

Central Administrative Tribunal  
Principal Bench, New Delhi

**OA No. 1087/2017**

MA No. 2524/2017

New Delhi this the 13<sup>th</sup> day of December, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman**  
**Hon'ble Mr. K.N. Shrivastava, Member (A)**

Dr. Neha Nischal,  
Aged about 29 years,  
W/o Dr. Deepak K. Bhangale,  
R/o M-16, Ground Floor,  
Lajpat Nagar-3,  
New Delhi-110024  
Post: Senior Resident Radiology

- Applicant

(By Advocate: Mr. Anuj Aggarwal)

Versus

1. Government of NCT of Delhi,  
Through the Chief Secretary,  
Secretariat, IP Estate,  
New Delhi-110002
2. Department of Health and Family Welfare,  
Through the Secretary,  
9<sup>th</sup> Floor, B-Wing, Sachivalaya,  
IP Estate, New Delhi-110002
3. Govind Ballabh Pant Institute of  
Post Graduate Medical Education & Research,  
(GIPMER),  
Through the Medical Superintendent  
1, JL Nehru Marg,  
New Delhi-110002

- Respondents

(By Advocate: Mr. Vijay Pandita)

**ORDER** (Oral)

**Justice Permod Kohli:**

Despite last opportunity, reply has not been filed. Right to file the reply already stands closed.

2. The applicant was appointed as Senior Resident Radiology on *ad hoc* basis in Govind Ballabh Pant Institute of Post Graduate

Medical Education and Research, Govt. of NCT of Delhi for a period of 89 days vide Memorandum (Annexure A-1). She was given extension from time to time and thereafter the applicant came to be regularly appointed on the said post in December, 2016 vide Memorandum dated 22.12.2016. *Vide* application dated 21.04.2016, the applicant applied for maternity leave for 180 days commencing from 16.05.2011 to 11.11.2016. The respondents did not pass any order granting maternity leave. The respondents, however, withheld the salary of the applicant for the period 09.12.2016 to 25.12.2016.

3. The claim of the applicant, as projected in the present OA, is that she is entitled to the maternity leave for 180 days in accordance with the rules and also the arrears of salary illegally withheld by the respondents for the period 09.12.2016 to 25.12.2016 subsequent to her joining after availing maternity leave. The applicant has accordingly filed this Application seeking a direction for payment of the salary for the period of maternity leave of 180 days commencing from 16.05.2016 to 11.11.2016 and also arrears of the salary for the period 09.12.2016 to 25.12.2016 with interest.

4. The controversy is no more *res integra* having been settled by this Tribunal as also by the Hon'ble Delhi High Court.

5. This Tribunal, *vide* its order dated 05.05.2017 in OA No. 160/2017 in the matter of **Mona Khatri v. Govt. of NCT of Delhi**, holding that the contractual employee is also entitled to the benefit of maternity leave under Rule 43 of CCS (Leave) Rules, 1972, has passed the following directions:-

“17. In view of the clear findings of the Tribunal, Hon'ble High Court and the Hon'ble Supreme Court, the OA succeeds. We

allow the OA with a direction to the respondents to grant 180 days maternity leave to the applicant within a month from the date of receipt of a certified copy of this order. No costs.”

6. The Hon’ble Delhi High Court in WP(C) No. 3089/2014, titled **Government of NCT Delhi v. Shweta Tripathi**, vide its judgment dated 09.12.2014, while considering the applicability of the Rule 43 of CCS (Leave) Rules, 1972 to the case of contractual employees, ruled as under:-

“6. The CAT’s reasoning is premised upon its previous ruling in Dr. Shilpa (supra) which has, in turn, relied upon several other judgments, including that of the Supreme Court in the Female Workers (Muster Roll) (supra) as well as Neetu Chaudhary (smt.) v. State of Rajasthan and Ors. MANU/RH/0841/2005: 2008(2) RLW 1404 (Raj.). The reasoning adopted by the CAT, for proceeding in the way it did, is that the higher benefit which is given to employees who are not contractual but are borne in the establishment of the GNCTD itself, is a standard which should not have been deviated. This Court is of the opinion that keeping in mind the larger public interest sub-served in the grant of maternity benefit, the GNCTD, as a model employer, which is bound by Articles 14 and 16(1), could not have discriminated between two female employees, for the purpose of maternity benefit, on the basis that one of them is a contractual employee and thus entitled to lesser extent of pay, whereas the other, being a permanent employee, could be favoured with a better term. This cannot be treated as a reasonable classification, considering the object of the rule for grant of maternity benefit.”

7. Mr. Vijay Pandita, learned counsel for the respondents, have also brought to our notice a copy of communication dated 25.09.2017 addressed to the all HODs of Hospitals/Institutions, Govt. of NCT of Delhi reiterating the compliance of the provisions of the statute regarding the maternity benefit which was amended vide the Maternity Benefit (Amendment) Act, 2017 and another circular was issued by the Joint Secretary, Ministry of Labour and Employment dated 28.08.2017 for the same purpose.

8. It appears that the provisions of Rule 43 of CCS (Leave) Rules, 1972 have been appropriately amended so as to grant the benefit of the Maternity Leave (Amendment) Act, 2017 to all the employees, including the contractual employees.

9. In this view of the matter, this OA is allowed. The respondents are directed to grant the maternity benefit for 180 days to the applicant in accordance with the judgments referred to hereinabove and keeping in view the spirit of the Maternity Leave (Amendment) Act, 2017. The applicant is also entitled to the arrears of the salary for the period 09.12.2016 to 25.12.2016. Let the entire payable benefit be calculated and paid to the applicant within a period of 45 days. All the pending ancillary applications also stand disposed of.

**(K.N. Shrivastava)**  
Member (A)

**(Justice Permod Kohli)**  
Chairman

/lg/