

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.620 OF 2015

(An application under Articles 226 and 227 of the Constitution of India)

Swornalata Dash

... Petitioner

-versus-

State of Odisha and others

... Opposite Parties

Advocates appeared in the case through hybrid mode:

For Petitioner

: Mr.S. S. Pratap,
Advocate

-versus-

सत्यमेव जयते

For Opposite Parties

: Mr.S. Pattnaik,
Addl. Govt. Advocate

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

21.07.2023.

Sashikanta Mishra,J. The Petitioner was appointed as an Asst. Teacher (CBZ) against an existing vacancy vide order dated 19th December, 1997 in the Practicing Girls'

High School, Fakirpur in the district of Keonjhar. The said school was declared as an Aided Educational Institution w.e.f. 1st June, 1994. The Institution was declared eligible to receive grant-in-aid to the extent of 100% of salary cost in respect of teaching and non-teaching staff as per the provisions of Orissa Education (Payment of Grant-In-Aid to High Schools/Upper Primary Schools) Order, 1994 (for short GIA Order, 2004). Be it noted that the Petitioner was duly approved by the competent authority and she received grant-in-aid in the shape of block grant as per Orissa Education (Payment of Grant-In-Aid to High Schools/Upper Primary Schools) Order, 1994 (for short GIA Order, 1994). On 17th June, 2013 she applied for maternity leave from 17th June, 2013 to 13th December, 2013 for her first issue. She delivered a female child on 20th August, 2013 and thereafter remained on leave till 13th December, 2013. She joined in her duties by submitting joining report and fitness certificate before the Headmaster of the School on 14th December, 2013, which was accepted. She then

applied for sanction of maternity leave for the
aforementioned period but the same was refused by
the District Education Officer (DEO), Keonjhar. On an
application being filed by the Petitioner under the R.T.I
Act, the D.E.O informed that no leave rule is applicable
in respect of employees of the School and hence
sanction of maternity leave could not be considered.
Feeling aggrieved, the Petitioner has approached this
Court seeking the following relief;

*“Under the facts and circumstances of the
case, it is humbly prayed that this Hon’ble
Court may graciously be pleased to admit
this writ application and direct the
Opposite Party No.3 to take all necessary
steps for sanction of maternity leave of the
petitioner from 17.6.2013 to 13.12.2013.”*

2. The District Education Officer, Keonjhar (Opposite
Party No.3) has filed a counter affidavit, inter alia,
taking the stand that the G.I.A Order, 1994 is silent
about the sanction of maternity leave or any kind of
leave except casual leave for 15 days under the
relevant provisions of Odisha Leave Rules, 1966 and
Odisha Service Code in favour of the Petitioner and
employees of Block Grant High Schools. The GIA

Order, 1994 was repealed by Odisha GIA Order, 2013 vide Notification dated 10th June, 2013. Accordingly, the Petitioner's services were approved and she was allowed to receive block grant w.e.f. 1.4.2013. It is further stated that the GIA Order, 2013 is also silent about sanction of maternity leave and the Odisha Education Recruitment and Conditions of Service and Staff of Aided Educational Institutions Rules, 1974 is also silent about such leave. The provisions of Odisha Service Code relating to maternity leave is applicable only to regular Government servants but not the employees of Block Grant High Schools. It was thus, contended that there was no rule, or provision or policy of the Government for sanctioning maternity leave to female employees appointed in Block Grant High Schools.

3. Heard Mr. S.S. Pratap, learned counsel for the Petitioner and Mr. S. Pattnaik, learned Addl. Government Advocate for the State.

4. Mr. Pratap would argue that the maternity leave being in the nature of a fundamental right of a female employee cannot be denied under any circumstances. He alternatively argues that the Maternity Benefit Act, 1961 would be applicable to the School in question. Mr. Pratap has relied upon the decision of ***Municipal Corporation of Delhi v. Female Workers (Muster Roll) and another***; reported in (2000) 3 SCC 224 in this regard.

5. Mr. S. Pattnaik, learned Addl. Government Advocate, on the other hand, would contend that leave is not a matter of right and can be availed only if the Rules so permit. In the instant case, there is no Rule governing the employees of Block Grant High Schools which provides for grant of maternity leave to its female employees.

6. Undisputedly, the Institution in question namely, Practicing Girls' High School, Fakirpur, Keonjhar is an Aided Educational Institution within the meaning of Section 3(b) of the Orissa Education

Act, 1969. The Institution has also been declared eligible under the GIA Order, 1994 followed by the GIA Order, 2013. The Opposite Parity-authorities in answering the averments of the Writ Petition have referred to the provisions of the two Grant-in-orders referred to above. But then the said orders relate to different provisions regarding payment of grant-in-aid and not to matters concerning leave of the employees of the institutions. The Opposite Party No.3 has also referred to Rules, 1974 as being silent regarding sanction of maternity leave to employees of Block Grant Institution. But maternity leave cannot be compared or equated with any other leave as it is the inherent right of every woman employee which cannot simply be denied on technical grounds. It would be preposterous to hold otherwise as it would militate against the very process designed by nature. If a woman employee is denied this basic human right it would be an assault on her dignity as an individual and thereby offend her fundamental right to life guaranteed under Article-21 of the Constitution, which

has been interpreted to mean life with dignity. In this context, the following observations of the Apex Court in the case of ***Municipal Corporation of Delhi v. Female Workers (Muster Roll) and another (supra)*** are highly relevant;

“A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre or post-natal period.”

9. Even though said observations were made keeping the provisions of the Maternity Benefit Act, 1961 in view, they would be equally applicable to women employees to whom the Act does not apply. The Apex Court has also referred to the Directive Principles of State Policy as set out under Article 39 and in other Articles, specially Article 42. Articles 39 and 42 are quoted herein below;

“39. Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing

(a) that the citizens, men and women equally, have the right to an adequate means to livelihood;

(d) that there is equal pay for equal work for both men and women;

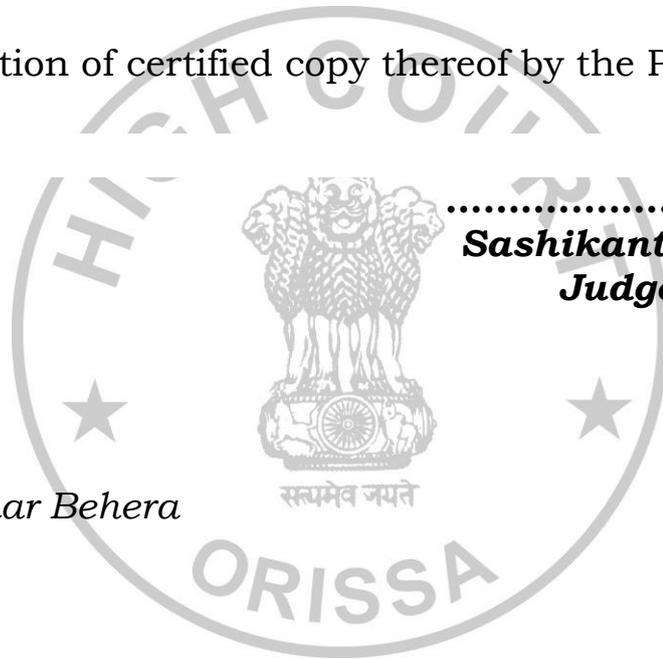
(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

*42. Provision for just and humane conditions of work and maternity relief
The State shall make provision for securing just and humane conditions of work and for maternity relief.”*

10. For the foregoing reasons therefore, this Court holds that the refusal by the authorities to sanction

maternity leave to the Petitioner is contrary to law and therefore, cannot be sustained.

11. In the result, the Writ Petition is allowed. Opposite party No.3 is directed to sanction maternity leave as claimed by the Petitioner within four weeks from the date of communication of this order or on production of certified copy thereof by the Petitioner.



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Sashikanta Mishra,
Judge

Ashok Kumar Behera