



news flash

November 2017



AD HOC AND TEMPORARY EMPLOYEES ENTITLED TO MATERNITY BENEFITS

I. INTRODUCTION

The Central Administrative Tribunal (“CAT”) has on 12 October 2017 declared its view on the issue of whether ad hoc employees are entitled to maternity benefits that are akin to those available to a regular employee[1].

II. BRIEF FACTS

1. Anuradha Arya, the applicant, joined the services of the respondents on 20th August 2010 as a guest teacher in the capacity of trained graduate teacher in Sanskrit. Her engagement was renewed from time to time and she was posted at Government Girls Senior Secondary School, New Delhi pursuant to her engagement letter dated 7 July 2015.
2. The applicant had informed the principal about the advance stage of her pregnancy and expected date of delivery and had sought maternity leave.
3. However, she was informed that the applicant being an ad hoc/contract employee, was not entitled to such benefits and her request for maternity leave did not fall within the terms and conditions of the offer letter, which mentioned that no claim for salary, allowances, facilities and “other benefits” accruing to the regular teachers shall be entertained.
4. Being aggrieved by the denial of maternity leave and consequent refusal to join the services of the respondent, the applicant approached the CAT.

III. CONTENTIONS/ ISSUES

The issue that was required to be addressed by CAT was whether the applicant, an ad hoc employee, was eligible and entitled to get maternity leave under the Maternity Benefit Act, 1961.

IV. OBSERVATIONS MADE BY THE TRIBUNAL

1. The CAT placed reliance upon Section 5 of the Maternity Benefit Act, 1961 which inter alia states that “subject to the provisions of the Act, every women shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.”
2. The CAT cited the ruling of the Hon’ble Apex Court in the case of Municipal Corporation of Delhi vs. Female Workers (Muster Roll) & Anr. (2000 (3) SCC 224) which held as follows: *“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 victimized for forced absence during the pre or post-natal period.”*

3. The Tribunal recorded that a consistent view has been taken by the courts, and rightly so, that contractual employees cannot be equated with regular employees. The benefits accruing to an ad hoc employee are necessarily different than those admissible to a regular employee and while this may be true in all other cases of ad hoc employees, the nature of the “benefit” being claimed by the applicant in the instant case, cannot be routinely clubbed, or, equated to any “other benefit” being claimed by an ad hoc employee. Grant of the benefit of maternity leave to a woman employee, whether ad hoc or regular, has to be dealt with on a different footing.

V.HELD

Upon considering the representations and averments made by the counsels of both parties, the CAT held as follows:

1. The Tribunal held that benefits of maternity leave with full salary cannot be denied to a female employee appointed on contractual basis and that the applicant is entitled to maternity leave as per provision of Section 5 of the maternity benefit Act, 1961.
2. CAT ordered that the applicant may be allowed to resume service as a guest teacher in terms of her original engagement letter and that the respondents give the back wages to the applicant till the disposal of the application with all consequential benefits for the academic year 2015-2016.

VI.CONCLUSION

The CAT has declared that while it is a fact that temporary, ad hoc or contract employees do not enjoy the same benefits as regular employees, request for maternity leave should be judged on a different footing and therefore, such ad hoc, temporary or contract employees are entitled to maternity leave and the consequent benefits akin to regular staff.

[1] Anuradha Arya v. The Principal, Govt. Girl Sr. School & Ors.

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