

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.4476/2019

Dr. Aamna Saleem Khan

Versus

National University of Sciences & Technology, Islamabad & 4 others

Petitioner by: Mr. Aaqib Siddique, Advocate.

Respondents by: Mr. Aasim Shafi, Advocate.

Date of Hearing: 10.09.2020.

JUDGMENT

MOHSIN AKHTAR KAYANI, J:- Through this writ petition, the petitioner has called in question Office Order as well as letter of the National University of Sciences & Technology, Islamabad, dated 15.10.2019 and 08.10.2019 respectively, whereby services of the petitioner have been discontinued.

2. Succinctly, Dr. Aamna Saleem Khan (petitioner) had been performing her services as Associate Professor in the School of Social Sciences and Humanities, National University of Sciences & Technology, Islamabad since 03.12.2015. The petitioner verbally informed HOD Department of Behavioral Sciences (Respondent No.4) that she is expecting in early August of 2019, the doctor advised her to take rest and accordingly, the petitioner applied for maternity leave w.e.f. 05.08.2019 to 05.11.2019. However, on 08.10.2019, the Principal, School of Social Sciences and Humanities (Respondent No.3) advised the petitioner through e-mail to resign before 20.10.2019 so as to provide a graceful exit, else termination process against the petitioner would be initiated, as such, services of the petitioner have been terminated vide impugned office order, dated 15.10.2019. Hence, the instant writ petition.

3. Learned counsel for petitioner contended that as per the rules of respondent University, the petitioner is entitled for maternity leave on full pay

for a period of three (03) months, but petitioner has been deprived of said right without any lawful justification; that petitioner's pregnancy was free from any complications, though the constant stress at the hands of respondent University resulted into delivery through C-Section of the petitioner; that petitioner having been an employee of respondent University had every right of benefits in accordance with law, but petitioner has been subjected to injustice in shape of passing of the impugned office orders, dated 15.10.2019 and 08.10.2019, which are liable to be set-aside and respondent University may be directed to allow the petitioner to perform her duties.

4. Conversely, learned counsel for respondent University opposed the filing of instant writ petition on the grounds that services of petitioner have been discontinued keeping in view her poor performance and lack of interest towards her profession; that petitioner being a contract employee is debarred from approaching this Court in constitutional jurisdiction, as such, petitioner has concealed material facts from this Court, therefore, instant writ petition is not maintainable.

5. Arguments heard, record perused.

6. Perusal of record reveals that petitioner was appointed as Associate Professor in the School of Social Sciences and Humanities, National University of Science and Technology, Islamabad, whose services have been terminated vide order dated 15.10.2019 by the respondent University, however, the petitioner was on leave as she was expecting, due to the said reason Doctor advised her to take rest and accordingly respondent University has granted a maternity leave to the petitioner w.e.f 05.08.2019 to 05.11.2019, but her services were terminated during the said period.

7. While considering this background, the primary question raised before this Court in constitutional jurisdiction is as to whether the services of the petitioner could be terminated as she was on maternity leave. In order to resolve

the controversy, I have gone through the initial status of National University of Science and Technology, which was established under *University of Science and Technology Act, 1997* and as such the employee contract dated 03.12.2015 of the petitioner also refers Clause 2(II) in the following manner:-

"The aforesaid appointment and employment shall be subject to and governed by this Agreement and NUST's Statutes/Regulations/Policies etc prevailing at the time, as applicable to NUST's employees, and by Government rules, regulations and policies etc."

8. Similarly, Clause 13(VIII) deals with the leave in the terms of contract, which is as under:-

"Leave shall be admissible in accordance with NUST Leave Rules 2013. The leave at FM's credit shall be carried forward in case the contract is extended without any interruption. However, all leave at FM's credit shall lapse on the date of final expiry or termination of the contract. No encashment against earned leave shall be admissible."

9. While considering the above position, it is necessary to dilate upon the issue of status of these rules as to whether the National University of Science and Technology Act, 1997 creates an exception regarding the status of rules of the University, whereby this Court is persuaded by the unreported judgment of the apex Court passed in C.P No. 495 of 2010 titled as "The Rector National University of Science & Technology (NUST), Islamabad and others Vs. Driver Muhammad Akhtar, whereby it has been held that the Court was, therefore, interpreting the particular rule making power, while holding and as a matter of fact such requirements were fulfilled and the regulations were statutory. I have no doubt in my mind that the *National University of Sciences and Technology (Enforcement of Academic, Service, and Financial Matters) Statutes, 2005* are statutory in nature and they were framed in accordance with the procedure prescribed in the statute.

10. Learned counsel for the respondent University has taken the stance that petitioner being contract employee is debarred from approaching this Court,

hence, instant petition is not maintainable. However, the instant writ petition has been taken up by this Court while keeping in view the violation of fundamental rights of a woman and it is the primary duty of the constitutional Court to protect the fundamental rights of a citizen, especially a woman, who is going to become mother and she has been penalized for availing maternity leave, which otherwise is a condemnable act on the part of an employer and that too after granting her such leave. In these circumstances, the Court while exercising extraordinary constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 cannot throwaway the prayer of the petitioner on mere technicalities. In this regard, I am fortified with the view rendered by the apex Court in a case reported as 2019 SCMR 84 (Tajwali Shah Vs. Bakhti Zaman) that any right vested in a person to seek his remedy under the law should be liberally construed as it would bolster his recognized fundamental right of access to justice.

11. While considering the statutes of the NUST Leave Rules, the concept of maternity leave has been referred at Para-28 in the following manner:-

- a. A female employee shall be entitled to Maternity Leave on full pay for a period not exceeding three months (90 days), provided that the date of her confinement falls within the period of the leave does not exceed six weeks beyond the date of confinement.*
- b. Such leave may not be granted for more than three (03) times in the entire service of a female employee.*
- c. For confinements beyond the third one, the female employee would have to take leave from her normal leave account of EL.*
- d. Maternity Leave may be granted in continuation of or in combination with any other kind of leave including EOL as may be due and admissible to a female employee.*

12. Hence, there is no cavil to the proposition that the concept of maternity leave is available to the female staff of the NUST University and as such there is no distinction regarding the Temporary, Adhoc, Contractual or Permanent employees or faculty members, hence, all female employees are entitled to maternity leave on full pay for period not exceeding 90 days, which confirms the rights of the petitioner by all means.

13. Similarly, I have also gone through the *West Pakistan Maternity Benefit Ordinance, 1958*, first ever legislation created in Pakistan for the protection of the rights of female workers in the commercial industrial establishments, whereas Section 7 of the said ordinance gives rights to an employee for protection of her job, whereby it was specifically settled that no notice of dismissal can be given to a woman in certain cases. This Court is also guided by the International Conventions referred as *ILO Convention No.183 on Maternity Protection, 2000*, whereby maternity benefits have been given across the board without any distinction or classification, as such the international labour standards are also applicable in Pakistan, whereby no legislation could be formulated, where the woman have been discriminated on the basis of their gender, similarly, Pakistan has also ratified the *Convention On Elimination Of Discrimination Against Woman 1979 (CEDAW)*, whereby in terms of Article 2, the State is under obligation to adopt appropriate legislative and other measures, to establish legal protection of the rights of women and shall refrain from engaging in any act or practice of discrimination against the woman and to ensure that the public authority and institution shall act in conformity with the obligation referred in the convention. In this backdrop the Government of Pakistan has already taken necessary steps in shape of *West Pakistan Maternity Benefit Ordinance, 1958*, but the same does not fulfill the requirements of present times as it has been argued on behalf of the respondents that the ordinance referred is applicable to the workers only.

14. I have also gone through the Article 23 of the Universal Declaration of Human Rights, which is as under:-

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

15. While considering the above national law, it is the obligation of the Government to provide a favourable working atmosphere, which in ordinary sense, includes the security, protection, remuneration, leave, right of dignity, self-respect and other economic and social rights with job hierarchy, therefore, cancellation of already granted maternity leave amounts to denial of favourable condition which is warranted under the said instruments.

16. In view of international obligation and commitment imposed upon the State of Pakistan, which has already been acknowledged in the Constitution of Islamic Republic of Pakistan, 1973 in terms of Article 18 for freedom of trade, business or profession and protection thereon and similarly Article 27 of the Constitution provides safeguard against discrimination in services.

17. The Constitution also imposes a State obligation in terms of Article 38 to secure the wellbeing of the people, irrespective of sex, caste, creed or race. It also ensures the fundamental security to all citizens, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure including social security by compulsory social insurance or other means alongwith basic necessities of life, such as food, clothing, housing, education and medical relief, irrespective of sex, caste, creed or race.

18. The above referred provisions of social and economic wellbeing are the part of international commitments embodied in the Constitution. In terms of all these obligations and constitutional guarantees under *West Pakistan Maternity Benefit Ordinance, 1958*, the impugned action of respondent University dismissing the petitioner from service, who was already on maternity leave, is neither justifiable nor sustainable in the eye of law. The State has also provided another beneficial legislation on *The Mines Maternity Benefit Act, 1941* to regulate the employment in mines to safeguard their maternity benefits and extended them a right to obtain a leave of absence in a pregnancy or after pregnancy in terms of

Section 4, even their financial benefits are also protected and they have been granted leave with pay.

19. Another legislation known as *West Pakistan Employees Social Security Ordinance, 1965* ensures the medical care during sickness and maternity in terms of Section 38 during six calendar months proceedings her claim, contributions in respect of her, were paid or payable for not less than ninety days, whereby a secured woman is entitled for maternity benefits as such right as may be fixed by the Government through notification for six weeks. All these aspects left nothing in favour of NUST University respondent to supersede the labour laws discussed above alongwith constitutional guarantees read with International covenant in any manner, especially, when the employment contract specifically provides the protection in terms of Medical Leave Rules, 2013, even otherwise, the statutes of the *National University of Sciences and Technology (Enforcement of Academic, Service, and Financial Matters) Statutes, 2005* are statutory in nature and there is no distinction to exclude any of the female worker employee or a woman on the basis of status of her job.

20. I have attended the case law reported as 2009 PLC (C.S) 928 (Rupa Sayed Vs. Pakistan International Airlines Corporation), whereby the regularization of service of the petitioner has been deferred by the PIA on account of her maternity leave, the said deferment was declared a discriminatory action by the Sindh High Court, the similar proposition has also been considered in the light of Air India v. Nergesh Meerza reported as (1981) 4 SCC 335, whereby Supreme Court of India held that employment regulations requiring airhostesses to retire on their first pregnancy violated their right to equality under Article 14 of the Constitution. It was also held by the Kerala High Court in the case of Neetu Bala v. Union of India reported as 2016 SCC Online P&H 602 that denial of employment to a woman solely on grounds of pregnancy was arbitrary and illegal and thus violative of Articles 14, 16 and 42 of the Indian Constitution.

21. While considering the above concepts, there is no other view except that the maternity benefits could not be stopped in any manner nor any female employee or a woman worker could be deprived of her right to livelihood and if any female employee has been terminated from her services/job, it amounts to violation of Article 9 of the Constitution of Islamic Republic of Pakistan, 1973, hence the maternity benefits including the maternity leave as a facet of guarantee of equality and non-discrimination could not be denied, especially when Constitution of Pakistan provides a protection in terms of Article 35, imposes an obligation upon the State to protect the marriage, the family, the mother and the child, so that all necessary steps be taken to ensure full participation of a woman in all spheres of national life being its State policy. *The West Pakistan Maternity Benefit Ordinance, 1958* as well as *The Mines Maternity Benefit Act, 1941* aims at achieving a just social order by providing all the facilities to women employees that they are entitled to be dealt with state of motherhood in a dignified and peaceful manner, without fearing penalties for forced absence during the pre-natal or post-natal period. The Court is of the view that principles referred in Article 11 of CEDAW on the right to non-discrimination on grounds of marital status, pregnancy, child birth, or family care obligations, should be read into the employees' contract of service.

22. Similar view has been settled by Delhi High Court in *Seema Gupta v. Guru Nanak Institute Management* 2006 SCC Online Del 1421, whereby it was held that provisions providing for maternity benefits under the employment and service regulations should be construed in the light of Articles 15, 41 and 42 of the Constitution and the obligations under UDHR and CEDAW. It was further held that the case of the employee seeking extension of her maternity leave in line with employment regulations is not to be construed as a traditional case of enforcement of contract of service, but an exercise of her fundamental rights.

23. The order of termination passed by respondent University has been considered a forcible act imposed upon the petitioner to choose between motherhood and employment, which itself violates the fundamental rights enshrined in the Constitution of Pakistan, especially in violation of Article 35 of the Constitution, whereby it is the State obligation to ensure the commitment to provide all circumstances conducive to a woman for exercise of her right to give birth to a child in a dignified manner, free from any threat that she could be thrown out from her job, which adversely affects her wellbeing, being a mother as well as endangering the life of a new born. Any penalization of woman employees, where unable to attend the work due to compelling family responsibilities of child care is to be eliminated. It is very important to understand that pregnancy is not a medical condition, which arose unexpectedly and same requires the preferential and humanly treatment to be given to a female employee, who is going through the said life cycle.

24. The Quranic injunctions referred in *Sureh Baqarah* verse 232, 233 provides a complete mechanism of protection to a lactating mother, whereby, no harm could be given to such mother and even the father of a child has been directed to provide due care and maintenance. The concept of provision of maintenance has also been referred in *Sureh Talaq* verse 65 and such obligations if not fulfilled are considerable to be a sin and violation of almighty *Hukam*.

25. From the above referred discussion, following principles are highlighted to be followed in such type of cases.

- a. *All Departments, Corporations, Institutions, Divisions, Companies, Public Sector Companies are under obligation to protect and provide maternity leave/pay to female workers/employees whether provided in their rules or regulations or otherwise.*
- b. *Every female worker, employee whether temporary or contract, ad-hoc, daily wages, contingent paid, domestic worker or permanent is entitled for maternity leave benefits with pay and job protection.*
- c. *No one is allowed to terminate the female employee/worker due to her pregnancy or deprive her from her paid leave rights, any such order under the law, constitutional guarantee or International*

Covenant is considered to be illegal and such employee, worker is entitled for compensation in addition to their substantive financial rights.

- d. No notice of termination from a job or employment would be given by the employer during maternity leave to a female worker/employee nor notice period will be considered valid during pregnancy.*

26. In view of above reasons, instant writ petition is ALLOWED, Office Order dated 15.10.2019 and letter dated 08.10.2019 are declared illegal and same are hereby SET-ASIDE. The petitioner shall be reinstated in her services with the respondent University w.e.f. the date of termination with all back benefits.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 23.09.2020.

JUDGE

Approved for reporting

RAMZAN