

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR

S.B. Civil Writ Petition No. 13482/2008
(Dr. Manika Gupta Versus State of Rajasthan & Ors.)

Date of Order : 31st August, 2012

HON'BLE MR. JUSTICE M.N. BHANDARI

None present on behalf of the parties.

BY THE COURT:

By this writ petition, a claim is made for maternity leave.

The petitioner remained on maternity leave but benefit of period of leave was not allowed as petitioner was appointed on contract/temporary basis. The issue regarding entitlement of maternity leave to temporary employee has already been settled by this Court in the case of ***Neetu Choudhary (Smt.) Vs. State of Rajasthan & Ors.*** reported in ***2008 (2) RLW 1404 (Raj.)***. The judgment thereupon was up-held by the Division Bench. In the aforesaid cases, Rule 103 of Rajasthan Service Rule, 1951 (for short "RSR") was taken into consideration apart from the order dated 25.02.1955 and subsequent order dated

30.10.2001. Those orders were not made applicable to deny benefit of maternity leave to the employees appointed on temporary basis. The direction was accordingly given to allow benefit of maternity leave. The case in hand is either of contractual or of temporary employee.

So far as employees appointed on contractual basis is concerned, the respondents issued a Circular on 06th November, 2007 to allow benefit of maternity leave. Accordingly, the persons appointed on contractual basis are covered by the said Circular. The validity of the said Circular has been challenged but I do not find any illegality therein. There exists difference between contractual employees and an employee appointed on urgent temporary basis. The urgent temporary appointment is under rules whereas there is no provision for appointment on contractual basis. This Court while deciding the case in the case of Neetu Choudhary (Smt.) (*supra*), considered the case of urgent temporary appointment finding it to be under rules, thus made Rule 103 of RSR to be applicable. The maternity leave therein was denied to temporary appointees mainly on the ground of getting consolidated salary. The argument therein was not

accepted by this Court, however, said judgment does not cover contractual employees. In any case, while not interfering in the Circular dated 06th November, 2007, the respondents are expected to grant benefit as provided under the said rule to all concern without limiting it to those, who obtained maternity leave subsequent to the aforesaid Circular. Once, benefit of maternity leave is allowed then it should apply to all, specifically to those, who had taken up this issue in the present writ petition.

In view of the aforesaid, I am of the opinion that so far as contractual employees are concerned, they would be entitled for maternity leave pursuant to Circular dated 06th November, 2007 and those, who were appointed on temporary/urgent temporary basis would be entitled to the maternity leave under the Rule 103 of RSR, as the issue aforesaid has already been settled by this Court in the case of Neetu Choudhary (supra) and has been up-held by the Division Bench.

The respondents are accordingly directed to allow maternity leave and benefit as a consequence thereof to the

petitioner within a period of two months from the date of receipt of copy of this order. The bifurcation as to whether petitioner falls in the category of contractual employee or appointed on urgent temporary/temporary basis would be decided after taking note of appointment order.

With the aforesaid direction/s, the writ petition is allowed.

(M.N. BHANDARI), J.

*S/No. 144
Preety, Jr.P.A.*

All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.

**Preety Asopa
Jr.P.A.**