

GAHC010123612015



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/6973/2015

MRS. SANGEETA KORMEL YADAV
WIFE OF RAKESH YADAV, DAUGHTER OF LT. SAMSON KORMEL, AGED
ABOUT 31 YEARS, RESIDING AT, P.O. CHEREKAPARA HATIMURIA GOAN,
DIST. SIVASAGAR, ASSAM- 785640.

VERSUS

UNION OF INDIA and 4 ORS,
MINISTRY OF HUMAN RESOURCE DEVELOPMENT, DEPARTMENT OF
SCHOOL EDUCATION AND LITERACY, REP. BY ITS SECRETARY, 124-C,
SHASTRI BHAWAN, NEW DELHI-110001.

2:THE COMMISSIONER

KENDRIYA VIDLAYA SANGATHAN
18
INSTITUTIONAL AREA
SHAHEED JEET SINGH MARG
NEW DELHI-110016.

3:THE JOINT COMMISSIONER

FINANCE
KENDRIYA VIDYALAYA SANGATHA
18
INSTITUTINAL AREA
SHAHEED JEET
SINGH MARG
NEW DELHI-110016.

4:THE PRINCIPAL

KENDRIYA VIDYALAYA
ONGC
AN AUTONOMOUS BODY UNDER MHRD
GOVT. OF INDIA
SIVASAGAR
ASSAM
PIN - 785640.

5:SHRI PUSHPENDR KUMAR
ADMINISTRATIVE OFFICER and PUBLIC INFORMAITON OFFICER
KENDRIYA VIDYALAYA SANGATHAN
TINSUKIA REGION
OIL CAMPUS DULIAJAN
DIBRUGARH- 786602
ASSAM

Advocate for the Petitioner : MR.S BANIK,

Advocate for the Respondent : MS.A DASR-2and5, MS.T BORA(R-5),ASSTT.S.G.I.,MR.C K S BARUAH,MR.S C BISWAS(R-5),C.G.C.,MS.K L R YANTHAN(R-5),MR. S BISWAS(R-5)

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

10.09.2024

Heard Mr. S. Banik, learned counsel for the petitioner and Mr. S.C. Biswas, learned counsel for the respondents.

2. By filing this writ petition, the petitioner has prayed for setting aside the communication dated 09.07.2015 (Annexure-6) and communication dated 10.07.2015 (Annexure-7), whereby the petitioner has been informed that maternity leave and its added benefits are admissible to only regular employees of Kendriya Vidyalaya Sangathan (KVS).

3. It is the case of the petitioner that she is a Master's Degree holder in

Political Science and in Business Administration with specialization in Human Resources. She was appointed as a part time contract teacher in Kendriya Vidyalaya, ONGC, Sivasagar for the period w.e.f. 29.06.2012 to 28.03.2013. She was thereafter appointed again for the period w.e.f. 01.04.2013 to 28.03.2014 and subsequently for the period w.e.f. 01.04.2014 to 04.03.2015. According to the petitioner, during the second tenure of her employment, on 13.10.2013, she got married and settled down at Sivasagar itself. After her last engagement up to 04.03.2015, she delivered a baby boy on 12.04.2015 and after delivery of the baby boy, the petitioner did not apply for continuation of her service. Before that on 11.02.2015, her husband sent an application through RTI to KVS, New Delhi, asking whether contractual teachers are eligible for maternity benefits. In reply, they were informed on 10.03.2015 that maternity leave benefits are extended to permanent teachers only and not to contractual teachers. Further, reference may be made as per their terms and conditions of appointment.

4. Mr. S. Banik, learned counsel for the petitioner submits that a woman employee irrespective of being a permanent, temporary or contract employee is entitled to receive maternity benefits. The learned counsel had drawn the attention of this Court to Section 5 and Section 8 of the Maternity Benefit Act, 1961 (Act of 1961) amongst others. The learned counsel submits that no distinction has been drawn by the said provisions about the nature of appointment of a woman employee in order to be entitled to the maternity benefits. The petitioner having been appointed on contract basis, naturally with artificial breaks in between two spells of the service, the same cannot be construed to be a bar so as to disentitle her from getting the maternity benefits. He submits that although the petitioner is no longer serving in Kendriya Vidyalaya, ONGC, Sivasagar, nevertheless, she is entitled to receive the benefits

that should be worked out in terms of Section 5 and Section 8 of the Act of 1961. In support of his submission, the learned counsel has relied upon the following authorities:-

(1) *Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) and Anr.*, reported in (2000) 3 SCC 224;

(2) *Dr. Kavita Yadav Vs. Secretary, Ministry of Health and Family Welfare Department and Ors.*, reported in (2024) 1 SCC 421 and

(3) The judgment of the High Court of Himachal Pradesh in *LPA Nos. 194 and 195/2014 (State of H.P. Vs. Sudesh Kumari)*.

5. Mr. S.C. Biswas, learned counsel for the respondents, on the other hand, submits that during her entire service period, the petitioner failed to disclose the fact that she was pregnant and only after her service period was over on 30.03.2015, the petitioner had made a claim that she delivered a child on 12.04.2015. He submits that as per the rules and norms applicable to KVS, contract employees are not eligible to get any maternity benefits including maternity leave. The petitioner has only failed to mention the fact that her appointment was only a part time contractual appointment. He further submits that against the offer for appointment on part time contract basis, the petitioner submitted her willingness with an undertaking in writing that she will not claim any benefit apart from the remuneration given to her and that she will also not claim regular appointment. The said undertaking was also given by the petitioner in the form of an affidavit. Such being the case, the petitioner has no right to claim maternity benefits as projected in the writ petition. He thus

submits that the writ petition should be dismissed.

6. I have heard the submissions made by the learned counsels for the parties and have perused the materials available on record.

7. There is no dispute to the fact that the petitioner was serving as a part time teacher in Kendriya Vidyalaya, ONGC, Sivasagar from 29.06.2012 to 04.03.2015 with artificial breaks in between. According to the petitioner, she got married to her husband on 13.10.2013 and thereafter, delivered a baby boy on 12.04.2015. Although she is no longer employed in Kendriya Vidyalaya, ONGC, Sivasagar, it is her case that she is entitled to receive maternity benefits in terms of the relevant provisions of the Act of 1961.

8. The Apex Court in ***Municipal Corporation of Delhi (supra)*** took into consideration the provisions provided under the Act of 1961, more particularly, Section 2 and Section 5 of the said Act. The Apex Court opined that Article 14 of the Constitution of India clearly provides that the State shall not deny to any person equality before law or the equal protection of the laws within the territory of India. It went on to refer to the case of ***Hindustan Antibiotics Ltd. Vs. Workmen***, reported in ***AIR 1967 SC 948***, wherein the Apex Court held that labour to whichever sector it may belong in a particular region and in a particular industry will be treated on equal basis. The provision of Article 15 of the Constitution was also taken note of by the Apex Court. It was therefore opined that the provision of the Act of 1961 nowhere provides that only regular employees would be given the benefits of maternity leave and not those engaged on casual basis or muster roll or daily wage basis. Under the circumstances, the Apex Court held that the provisions of the Act of 1961 would

be applicable to woman employees irrespective of their nature of engagement.

9. In the case of ***Dr. Kavita Yadav (supra)***, the case of ***Municipal Corporation of Delhi (supra)*** was also taken into consideration and the Apex Court in the given facts of that case on making an independent analysis of the provisions of the Act of 1961 held that the same did not lead to an interpretation that the maternity benefits cannot survive or go beyond the duration of employment of an employee. Even in a case where the applicant woman dies after delivery of the child, the benefit as per the last proviso to Section 5(3) of the Act of 1961 would be available. The Apex Court further opined that the expression "discharge" is of a wide import, and it would include "discharge on conclusion of the contractual period." By virtue of the operation of Section 27 of the Act of 1961, the same would override any agreement or contract of service found inconsistent with the Act of 1961.

10. Coming to the present case, it may be seen that the petitioner admittedly had last served on 04.03.2015 and not thereafter. But having regard to the decision of the Apex Court she would still be entitled to maternity benefits provided by the Act of 1961. Although the respondents have maintained that the petitioner herself had given an undertaking that to claim any benefit apart from the salary offered to her, the same in view of Section 27 of the Act of 1961 and as held by the Apex Court, will not come in the way. Under the circumstances, this Court is of the considered view that the petitioner would be entitled to maternity benefits in terms of the relevant provisions of the Act of 1961.

11. In the result, the petitioner shall within a period of 15(fifteen) days from

today submit her claim for maternity benefit by incorporating all the relevant materials and documents in support of her claim and submit the same before the respondent No.4 and the respondent No.4 upon receipt of the same shall examine and process the matter and grant the benefit entitled to the petitioner by quantifying the same in monetary terms and disburse the same to her without delay. The entire exercise as directed be completed within a period of 2(two) months from the date of receipt of a certified copy of this order and the claim of the petitioner. It is also made clear that the amount to be received by the petitioner shall not be only restricted to the amount claimed by her, but would also include any such other computation admissible in terms of the relevant provisions of the Act of 1961.

12. With the above observations and directions the writ petition stands disposed of as allowed. It is needless to state herein that the impugned communications dated 09.07.2015 and 10.07.2015 stands interfered with. Parties are directed to bear their own cost.

JUDGE

Comparing Assistant