

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.554 OF 2019

DISTRICT : PUNE

Nilima Jawahar Gupta,)
Age : 36 years, Working as Assistant Professor,)
Working as Assistant Professor at B.J.)
Govt. Medical College, Residing at Shantiship)
Apartment, Flat No.4, S.No.297, Rasta Peth,)
Tal. Haveli, Pune 411 001.) **...Applicant**

Versus

1. State of Maharashtra,)
Through the Secretary,)
Medical Education and Drugs Department,)
Mantralaya, Mumbai 400 032)
2. The Director, Medical Education and)
Research, Govt. Dental College & Hospital)
Building, St. George's Hospital Compound,)
Near V.T., Mumbai 400 001.)
3. The Dean,)
B.J. Government Medical College,)
Near Railway Station, Jai Prakash)
Narayan Road, Pune 411 001.) **...Respondents**

Smt. Punam Mahajan, learned Advocate for Applicant.

Shri A.J. Chougule, learned Presenting Officer for Respondents.

✓

CORAM : JUSTICE MRS. MRIDULA BHATKAR, (CHAIRPERSON)
SHRI P.N. DIXIT, (VICE-CHAIRMAN)

PER : JUSTICE MRS. MRIDULA BHATKAR, (CHAIRPERSON)

RESERVED ON : 22.10.2020

PRONOUNCED : 03.11.2020
ON

J U D G M E N T

1. Heard Smt. Punam Mahajan, learned Advocate for Applicant and Shri A.J. Chougule, learned Presenting Officer for Respondents.

2. The Applicant, Assistant Professor, who was working on adhoc basis in the Department of Biochemistry, B.J. Government Medical College, challenges the denial of giving the continuation order of appointment. The applicant admittedly is not in continuous service in the hospital. She is appointed for a period of 120 days since 18.09.2015 till 15.05.2019. She was given technical break of one day and thereafter again was given appointment letter for short period. She was again appointed till 15.05.2019. As her last appointment she has received till 15.05.2019. She delivered a baby on 10.04.2019. She went on maternity leave from 01.04.2019. After 6 weeks she attended duty i.e. on 15.05.2019. She applied for her appointment. However, she was not given appointment on the ground that she is not fit for the work and she was not entitled to maternity leave being an adhoc employee. Therefore, her maternity leave was unauthorized.

W

3. Learned Counsel Ms. Punam Mahajan has submitted that under the Maternity Benefits Act, 1961 any woman employee irrespective of temporary or adhoc is entitled to maternity leave. The Applicant should not have been deprived of her maternity benefit which is assured under the Act. She relied on the Government Resolution 15.01.2016, wherein the State of Maharashtra i.e. Respondent has taken the policy decision of giving maternity leave to even the adoptive mothers. She submitted that even though the post was vacant in May 2019 yet she was not appointed, though she had put in service of Medical Officer for three years with the Respondent. The Respondent did not fill-up the said post till January, 2020. The decision of not appointing the applicant is illegal when the Respondent is a Welfare State.

4. Learned Advocate for the Applicant has relied on following judgments :-


- (a) Municipal Corporation Of Delhi Versus Female Workers (Muster Roll) & Ors. [(2000) 3 SCC 224].
- (b) J.K. Cotton Spinning and Weaving Mills Versus Badri Mali and Ors. [(1964) 3 SCR 724]
- (c) Archana Nanabhau Dahifale Versus The State Of Maharashtra, (W.P. No.3491/2018).
- (d) Anita Baban Nikam Vs. State of Maharashtra, (O.A.No.167 /2018).

5. Learned P.O. for the Respondents has submitted that according to the Maternity Benefits Act, 1961, the maternity leave is for the women working industries, mines and other establishments. The case of the Applicant, who is working as a Government servant, is covered only under



Maharashtra Civil Services (Leave) Rules, 1981 (hereinafter referred as 'MCS (Leave) Rules, 1981' for brevity) and Government Resolution dated 15.01.2016. The applicant is entitled to maternity benefit, if at all, she is continuously working at the same post. However, in the present case, the applicant is working and appointed after 120 days and hence, she is not entitled for it. Moreover, learned P.O. argued that her service came to end on 15.05.2019 at that time being a mother of newly born baby she was not in a condition to render her service as a Medical Officer so she was not given appointment and today the post is not vacant and therefore her case cannot be considered. Such adhoc employee has no right or lien over the post.


6. The facts regarding the adhoc appointment and period of service of the Applicant are admitted. The last appointment given to the Applicant was for 120 days i.e. from 15.01.2019 to 15.05.2019. She went on maternity leave on 01.04.2019 and delivered baby on 10.04.2019. As per Rule 74, under 'MCS (Leave) Rules, 1981', maternity leave is granted with full pay i.e. 180 days. The maternity leave is allowed for women in the Government service including newly appointed women. However, with the condition that there should not be more than 2 alive children. The Government of Maharashtra by way of amendments in G.R. dated 28.07.1995 made the Rules more gender friendly. By this amendment Rules of 1995, the adoptive mothers are also entitled to leave for 60 days till the child attains one year. 45 days leave can be granted to women



who has undergone medical termination of pregnancy. The population control and welfare of female were aimed at by these amendments.

7. By G.R. dated 27.08.2009, 'MCS (Leave) Rules, 1981', the period of 90 days was increased which was assured by G.R. dated 28.07.1995. The G.R. dated 15.01.2016 is very much relevant to the facts of the present case. By this G.R. the condition of minimum continuous service/employment for the entitlement to maternity leave was cancelled. As such female employees who have not completed even two years are entitled to paid maternity leave. However, such maternity leave was with certain conditions viz. she has to execute the indemnity bond of salary of 6 months and it was obligatory on such female Civil Servant for joining the services after maternity leave she has to serve the Government for minimum 2 years.

8. Except Maternity Benefit Act, 1961 there is no other separate legislature on the point of maternity leave benefit. It was enacted with view to facilitate the maternity leave to especially the women working in the industries, mines or in the establishments which are defined under Section 3(e) of the said Act. The issue of maternity leave is covered under the Rules framed by each State. The State of Maharashtra has framed 'MCS (Leave) Rules, 1981' as referred above. Thus, whenever the Hon'ble Supreme Court or Hon'ble High Court of various States had opportunity to address the various angles of Maternity Leave Benefits, the Maternity Benefit Act was stretched to cover the maternity leave issues of the female




employees working in the other establishments covered under the said Act, so is the case of female Civil Servants.

9. The Hon'ble Supreme Court and Hon'ble High Court time and again has expressed that the maternity leave is a right of a women and she is entitled to enjoy the same in the interest of children and welfare of the family.

In the case of ***J.K. Cotton Spinning and Weaving Mills Versus Badri Mali and Ors. [(1964) 3 SCR 724]*** the industrial dispute was raised by the Gardeners who claim they are workmen under the Act and hence entitled to various allowances and benefits. In the said judgment of Hon'ble Supreme Court has observed that the social justice is not narrow, one-sided or pedantic and is not confined to industrial adjudication alone but socio economic equality should be achieved by elimination of socioeconomic, disparities and inequalities.

10. ***The Municipal Corporation of Delhi Versus Female Workers (Muster Roll) & Ors. [(2000) 3 SCC 224]***. The Hon'ble Supreme Court in this case has directly dealt with the Maternity Benefit Act, 1961 and held that the benefit of maternity leave under the said Act is to be given to women engaged on adhoc basis or on muster roll basis or daily wages, and not to be restricted to those in regular employment. The Act has also held that the act is in consonance with the Directive Principles of State Policy in Articles, 39, 42 and 43 of the Constitution of India,

"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 work place 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.

In the said judgment, the Hon'ble Supreme Court relied on **Budge Budge Municipality Versus P.R. Mukherjee reported in 1953 SC 58** has relied and reiterated that the municipal activity will fall within the undertaking and as such would be the Industry. These disputes between the Municipality and other employees are treated as Industrial disputes.

The Hon'ble Bombay High Court in the case of **Archana Nanabhau Dahifale Versus The State Of Maharashtra, judgment delivered on 19.10.2018 in W.P. No.3491/2018**, the Hon'ble Division Bench of the Bombay High Court had opportunity to deal with the issue regarding the payment of the salaries and maternity leave benefits given to female Civil Servants i.e. Project Officer working with State of Maharashtra. One of the contentions advanced by the Respondents was that the Petitioner is not the Government servant, but she is a contractual female employee and hence her services are governed by the conditions of the contract.

17. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified

W

manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimized for forced absence during the pre or post-natal period.

18. *As indicated earlier, the benefits contemplated by the Maternity Benefit Act, 1961 have been extended by the Hon'ble Supreme Court not only to work women in an 'industry' but to the muster roll women employees of the Municipal Corporation working on daily wages also.*

19. *Identical issue of granting maternity benefit to women employees on contract basis or on ad-hoc or temporary basis has been considered by various High Courts wherein petitions have been allowed and directions issued to grant maternity benefits to the woman employees.*

The Hon'ble Division Bench also relied on the ratio laid down in case of ***Rakhi P.V. V/s. The State Of Kerala decided on 27.02.2018 in Writ Petition (L) 30561, 39828 and 40564/2017***, wherein Hon'ble Kerala High Court had considered the Maternity benefit of 180 days to the Government employee. It has held that the female employees who are appointed on contractual basis are in continuous services on the basis of successive extension of contract. This ratio is applicable mutatis mutandis to the present applicant who was given successive appointments for 120 days adhoc basis since more than 3 years.

In the case of ***Mrs. Priyanka Gujarkar Shrivastav V/s. Registrar General and another in Writ Petition No.17004/2015***, the Hon'ble Madhya Pradesh High Court held that the Court Manager on the contractual basis is entitled to maternity leave at par with regular employees of the State Government.

11. Thus all the facilities of maternity benefits available to female employees irrespective of her nature or period of work should be made applicable at par with female employees having permanent job.


12. In case of **Anita Baban Nikam Vs. State of Maharashtra**, the Single Bench of this Tribunal by order dated 05.07.2019 in O.A.NO.167/2018 has held that the Petitioner working as Counsellor in Child Development Department claimed the benefit of Rule 74(1) and (2) of 'MCS (Leave) Rules, 1981'. But it was denied and recovery was initiated by the Respondents on the ground that she is not entitled to maternity leave because she is a temporary employee and not completed one year service period. This Tribunal has held that having regard to the benevolent object to grant maternity leave to women employees it is to be made available to even contract female employees.

13. Thus the female Civil servants on the issue of maternity benefits are covered by the 'MCS (Leave) Rules, 1981' and further Government Resolutions issued by the Government. The Maternity Benefit Act, 1961 strictly speaking is restricted to the female workmen employed in the establishment delivered under Section 3(e) of the said Act. Way back in the year 1961, the Government felt need to enacting the laws in respect of entitlement of Maternity leave to limited class of employees covered under the Industries, mines etc. From 1961 till today i.e. 2020, 60 years thereafter till today no such specific enactment exists to take care of various issues which may crop up from time to time today and in future of working women in all the fields, who on large scale have stepped out of the house and working and earning. Such legislature is a dire need of the present time. The State of Maharashtra though by enacting 'MCS (Leave) Rules, 1981' as per the requirement of the time has definitely fallen the



gender friendly approach, yet the specific legislature on this issue is necessary and this issue cannot be ignored in view of the physical and mental health of not only the working women but of the entire family. To be pregnant or not is the biological factor and women in all work places have right to be mother. No class of women from any specific establishment including Government set-up can be denied this benefit as women have inalienable right of motherhood.


14. In the present case, admittedly 15.05.2019 was the last working date of the applicant so she attended the duty on the last date. However, she was not given further appointment in adhoc services. To continue the service as the requirement or not to continue is within the prerogative of the higher appointing authority. On this point the affidavit-in-reply of Respondents No.1 to 3 is filed by Dr. Chandankumar Dey, Associate Professor on behalf of Dean B.J. Government Medical College, Pune on 14.08.2019 can be looked into. In the said affidavit-in-reply, the stand is taken that the maternity leave is applicable to the regular employee only and applicant was not at all eligible to avail maternity leave. This stand of the Government is against the law laid down by the Hon'ble High Court and Hon'ble Supreme Court. Moreover its stand is inconsistent with the Government Resolutions dated 28.07.1995 and 15.01.2016 which are referred above. In paragraph 8 the reasons for denying further appointment was mentioned that there is no sanction for her maternity leave and she went on maternity leave when that facility was not available to her. In paragraph 9, it was mentioned that the applicant will not be



able to attend her duty in future and therefore she is not entitled to further appointment. In paragraph 12, it is mentioned that the Head of the Department on 03.06.2019 informed that since the applicant will be proceeding on leave and she did not submitted her fitness certificate too, hence no recommendation would be made for her re-appointment.

15. Learned Counsel for the Applicant submitted that no fitness certificate was asked at the relevant time i.e on 03.06.2019. She has produced the fitness certificate when it was objected. But on 15.05.2019 when she was not given further re-appointment she was not asked to submit fitness certificate which she could have produced. Learned Counsel has further pointed out that the post where she was working was kept vacant till February 2020 and now Dr. Mr. Phad is appointed on that post. She submitted that she could not apply for the post in between because she has approached for judicial relief by filing the present O.A.

16. Thus the documents placed before us and the reply disclose that the Respondents authority is having wrong notion that the applicant not being a permanent but adhoc is not entitled to maternity leave and further she being the mother of 5 weeks old baby is not fit to work physically. It is true that no woman is allowed to continue to work unless she completes 6 weeks after her delivery under Section 4 of Maternity Benefit Act, 1961. However, the authority could have asked her to join one week thereafter and could have given her appointment letter when the post was available and the said post had remained vacant till February 2020 for want of competent Doctor. Thus, it is amply clear that



the authority is holding view which is not sustainable in law but the authority was ought to have taken the sensitive approach which is needed in view of the ratio laid down by the Hon'ble Supreme Court and Hon'ble High Court in cases referred above.

17. Learned Advocate Smt. Punam Mahajan has lastly pointed out that the applicant's husband is working in Solapur at present and in Solapur one post as per the clarification of the applicant is vacant and therefore she be given the appointment. Whether the services of the Applicant, who is a Medical Officer, by profession are useful and required, that decision is to be taken by the Respondents. The applicant was denied further appointment only on the ground of reasons which are not legal.

18. Thus, we allow this Original Application with following order :-

O R D E R

- (a) The Respondents to consider the case of the Applicant for further appointment, may be on temporary or ad hoc basis as per request made by the Applicant and availability of the post.
- (b) She is entitled to salary of 45 days i.e. from 01.04.2019 to 15.05.2019 as maternity leave benefit.
- (c) Such order is to be passed till 30.11.2020.
- (d) No order as to costs.

Sd/-

(P.N. Dixit)
Vice-Chairman



Sd/-

(Mridula Bhatkar J.)
Chairperson

prk
Mumbai.
Date : 03.11.2020