable to Government School. It appears that it is applicable to all woman Shikshan Sevak employees. Decision in the G.R. dated 25/03/2013 is as under -

“२. यापुढे महिला शिक्षण सेवकांना अनुज्ञेय असणारी १८० दिवसांची प्रसूती रजा मंजूर केल्यास त्यांचा शिक्षण सेवक पदाचा कालावधी त्या प्रमाणात वाढणार नाही. ”

12. Hence, as per the G.R. dated 25/03/2013 the period of maternity leave should have been taken into account by the respondents as a duty period. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to regularise the service of the applicant as a Teacher w.e.f. 16/4/2015.

(iii) The respondents are directed to give the monetary benefits, if she is entitled after regularisation of service from 16/4/2015.

(iv) No order as to costs.

Dated :- 14/07/2022.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 14/07/2022.

Uploaded on : 18/07/2022.

ok