

O.A. Nos.254, 255 and 256 of 2016.

CORAM : S.S. Hingne : Vice-Chairman.

DATE : 21/12/2016.

The common point is involved in these matters and the parties are also same, hence the O.As. are disposed of by this common order.

2. The applicants, working as a temporary Assistant Medical Officer have filed these O.As. challenging the orders of recovery of their salary paid to them during the period of maternity leave.

3. Heard Shri U.K. Bisen, Id. counsel for the applicants, Shri P.N. Warjurkar, Id. P.O. for R/1, 2, 4 and 7 and Shri P.V. Thakre, Id. counsel for R/3,5 and 6.

4. With consent of Id. counsel for the parties, the matter is heard and decided at the stage of admission.

5. The applicants are working on temporary basis for years together and given appointment every time giving

breaks of some days. During the course of employment they proceeded on maternity leave for different periods. Their salary for that period is paid.

6. However, the Asstt. Director of Local Audit Department has issued the communications on different dates like 21/12/2015, 5/2/2016 and 9/2/2016 directing to recover the amount of their salary for the reason that they being the temporary employees are not entitled to get the salary. The applicants seek relief that recovery should not be done. In the case of one employee Dr. Hemlata Eknath Sonkusare in O.A. No.256/2016, the amount of Rs.55,292/- is recovered from her, hence she sought refund of the amount.

7. The stand of the R/4 i.e. the Asstt. Director of Local Audit Department, Wardha reveals from the reply is that under Rule 74(2) of the Maharashtra Civil Services (Leave) Rules, 1981 and the G.R. dtd.15/1/2016 a permanent employee alone can get the benefit of maternity leave. There are also provisions in chapter (VI) of the Leave

Rules how the matter of leave is to be decided in various set of facts when the employees are working in different capacities.

8. As against this, the Id. counsel for the applicants heavily relied on the judgment of the Aurangabad Bench of the Mumbai High Court in **W.P. No.1109/2011 (State of Maharashtra and Others –Vs- Uma Uday Patil** (Annex.A-25) decided on 10/12/2014, wherein Their Lordships have relied on the judgment of the Apex Court of the Land in the case of **Municipal Corporation of Delhi vs- Female Workers** (Muster Roll) and another reported in [(2000) 3 SCC 224], wherein it is held that even a female worker on muster roll is entitled for maternity leave. In the instant case, the applicants have worked for several years with only technical breaks. Every time they are appointed for the period of one year is less by few days. Having regard to the decision in the above cited cases, the applicants cannot be denied the reliefs as claimed. The applications thus deserve to be allowed. Consequently the following order is passed :-

- a) The O.As. are allowed.
- b) The impugned communications directing the recovery of the salary for the period of maternity from Dr. Rajnitai I. Gajbhiye in O.A. No.254/2016 , Dr. Yogita Vilas Deshbhratar in O.A. No.255/2016 and Dr. Hemlata E. Sonkusare in O.A. No.256/2016 are quashed.
- c) The amount of Rs.55,292/- recovered from Dr. Hemlata E. Sonkusare in O.A. No.256/2016 be returned to her.
- d) The amount be refunded to Dr. Hemlata E. Sonkusare in O.A. No.256/2016 before 31/3/2017.
- e) No order as to costs.

(S.S. Hingne)
Vice-Chairman.

Skt.