

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/S) No. 2224 of 2022

Mehajbee QureshiPetitioner

Versus

State of Uttarakhand & othersRespondents

Presence:-

Mr. Siddharth Bankoti, advocate for the petitioner.

Mr. R.C. Joshi, Brief Holder for the State/respondent nos. 1 to 3.

Hon'ble Pankaj Purohit, J. (Oral)

Heard learned counsel for the parties.

2. Petitioner has challenged the order dated 28.10.2022 passed by respondent no.3 (Annexure No.4 to the writ petition), whereby, maternity leave was denied to the petitioner, alongwith order dated 09.11.2022 passed by respondent no.3 (Annexure No.6 to the writ petition), whereby, her service was terminated by the respondent-Director, Department of Horticulture and Food Processing, Uttarakhand.

3. The case of the petitioner is that she was initially engaged as Manager Enterprise Development (Non-Gazetted Post) on 01.10.2021, under the Scheme of Prime Minister Formalisation of Micro Food Processing Enterprises Scheme (PMFME) in the State Programme Management Unit (SPMU). The petitioner moved an application (Annexure No.3 to the writ petition) on 10.10.2022 requesting maternity leave w.e.f. 10.10.2022 for upcoming 26 weeks.

4. The said application was rejected by the impugned order dated 28.10.2022 by the Nodal Officer/ Director-respondent no.2, stating therein that the benefit of maternity leave is available only in those Offices, where there are minimum 10 employees working, while under the Scheme SPMU-PMFME, only 05 employee are working. Subsequently, vide order dated 09.11.2022, the services of the petitioner was terminated by respondent no.2, wherein, the reason for termination was given that the Scheme is now transferred from Horticulture and Food Processing Department to Industries Department of State of Uttarakhand.

5. Petitioner, feeling aggrieved by her termination order, together with the denial of maternity leave to her, is before this Court.

6. It has been stated in the counter affidavit filed by the respondent no.2-State that the termination of service of the petitioner has nothing to do with the denial of the maternity leave to the petitioner; rather, the termination was made for the reason that the aforesaid Scheme was cancelled with immediate effect by respondent no.2 due to the slow pace of the Scheme and the decision is taken to further constitute a new State Programme Management Unit (SPMU) in the Prime Minister Formalisation of Micro Food Processing Enterprises Scheme (PMFME). By the same order, the services of the petitioner alongwith other employees of the SPMU, was terminated. A reference may be had from Annexure No.CA-4 to the counter affidavit.

7. However, counter affidavit filed by the respondent-State so far as with regard to the maternity leave of the petitioner is concerned, is silent except saying that the petitioner has signed an agreement with the respondent under the Scheme and she is subjected to the terms and conditions of the agreement. But, what is that terms and conditions of the agreement, which debars the petitioner to get the benefit of maternity leave, counter affidavit is silent about this fact.

8. Learned counsel for the petitioner, so far as the benefit of the maternity leave to the petitioner is concerned, has submitted that the Prime Minister Formalisation of Micro Food Processing Enterprises Scheme (PMFME) is a robust institutional architecture, which is working in the different levels from National to District level for implementation of progress of the Scheme, where various employees are working. The stand of the respondent saying that in PMFME (SPMU) only 05 employees are working, the petitioner would not entitle to get the benefit of maternity leave, is highly illegal, arbitrary and unsustainable.

9. In order to substantiate his argument, it is submitted by learned counsel for the petitioner that though, in PMFME and SPMU constituted, definitely, there are less than 10 employees working, but, if we see it in its entirety, Scheme is working throughout the Country under different levels, the benefit of the maternity leave would not be denied to the petitioner.

10. In order to appreciate the argument advanced by learned counsel for the petitioner, this Court has gone through the provisions under Section 2 Application of Act

of the Maternity Benefit Act, 1961, which is reproduced as under:

- “2. *Application of Act-* (1) *It applies, in the first instance,—*
- (a) *to every establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;*
 - (b) *to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months:]*
- Provided that the State Government may, with the approval of the Central Government, after giving not less than two month’s notice of its intention of so doing, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply also to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.*
- (2) *[Save as otherwise provided in [sections 5A and 5B] nothing contained in this Act] shall apply to any factory or other establishment to which the provisions of the Employees’ State Insurance Act, 1948 (34 of 1948), apply for the time being.”*

11. In order to appreciate the provisions contained in Section 2, the preamble of the Act is to be taken under consideration and from the Preamble of the Act, it is clear that *the Act is passed to regulate the employment of women in certain establishments for certain period before and after child-birth and to provide for maternity benefit and certain other benefits.*

12. The provisions of the Act is to be construed in the larger perspective and by simply saying that in a project-SPMU, only 05 persons are working, the benefit of the Act would not be extended, petitioner can be denied maternity leave. This Court holds that in the Scheme, which is working throughout the country on all levels, right from the National level to District level of the State, the said ground taken by the respondent-State is nothing but an attempt to deny the benefit of the Maternity

Benefit Act to the petitioner and similarly situated persons.

13. Hence, the petitioner is entitled to get benefit of the maternity leave of 26 weeks, which she was entitled to get. Petitioner has proceeded on maternity leave from 10.10.2022 and abruptly, her services was terminated vide impugned order dated 09.11.2022 saying that the Scheme has now come to an end.

14. So far as the termination of the petitioner is concerned, on bare reading of the order dated 09.11.2022, it is not reflected that the Scheme SPMU-PMFME has not come to an end, but the SPMU which was constituted was cancelled and in order to achieve the aims of the aforesaid Scheme-PMFME, the respondents have decided to constitute a new SPMU under the PMFME Scheme. Thus, abruptly terminating the services of the petitioner is illegal and the same cannot be sustained.

15. In this view of the matter, the termination order dated 09.11.2022 qua the petitioner, is hereby quashed. The respondents are directed to immediately reinstate the petitioner under the newly constituted Scheme- State Programme Management Unit (SPMU) and further to pay benefit of maternity leave to the petitioner as admissible to her under the provisions of the Maternity Benefit Act, 1961, neglecting the fact that only 05 employees are working with the Scheme-SPMU. The order dated 28.10.2022 is also quashed.

16. With these observations, writ petition is finally allowed.

17. Urgency application (IA/3/2024) stands disposed of accordingly.

(Pankaj Purohit, J.)
08.01.2024

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