IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 4122 of 2020
Date of Decision 28th December, 2023

The Secretary, Managing Committee of Loreto Convent Tara Hall School

…Petitioners

Versus

Sharu Gupta and others ***….Respondents***

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, J.

Whether approved for reporting? Yes

For the Petitioner: Mr. K.D. Sood, Sr. Advocate with Mr.Het Ram Thakur, Advocate.

For the Respondents: Ms.Uma Manta, Advocate for respondent No.1.
Mr. Anup Rattan, Advocate General with Mr.Rajesh Mandhotra, Additional Advocate General for respondents No.2 and 3.

Vivek Singh Thakur, J.

Petitioners have approached this Court, invoking provisions of Article 226 of Constitution of India, for setting aside the order dated 14th September, 2020 (Annexure P-6) passed by the Labour Commissioner-cum-Chief Inspector of Factories-cum-Appellate Authority, under Maternity Benefit Act 1961, in appeal No. L-L&E (MB) Appeal-2019 titled Secretary Managing Committee of Loreto Convent Tara Hall School and another vs. Sharu Gupta and another, whereby order dated 16.10.2019 (Annexure P-3)

passed by Labour Inspector Circle-1 Shimla (Authorized Inspector under Maternity Benefits Act), in case No. L1/SML/C-1/Maternity Benefit Act, 1961 (Sharu Gupta)/19 titled Sharu Gupta vs. the Secretary Managing Committee of Loreto Convent School, has been affirmed with modification by granting additional payment of three months salary to the respondent/claimant as per provisions contained in Section 17(2)(a)(b) of the Act, over and above the relief granted by the Authorized Inspector directing the petitioner to pay Rs.2,45,592/- as maternity benefit and salary for the month of September 2019 to the complainant and also to take joining of Sharu Gupta (complainant) on the same post as Assistant Teacher which she was holding before her proceeding on maternity leave.

2 I have heard learned counsel for parties and have also perused the original record summoned from the petitioners as well as of Authorities.

3 Admitted facts in present case are that respondent was appointed in Petitioner No.2-School, managed by Petitioner No.1, as Assistant Teacher on contract basis from 1.4.2016 to 31.07.2017. Subsequently, she was appointed on probation w.e.f. 1.7.2017 till 30.06.2018. Probation of respondent No.1 was extended from 1.7.2018 to 30.06.2019.

4 Petitioner remained on medical/earned/without pay leave twice w.e.f. 20th September 2018 to 30th September, 2018

and from 12th November 2018 to 24th November 2018. On 21st December, 2018, services of respondent No.1 were terminated vide letter dated 20th December, 2018 w.e.f. 21st December 2018 by paying one month's salary in lieu of notice and termination letter was served upon respondent No.1 on 21st December, 2018.

5 Respondent No.1 delivered a baby in Tenzin Hospital Shimla on 12th April, 2019 and she preferred complaint under Section 17 of Maternity Benefits Act 1961 ('the Act') before the Labour Inspector (Authorized Inspector) under the Act on 14th May, 2019 for setting aside the termination order with consequential payment of Rs.44,896/- after adjusting one month's salary inclusive of the salary of winter vacation from 1st January, 2019 to 28th February 2019 from the petitioners-Management and also to pay maternity benefit to her from 1.3.2019 to 30.09.2019 under the Act amounting to Rs.1,97,106/- based on salary of respondent No.1 and also to pay Rs.3500/- as medical bonus as admissible under Section 8 of the Act.

6 In response to notice issued by the Inspector, petitioners filed reply on 16th July, 2019 with plea that respondent No.1 had not applied for maternity leave and, therefore, there is no question of her termination on the ground of maternity leave and as and when she asked for leave, leave was granted to her, whereas her termination was strictly in accordance with Service

Rules for teaching and non-teaching staff of the petitioners and also in terms of her appointment, because her service record was not found to be satisfactory and one month's salary in lieu of notice of termination was given to her.

7 After taking into consideration material placed before him, the Authorized Inspector allowed the complaint and issued direction to reinstate respondent No.1 and to pay her maternity benefits as referred supra vide order dated 16.09.2019.

8 Against the order dated 16.09.2019, appeal was preferred by petitioners. Appellate Authority, after taking into consideration material on record and pleas taken by the parties, has arrived at a conclusion that Management had failed to prove the alleged ground of termination i.e. unsatisfactory service record with further finding that termination was done just to avoid maternity benefit to complainant and no reason was assigned by Management in termination letter for termination of service of complainant.

9 It has been contended on behalf of petitioners that complainant was on probation period, and as per Rules, applicable to employees of petitioners, the petitioners, for unsatisfactory service of complainant, were empowered to terminate her service without assigning any reason and therefore, it has been contended that findings of Appellate Authority that no reason has been

assigned in the termination letter is not a valid ground to dismiss the appeal. It has been further contended that as per Service Rules, an employee, on an application, is entitled for maternity leave but in present case, complainant never informed the petitioners about her pregnancy and she never applied for any maternity benefits and filing of complaint by her is an afterthought in order to receive benefits from the petitioners for which she was not entitled at all. It has been contended that Authorities below have failed to appreciate the terms and conditions of appointment letter of complainant, Rules and law that service of probationer can be dispensed with in terms of her appointment letter, and that law cited by petitioners has not been taken into consideration by the Authorities below. It has been contended that no application in writing was ever submitted by complainant for maternity leave whereas service rules of petitioners' Society clearly provide that maternity leave must be applied for with a supporting medical certificate from the registered Medical Practitioner and, therefore, grant of benefit to respondent by Authorities below believing her oral statement that she had informed about her pregnancy on 19th December 2018, suffers from material irregularity and illegalities in law.

10 To substantiate plea of petitioners, reliance has been placed on judgment of the Delhi High Court in case titled as

Sunita Baliyan vs. Director Social Welfare Department, Government of NCT of New Delhi, reported in ***(2007)99 DRJ 551; Muir Mills Unit of NTC (U.P.) Ltd. vs. Swayam Prakash Srivastava and another,*** reported in ***(2007)1 SCC 491; Progressive Education Society and another vs. Rajendra and another,*** reported in ***(2008)3 SCC 310.***

11 In response, it has been contended that the fact, that complainant was pregnant, was in the knowledge of Management as well as Principal as complainant had availed leave w.e.f. 20.09.2018 to 30.09.2018 as well as 12.11.2018 to 24.11.2018 by filing applications along with medical prescriptions wherein with advise to rest, it was unambiguously mentioned that complainant was pregnant. Photocopies of prescription slips have also been placed on record with claim that these are also part of record of petitioners being attached with applications filed for leave by complainant. It has been further contended that school was going to be closed for winter vacation and expected date of delivery was in the month of March 2019 and complainant was planning to proceed on maternity leave immediately after winter vacation i.e. w.e.f. 1st March, 2019 and, therefore, there was no occasion for complainant to file written application prior to last week of December 2018 and therefore, complainant, before filing application, considered it appropriate to inform her employer as

well as Principal about her plan to proceed on maternity leave w.e.f. 1st March, 2019 verbally with understanding that she would be applying for leave thereafter as there was about more than 2 months time to proceed on maternity leave. It has been contended that under the Act, there is no requirement of giving notice at such early stage.

12 Applications filed by complainant for proceeding on leave in September and November 2018 are on record produced by petitioners along with prescription slips/medical treatment slip of complainant indicating her pregnancy with advise of doctor to have rest at initial stage of pregnancy. Admittedly, in furtherance to those applications, leave was granted to complainant. Therefore, plea of Management that pregnancy of complainant was never informed by her to the Management or Principal is patently false.

13 As per the record of petitioners, appointment letter of complainant (on probation) dated 1st July, 2017 was accepted and received by complainant on 28th July, 2017. Whereas extension of appointment on probation in the year 2018 was ordered on 20th July, 2018 wherein it was stated that her appointment shall be subject to written acceptance of terms and conditions mentioned therein and areas of improvement attached to the said letter. There are acceptance signatures of complainant on this extension

order. Though there is a document available on record containing 13 observations with respect to petitioners and 6 areas of improvement need to be adhered by complainant but there is nothing on record that this communication was the same which was referred in extension of appointment of probation. It does not indicate any signatures of receiving by complainant. Termination letter dated 20th December 2018 speaks that services of complainant were no longer required by school and as per condition of her appointment dated 1st July, 2017 she was informed about that her services will not be required by school on and from 21.12.2018. There is nothing on record to indicate that after appointment on probation or extension of appointment on probation, complainant was ever informed about her failure to meet the requirement of petitioners/employer as claimed to have been communicated to her along with extension letter dated 20th July, 2018. Rather it has come on record that she was continued uptil the end of session i.e. December 2018. During intervening period, she was permitted to avail leave on account of complicity in the initial stage of pregnancy and when she informed about her plan to proceed on maternity leave after winter vacation, then, to avoid extension of maternity benefits to her, her services were terminated under the garb of conditions contained in her appointment order.

14 Petitioners are relying upon the provisions of Section 6(1) of the Act and Service Rules, which provide that before proceeding on maternity leave, a written information by beneficiary is necessary. There is no dispute with respect to aforesaid provisions. However this provision is to be read with other provisions of the Act including Section 6(2) which provides that pregnant employee can remain absent from the work on pregnancy but not being a date earlier than six weeks from the date of her expected delivery. In present case, expected date of delivery was 26.04.2019 and, therefore, six weeks earlier to expected delivery were to start after first week of March, 2019 and prior to that, there were winter vacation and thus, there was no occasion for complainant to give any written information in December 2018 for grant of maternity leave w.e.f. March, 2019. The complainant intended to submit application and thereafter she verbally informed about it but before submission of application, complainant was terminated.

15 It is also apt to record here that it is normal phenomena in service that an employee apprises his employer or Boss before filing an application for availing any kind of leave by informing about his/her plan to proceed on leave as an etiquette and courtesy and, therefore, there is nothing unnatural on the part of complainant to inform the employer verbally about her plan to

proceed on maternity leave before filing written application.

16 Conduct of petitioners is not above board as there is a complete denial on the part of petitioners about knowledge of pregnancy of complainant despite the fact that in the months of September and November 2018 complainant was granted leave by petitioners on account of initial stage of pregnancy as advised by doctor.

17 In ***Muir Mills Unit of NTC (U.P.) Ltd.'s case,*** a direction to reinstate the probationer with back wages was considered to be perverse because discontinuation of probationer was on account of unsatisfactory work and, therefore, it was observed that wages paid should have been held to be treated as compensation in lieu of reinstatement.

18 In ***Progressive Education Society's case,*** it was observed that Management or Appointing Authority is not required to give any explanation or reason for terminating the services of probationer during the probation period except informing him that his services were found to be unsatisfactory.

19 In ***Sunita Baliyan's case,*** it was observed that provisions of Act do not mandate that a woman is immediately required to intimate the employer about her pregnancy for claiming benefit of the Act but it certainly calls upon her to give a

notice in writing during her pregnancy as soon as possible after delivery.

20 In present case, in the given facts and circumstances, it has been concluded by Authorities below, and rightly so, on the basis of material on record that termination of complainant was not on account of unsatisfactory performance of complainant but to avoid the Maternity Benefits Act. Therefore, the pronouncements in ***Muir Mills Unit of NTC (U.P.) Ltd.'s case and Progressive Education Society's case,*** are not relevant in this regard.

21 As observed in ***Sunita Baliyan's case,*** as also in present case, notice of pregnancy was already there to the employer since the month of September and November 2018 and, therefore, plea of employer that no information about pregnancy was given by complainant is factually incorrect being contrary to record and, therefore, petitioners are not benefitted by any observation made in judgments referred on their behalf, as referred supra.

22 Both Authorities below have returned the findings of the fact which are plausible and in consonance with record and therefore, interference therein in a petition preferred under Article 226 of Constitution of India is not warranted.

23 Motherhood is an important and essential duty to be performed by a woman for existence of the human race on this earth. To conceive, to give birth and take care of a child is not only the fundamental right of the woman but also a pious role to be performed by her for existence of Society. Keeping in view arduous nature of this duty, she must be provided facilities to which she is entitled.

24 It has been observed by the Supreme Court in ***Municipal Corporation of Delhi vs. Female Workers (Muster Roll)*** reported in ***(2000)3 SCC 224,*** that to become a mother is a most natural phenomena in the life of a woman and for it, the beneficial piece of legislation i.e. Maternity Benefit Act, 1961 has been enacted with object to provide security to the working woman with respect to her service as well as extension of benefits. Working woman, on account of biological duty assigned to her by the nature, has to inevitably face the physical difficulties for performing her duty for conceiving, carrying a baby in the womb and rearing up the child after birth. Maternity Benefit Act has been enacted to provide all facilities to the working woman in dignified manner so that she may overcome the state of motherhood honourably, peacefully and undeterred by the fear of being victimized for forced absence during pre or post-natal period.

25 Article 42 of the Constitution of India categorically directs that State shall make provision for securing just and humane conditions of work and for maternity relief. India is signatory to various international covenants and treaties including The Universal Declaration of Human Rights, adopted by the United Nations on 10th December, 1948 declaring that human right are supreme and ought to be preserved at all costs. In my opinion, the right to become a mother is also one of the most important human right and this right must be protected at all costs and therefore, provisions of Maternity Benefit Act must be enforced strictly wherever applicable.

26 Relationship of an employer and an employee requires mutual trust between them, particularly in an education institution, where congenial atmosphere for teaching and learning is required. Therefore, in case petitioners do not intend to accept joining of the respondent, as directed by the Authorities below, then they shall, in addition to the maternity benefits already granted by the Authorities below, shall pay compensation to the respondent amounting to Rs.15.00 lakhs (fifteen lakhs) in lieu of her reinstatement because any intent to thwart the grant of maternity benefits should be dealt with seriously in order to ensure implementation of the Act in letter and spirit.

27 In view of aforesaid discussion, I do not find any illegality, irregularity, judiciary impropriety to interfere in impugned orders passed by Authorities under the Maternity Benefits Act by invoking discretionary jurisdiction under Article 226 of Constitution of India.

Accordingly, petition is dismissed including all pending miscellaneous application(s), if any, in aforesaid terms.

December 28, 2023 **(Vivek Singh Thakur)**
(ms) **Judge**