

(2012) 10 P&H CK 0044

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 18515 of 2011

Pooja Sindhu

APPELLANT

Vs

State of Haryana and
Others

RESPONDENT

Date of Decision: Oct. 15, 2012

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 3
- Maternity Benefits Act, 1961 - Section 27

Citation: (2013) 138 FLR 365

Hon'ble Judges: Augustine George Masih, J

Bench: Single Bench

Advocate: Arun Singal, for the Appellant; Shruti Jain, AAG, for the Respondent

Final Decision: Allowed

Judgement

Augustine George Masih, J.

Petitioner has approached this Court, who is a regular employee of the Haryana Government working as a Lecturer in English in the School Education Department and prays for converting the earned leave which she was forced to take on the birth of her 3rd child as maternity leave as per the provisions contained under the Maternity Benefit Act, 1961 (hereinafter referred to as "the Act"), which was not granted to her.

The petitioner had two children from her marriage. On 12.4.2011 a third child was born. Petitioner vide letter dated 22.5.2011 requested the Principal Government Senior Secondary School, Village Dabra, Hisar (respondent No. 4) to grant her maternity leave. Along with the said application judgment passed by this Court in CWP No. 4229 of 2011 titled Ruksana v. State of Haryana and others, was also attached asserting that she is entitled to the grant of maternity benefits on the birth of third child. The maternity leave was denied to the petitioner vide letter dated 7.9.2011 (Annexure P-4) by respondent No. 4 relying upon the instructions dated 19.11.1991 and 25.9.1992, according to which

maternity leave could be granted upto two living children for six months along with pay and it was stated there is no instruction to grant maternity leave along with pay for the third child. It is this order, which is challenged by the petitioner on the ground that these instructions which are based upon Rule 8.127(1) read with note 4 thereof of Chapter 8 of the Punjab Civil Service Rules, Vol. I, Part-I are contrary to the provisions as contained u/s 27 of the Act.

Counsel for the petitioner on this basis contends that the claim of the petitioner for grant of maternity leave based upon aforementioned instructions read with Rule 8.127(1) note 4 of the Punjab Civil Service Rules, Vol. I part-I cannot be sustained in the light of the Division Bench judgment of this Court in Ruksana"s case (supra), wherein it has been held that the Act nowhere restricts the benefit of payment of maternity benefits to birth of two children and unless the Act is amended Government cannot restrict the beneficial provisions of Act to a woman employee for the birth of a third child. Such a restriction imposed under the Rules is contrary to section 27 of the Act and cannot sustain in the eyes of law. Copy of the judgment passed in Ruksana case (supra), has been appended as Annexure P-3. Accordingly, prayer has been made for quashing the communication dated 7.9.2011 (Annexure P-4) denying the petitioner the maternity leave and for issuing a writ of mandamus for treating the earned leave availed of by the petitioner as maternity leave.

2. On the other hand, Counsel for the respondents contends that the communication under these instructions have been issued relying upon Rule 8.127(1) of the Punjab Civil Service Rules, Vol. I, Part-I is for the purpose of restricting the benefits and discouraging employees for having more children and as per the policy of the Government to control growth of population and is a part of family planning programme. She contends that the statutory Rules do provide for such curtailment and instructions are in consonance thereof and action of the respondents in denying the maternity leave for the third child to the petitioner is, thus, fully justified and deserve to be sustained.

3. I have heard Counsel for the parties and with their assistance have gone through the records of the case.

The claim as made by the petitioner in the present petition deserves to be allowed in the light of the Division Bench judgment of this Court in Ruksana"s case (supra), wherein Rule 8.127(1) of the Punjab Civil Service Rules, Vol. I, Part-I along with note 4 thereto was considered vis-a-vis section 27 of the Act and it was held as follows:--

The Act nowhere restricts the benefit of payment of maternity benefits to birth of two children. In other words, the provisions of the Act entitle the women employee to maternity benefits for the birth of third child too. We are conscious that by Note 4 to Rule 8.127 of the Punjab Civil Services Rules Volume I, Part I, the State Government intended to achieve a laudable object but such an object cannot be given effect to till the establishments of the Government are amenable to the Act. Unless an amendment is

carried out in the Act the Government cannot restrict beneficial provisions of the Act to a woman employee for the birth of a third child. Such a restriction imposed under the Rules is contrary to section 27 of the Act and cannot sustain in the eyes of law. In [Vasu Dev Singh and Others Vs. Union of India \(UOI\) and Others](#), wherein the validity of section 3 of the East Punjab Urban Rent Restriction Act, 1949 was challenged, the Hon"ble Apex Court referred to a large number of decisions on subordinate legislation and held as under:--

118. A statute can be amended, partially repealed or wholly repealed by the legislature only. The philosophy underlying a statute or the legislative policy, with the passage of time, may be altered but therefore only the legislature has the requisite power and not the executive. The delegated legislation must be exercised, it is trite, within the parameters of essential legislative policy. The question must be considered from another angle. Delegation of essential legislative function is impermissible. It is essential for the legislature to declare its legislative policy which can be gathered from the express words used in the statute or by necessary implication, having regard to the attending circumstances. It is impermissible for the legislature to abdicate its essential legislative functions. The legislature cannot delegate its power to repeal the law or modify its essential features....

To similar effect is the law laid in [Emp. State Insurance Corporation Vs. H.M.T. Ltd. and Another](#), as their Lordships of the Hon"ble Apex Court held as under:--

24. We agree with the said view as also for the additional reason that the subordinate legislation cannot override the principal legislative provisions...

Thus, we are of the opinion that Note 4 to Rule 8.127 of the Punjab Civil Services Rules Volume I, Part I is not in consonance with the provisions of the Act and this cannot be given effect to and the petitioner cannot be deprived of the maternity benefit for the birth of a third child.

In the light of the above, the impugned order dated 7.9.2011 (Annexure P-4) passed by the Principal, Government Senior Secondary School, Village Dabra, Hisar-respondent No. 4 cannot sustain and is hereby quashed. Direction is issued to the respondents to treat the period of earned leave availed of by the petitioner as maternity leave to the extent of six months.

The writ petition stands allowed in the above terms.