

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 9659 of 2018**

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DHANUSHREE DASHRATHBHAI UDAGE

Versus

STATE OF GUJARAT

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Appearance:

MR YATIN OZA, SENIOR ADVOCATE with MR MN MARFATIA(6930) for the PETITIONER(s) No. 1

MR KM ANTANI, ASSISTANT GOVERNMENT PLEADER for the RESPONDENT(s) No. 1,2,3

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CORAM: **HONOURABLE MR.JUSTICE N.V.ANJARIA**

Date : 24/08/2018

ORAL ORDER

Learned advocate for the petitioner Mr.Marfatia seeks leave to amend prayer clause in paragraph 17(A) by mentioning "condition No.2(b)" in place of "condition No.2(a)". The amendment is granted, to be carried out forthwith.

1.1 Learned Assistant Government Pleader files affidavit on behalf of respondent No.2 which is taken on record.

1.2 Heard learned senior advocate Mr.Y.N. Oza for the petitioner and learned Assistant Government Pleader Mr.K.M. Antani for the respondents on the aspect of interim protection to the petitioner.

2. In this petition filed under Article 226 of the Constitution what is prayed is to direct the respondents, in particular respondent No.1, to modify condition No.2(b) by

Resolution dated 11th October, 2017, further pray to grant maternity leave to the petitioner for 180 days.

3. Resolution dated 11th October, 2017 deals with confirmment of certain benefits to the employees who are in contractual employment for a specified period. Condition No.2(b) of the Resolution contemplates that the female employees who have been serving on contractual basis, would be entitled to the maternity leave for 90 days, after completion of one year of contractual service, subject to the other conditions mentioned therein.

3.1 The petitioner herein came to be appointed as Assistant Lecturer in respondent No.3 Government College. The appointment and the conditions of the appointment of the petitioner is reflected in the appointment order dated 27th July, 2015 which contains a clause that the petitioner would be entitled to continue in service until a regularly selected candidate by G.P.S.C. becomes available to hold the post. Admittedly, such regularly selected candidate is not available. The petitioner continue to hold the post.

3.2 It is not disputed that the petitioner has completed three years of service. The grievance of the petitioner arises in the context of Rule 69 of the Gujarat Civil Services (Leave) Rules, 2002. Chapter VI of the Rules deals with special kinds of leave whereas Rule 69 deals with maternity leave.

3.3 Rule 69 of 2002 Rules reads as under.

“69. Maternity leave: (1) A competent authority may, subject to the provisions of this rule, grant to

a female Government employee in permanent employ, who does not have two or more living children at the time the maternity leave asked for, is actually sanctioned; leave for a period of one hundred and thirty five days from the date of its commencement. Such leave shall not be debited to the leave account.

(2) A female Government employee not in permanent employ who has put in at least one year of continuous service shall also, subject to the provisions of this rule, be eligible for maternity leave referred to in sub-rule (1).

(3) The leave salary admissible during the period of maternity leave shall be as regulated as follows:-

(i) In the case of a female Government employee who is permanent or who has put in two or more years' continuous service, the leave salary admissible shall be equal to the pay drawn immediately before proceeding on leave.

(ii) In the case of a female Government employee who has put in continuous service for a period exceeding one year, but less than two years, the leave salary admissible shall be equal to half the pay drawn immediately before proceeding on leave.

(4)

(5)

(6)

(7)"

3.4 Thus in sub-rule (2) of Rule 69, a female government employee who is not in permanent employment but who has put in at least one year of continuous service, is treated for maternity leave as provided under sub-rule (1). Now, sub-rule (1) contemplates that leave which may be granted would be for the period of 180 days.

4. The contention which is sought to be canvassed is that while one hand Rule 69(2) read with Rule 69(1) entitles a female government employee not in government employment but has put in at least one year of continuous service, for maternity leave of 180 days, Resolution dated 11th October, 2017, in particular in condition No.2(b) provides for 90 days of leave only to such class of female employees covered under Rule 69(2). It was submitted that condition No.2(b) of Resolution dated 11th October, 2017 is an overreach of statutory provision of Rule 69(2) and Rule 69(1) of the Rules and that the statutory provision is sought to be truncated by administrative instructions in form of a Resolution.

5. Learned Assistant Government Pleader however termed the Resolution and the contemplation in the condition No.2(b) as policy decision, to further submit by harping on Rule 5 of the Rules that the appointment of the petitioner was subject to certain conditions mentioned in the appointment order and that these conditions would bind the petitioner and would prevail over the provisions of Rule 69. *Prima facie*, the submission on part of learned Assistant Government Pleader is not tenable in terms of its rationality and interpretational purpose.

6. In the aforesaid view, a strong *prima facie* case is

made out. Therefore by way of ad-interim relief, the petitioner shall be allowed to remain on maternity leave.

7. Let the parties to complete their pleadings if they so opt before the next date. Further orders may be passed on the next date.

Put up on 18th September, 2018.

(N.V.ANJARIA, J.)

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