

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No.703 of 2020

Dr. Shweta W/o Ajay Bulle,
Aged about 34 years, Occu. Service,
R/o. Plot No.20, Vijay Shruti, Bhole Nagar,
Nagpur-34.

Applicant.

Versus

- 1) The State of Maharashtra Through its Secretary,
Department of Medical and Research,
Mantralaya, Mumbai-032.
- 2) Directorate of Medical Education,
through its Director, Saint George Hospital,
Fort, Mumbai.
- 3) Dean,
Government Medical College, Nagpur.

Respondents.

S/Shri Bhushan Dafle, A. Das, Advocates for applicant.
Shri A.M. Khadatkhar, learned P.O. for respondents.

Coram :- Hon'ble Shri M.A. Lovekar,
Member (J).

Date of Reserving for Judgment : 26th June,2024.

Date of Pronouncement of Judgment : 2nd July,2024.

JUDGMENT

(Delivered on this 2nd day of July,2024)

Heard Shri B. Dafle, learned counsel for the applicant and
Shri A.M. Khadatkhar, learned P.O. for respondents.

Details of services rendered by the applicant certified on
31/08/2018 (P-24) are as follows –

Shri/Mrs/Ku.: Dr. Shweta A. Bulle, Assistant Professor, in Department of Anesthesiology is working in the following capacity at (Trauma Care Centre) Govt. Medical College, Nagpur, for the period mentioned below :

Sr. No.	Post	Period	
		From	To
1	Assistant Professor (Through D.S.B.) One day break after 120 days	27.06.2016	24.10.2016
2	-----do-----	26.10.2016	22.02.2017
3	-----do-----	27.02.2017	26.06.2017
4	-----do-----	28.06.2017	25.10.2017
5	-----do-----	27.10.2017	23.02.2018
6	-----do-----	27.02.2018	26.06.2018
7	-----do-----	28.06.2018	till to date

The applicant applied for and proceeded on maternity leave for 26 weeks from 25/09/2018 (Annex-A-4).

By letter dated 23/04/2019 (Annex-A-5) respondent no.2 sought guidance from respondent no.1 as follows –

डॉ. श्वेता अजय बुले हया १२०,१२० दिवस निवडमंडळाकडून सहाय्यक प्राध्यापक या पदासाठी पात्र ठरलेल्या आहेत. त्यांची सतत २ वर्षे सेवा होत नाही. त्यामुळे त्यांना १८० दिवस प्रसुती रजा अनुज्ञेय ठरत नाही. परंतु मॅट नागपूर यांनी मुळ अर्ज २२८/२०१३ डॉ.अस्मिता एस. धुर्वे, डॉ. सारीका एम ठाकरे विरुद्ध महाराष्ट्र शासन व इतर २ मध्ये मॅट, नागपूर यांनी मुळ अर्ज मंजूर करून अर्जदारास आदेश दि.१९.१०.२०१२ अन्वये नाकारलेली प्रस्तुती रजेचे आदेश मा. मॅट नागपूर यांनी रद्दबादल ठरवलेले आहेत व प्रसुतीरजेचे सर्व फायदे नियमातील तरतुदीनुसार देणेबाबत आदेशित केलेले आहे. त्याच अनुषंगाने विधी व न्याय विभागाचे परिपत्रक दिनांक २८.०२.२०१७ अन्वये All similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court

earlier they are not to be treated differently. त्याच धर्तीवर डॉ. श्वेता अजय बुले ह्यांनी प्रसुती रजेची मागणी केलेली आहे.

डॉ. श्वेता अजय बुले, सहाय्यक प्राध्यापक, बधिरीकरणशास्त्र, ट्रॉमा केअर सेंटर ह्या दिनांक २९.०६.२०१६ पासून १२० दिवसांच्या नियुक्ती आदेशान्वये (डीएसबी नियुक्ती अधिष्ठाता स्तरावर) कार्यरत आहेत. त्यांना प्रसुती रजा अनुज्ञेय ठरते किंवा कसे ? याबाबत शासनस्तरावरून मार्गदर्शन होणेस विनंती आहे.

However, benefits of maternity leave were not extended.

Hence, this O.A.

2. Stand of the respondents is as follows –

The Applicant is entitled for benefits of maternity leave. However, she has claimed the maternity leave beyond her period of last appointment order on temporary basis. The last appointment order of Applicant on temporary basis was from 28.6.2018 to 25.10.2018 and the Applicant has proceeded on maternity leave by giving a leave application on 15.9.2018 for a period of 26 weeks from 25.9.2018. The last appointment of the Applicant is from 22.6.2018 which comes to an end on 25.10.2018. As such it would be unreasonable that the Applicant is claiming maternity leave for a period during which she was not appointed even on temporary basis in government establishment.

3. In support of her claim the applicant has relied on Judgment of the **Hon'ble Supreme Court in Dr. Kavita Yadav Vs. Secretary, Ministry of Health & Family Welfare Department & Ors. (2023) SCC Online SC 1067** wherein it is held –

The main question which falls for determination in this appeal is as to whether the maternity benefits, as contemplated in the 1961 Act, would apply to a lady employee appointed on contract if the period for which she claims such benefits overshoots the contractual period. Ms. Rachita Garg, learned counsel appearing for the respondent-employer, sought to defend the reasoning given in the

judgment under appeal. Her main argument is that once the term or tenure of the contract ends, there cannot be a notional extension of the same by giving the employee the benefits of the 1961 Act in full, as contemplated in Section 5(2) thereof. It is her submission that any benefits that the appellant would be entitled to ought to be within the contractual period.

We have reproduced earlier in this judgment the provisions of Section 12(2)(a) of the 1961 Act. The aforesaid provision contemplates entitlement to the benefits under the 1961 Act even for an employee who is dismissed or discharged at any time during her pregnancy if the woman, but for such discharge or dismissal, would have been entitled to maternity benefits or medical bonus. Thus, continuation of maternity benefits is in-built in the statute itself, where the benefits would survive and continue despite the cessation of employment. In our opinion, what this legislation envisages is entitlement to maternity benefits, which accrues on fulfilment of the conditions specified in Section 5(2) thereof, and such benefits can travel beyond the term of employment also.

In our opinion, a combined reading of these provisions in the factual context of this case would lead to the conclusion that once the appellant fulfilled the entitlement criteria specified in Section 5(2) of the Act, she would be eligible for full maternity benefits even if such benefits exceed the duration of her contract. Any attempt to enforce the contract duration term within such period by the employer would constitute "discharge" and attract the embargo specified in Section 12 (2) (a) of the 1961 Act. The law creates a fiction in such a case by treating her to be in employment for the sole purpose of availing maternity benefits under the 1961 Act.

4. In view of aforesaid legal position the O.A. is allowed. The applicant is held entitled to maternity leave for 26 weeks, and consequential benefits. The same shall be extended to her within two months from today. No order as to costs.

(M.A.Lovekar)
Member (J).

Dated :- 02/07/2024.

dnk.

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

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 02/07/2024.