

Court No. - 20

Case :- WRIT - A No. - 9110 of 2023

Petitioner :- Smt. Sonali Sharma

Respondent :- State Of U.P Thru. Prin. Secy. Deptt. Dibyangjan
Sashaktikaran Lko. And 2 Others

Counsel for Petitioner :- Alok Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.

2. Petition has been filed challenging order dated 17.10.2023 whereby petitioner's application for second maternity leave has been rejected. Further prayer seeking a direction to opposite parties to grant maternity leave to petitioner with effect from 14.08.2023 till 09.02.2024 with full salary has also been sought.

3. It has been submitted that a perusal of impugned order will make it evident that petitioner's application for maternity leave has been rejected only on the ground that as per Regulation 101 read with Regulation 153(1) of Financial Handbook Volume II part 2 to 4, second maternity leave is not admissible in case it is sought within a period of two years from the date first maternity leave was sanctioned.

4. Learned counsel for petitioner has placed reliance on judgments rendered by Coordinate Benches of this Court in the case of **Anupam Yadav & Ors versus State of U.P. & Ors.** reported in **2022(11) ADJ 669**, **Anshu Rani Versus State of U.P. & Ors.** reported in **(2019) 3 UPLBEC 1741** and **Satakshi Mishra versus State of U.P. & Ors.** reported in **2022(10) ADJ 333**.

5. A perusal of aforesaid judgments make it evident that the aforesaid issue has already been decided by Coordinate Benches of this Court.

6. In the case of **Anupam Yadav** (supra) the following has been held as under:

"24. Thus the State of U.P. in exercise of powers granted under Section 28 has already issued Government Order dated 8.12.2008 and 24.3.2009 adopting the provisions of the Maternity Benefits Act, 1961 for the benefit of its employees. Further, the modifications made by the Central Government have also been adopted by the State of U.P. in its Government

Order dated 11.4.2011 reproduced hereinabove. Once the provisions of the Maternity Benefit Act, 1961 has been adopted by the State of U.P. as held by this Court then the said Act of 1961 would apply with full force irrespective of the provisions contained in the Financial Handbook which is merely an executive instruction and would in any case be subsidiary to the legislation made by the Parliament.

25. In conclusion it can safely be said that the Maternity Benefit Act, 1961 has been enacted by the Parliament in exercise of powers under Entry 24 in List-III of the Seventh schedule of the Constitution of India and to secure the goals stated in Articles 38, 39, 42 and 43 of the Constitution of India and also to give effect to the provisions contained in Article 15 (3) of the Constitution. The provisions of Financial Handbook are merely executive instructions and would be subsidiary to the Act of the Parliament and in case of any inconsistency, the statutory enactment framed by the Parliament would prevail and hence, the provisions of the Maternity Benefit Act, 1961 would prevail over the provisions of the Financial Handbook and consequently, the provisions of Rule 153 (1) of the Financial Handbook Volume II to IV are read down with regard to the admissibility of leave to a women with regard to second pregnancy which would be governed by the Maternity Benefit Act, 1961 and not Rule 153 (1) of the Financial Handbook Volume II to IV. The State Government already having adopted the provisions of the Maternity Benefit Act, 1961 as recorded by the Division Bench of this Court and followed by the Single Bench in the case of Anshu Rani versus State of U.P. passed in Writ-A No. 3486 of 2019, it is clear that the provisions of the Maternity Benefit Act, 1961 would prevail over any law.

26. In the case at hand the maternity leave so applied by the petitioner has been rejected simply by stating "Anumanya Nahi". Learned counsel for the respondents has submitted that the petitioner is not entitled to the maternity leave in terms of the restriction imposed by the second proviso of Rule 153(1) of the Financial Handbook to the effect that second maternity leave cannot be granted where there is difference of less than two years between the end of the first maternity leave and grant of second maternity leave. Admittedly, the first maternity leave of the petitioner was availed and she gave birth to a male child on 4.1.2021. The petitioner became pregnant again and applied again for maternity leave on 11.6.2022. The second maternity leave to the petitioner has been refused by the impugned order. However, once the 1961 Act does not contain any such stipulation, the Basic Education Officer manifestly erred in rejecting the leave to the petitioner more particularly when Section 27 of the 1961 Act provides that it is the 1961 Act which would be applicable notwithstanding anything in consistent contained in any other law or contract of service."

7. The aforesaid reasoning has also been indicated by Coordinate Benches of this Court in the other two judgments as well to the effect that the provisions of Maternity Benefit Act, 1961 being a beneficial legislation would have overriding effect over the provisions of Financial Handbook. It was being specifically held that Second Maternity Leave within a period of two years from the grant of First Maternity Leave is admissible.

8. Since the only reason indicated for rejection of petitioner's application of second maternity benefit is already indicated in the impugned order itself, the same cannot be supplemented or made better by any other affidavit as indicated in judgment of Hon'ble the Supreme Court in the case of ***Mohinder Singh Gill & Ors. versus Chief Election Commissioner, New Delhi & Ors.*** reported in ***AIR 1978 SC 851***, therefore this petition is being adjudicated upon at the admission stage itself considering law settled as indicated hereinabove with regard to dispute in the present petition.

9. Considering the aforesaid judgments on the point, it being evident that there is no bar for an employee seeking Second Maternity benefit within a period of two years from the grant of First Maternity benefit, the impugned order dated 17.10.2023 is hereby quashed by issuance of a writ in the nature of Certiorari. A further writ in the nature of Mandamus is issued commanding the opposite party no.2 i.e. Director, Dibyangjan Sashaktikaran Nideshalaya U.P. Lucknow to sanction Maternity Leave to petitioner with effect from 14.08.2023 till 09.02.2024 alongwith all service benefits.

10. Resultantly, the petition succeeds and is **allowed at the admission stage itself**. Parties to bear their own costs.

Order Date :- 28.11.2023

Subodh/-