Before D. V. Sehgal, J.

SAVITA AHUJA,—*Petitioner.*

versus

STATE OF HARYANA and others,—*Respondents.*

Civil Writ Petition No. 2674 *of* 1987

January 14, 1988.

Constitution of India, 1950—*Arts.* 14, 15 *and* 16—*Punjab Civil Service Rules, Vol. I, Part I*—R. 8.137-*A*—*Employee found medically fit for appointment despite pregnancy of* 10 *to* 12 *weeks*—*Maternity leave sought by* ad hoc *employee*—*Services terminated on account of being pregnant at the time of appointment*—*Instructions that maternity leave not admissible to* ad hoc *employees*—*Instructions*—*Whether discriminatory on ground of sex and* ultra vires *Arts* 14, 15 *and* 16—*Order terminating services*—*Whether valid.*

Held, that had the petitioner been appointed even temporarily but on regular basis, she would have been entitled to the privilege of grant of maternity leave as available to all other government servants of the State of Haryana. The mere fact that her appointment was on *ad hoc* basis should not disentitle her to this privilege because such a disentitlement results in one and the only consequence that the services of the *ad hoc* female employee who is pregnant and has reached the stage of confinement are to be terminated. This would be highly unjust and virtually a discrimination against female *ad hoc* employees on the ground of sex which is violative of Arts. 14, 15 and 16 of the Constitution of India, 1950.

(Para 5)

Held, that I have, therefore, no doubt in my mind that the instructions dated 10th August, 1983, issued by the Government of Haryana, are discriminatory on the ground of sex and, therefore, *ultra vires* of the Constitution and cannot be sustained.

(Para 5)

Petition under Articles 226/227 *of the Constitution of India praying that a writ in the nature of* certiorari *thereby quashing the impugned order dated 6th May,* 1987 (*Annexure P.* 9) *and a writ in the nature of* mandamus *thereby directing the respondents, in particular Respondent No.* 3 *not to act upon the impugned order and instead allow the petitioner to continue working against the post of junior Librarian as theretofore and any other appropriate writ, order or direction may very kindly be issued and costs of this writ petition may also be awarded to the petitioner.*

It is further prayed that pending final disposal of the writ petition, operation of the impugned order dated 6th May, 1987 (Annexure P/9) may very kindly be ordered to be stayed.

It is still further prayed that issuing and service of notices of motion/stay on the respondents and filing of originals/certified copies of the documents marked as Annexures P/1 to P/10 may very kindly be ordered to be dispensed with.

R. P. Bali, Advocate, *for the Petitioners.*

Sumit Kumar, Advocate for A.G. (Haryana), *for the Respondents.*

JUDGMENT

D. V. Sehgal, J.

(1) The petitioner possessed educational qualifications of M.A., B. Lib. & B.Ed. She was appointed as a Junior Librarian on *ad hoc* basis in Sub-Divisional Library under the control of respondent No. 3 through the agency of local employment exchange on 24th December, 1986. The post against which she was so appointed is a temporary one and according to the petitioner sanction for its continuance has been granted by the government till 28th February, 1988. In the letter of appointment, Annexure P1 it was made clear that the appointment of the petitioner shall be on purely temporary basis for a period of six months or till any regular candidate joins whichever event occurs earlier. The petitioner got herself medically examined from the Chief Medical Officer, Ambala who did not discover that she has any disease (communicable or otherwise) constitutional weakness or bodily infirmity except pregnancy of 10 to 12 weeks duration. This was, however, considered not to be a disqualification for appointment to the post. Respondent No. 3 addressed a letter dated 21st April, 1987, Annexure P2 to Director, Higher Education, Haryana, respondent No. 2 seeking advice as to if the services of the petitioner should be continued or terminated since she is in the family way. Later, respondent No. 3 relying on a letter dated 6th May, 1987 issued by respondent No. 2, terminated the services of the petitioner,—*vide* order dated 6th May, 1987 Annexure P9. The petitioner has averred in the present writ petition that her services have been terminated simply on account of the fact that she was in the family way. She has relied on rule 8.137-A of the Punjab Civil Service Rules, Volume I, Part I, as applicable to the employees of the State of Haryana and contends that in case of leave, she was entitled to grant of maternity leave on full pay for

the period of her confinement and that termination of her services on account of her pregnancy was illegal. She has also staked the claim that she is entitled to regularisation of her services and sought a direction to this effect to respondents No. 1 to 3.

(2) The petition has been opposed by the respondents. A written statement on their behalf has been filed by respondent No. 3 who has *inter alia* contended that since the petitioner was employed on purely temporary and *ad hoc* basis, she could not be granted maternity leave under rule 8. 137-A *ibid.* It has been further contended that the order terminating the services of the petitioner was passed strictly in accordance with the terms and conditions of her appointment. She being purely a temporary and *ad hoc* employee, her services could be terminated and as such the impugned order, Annexure P9 is valid. It is further submitted that according to the instructions issued by the Government of Haryana,—*vide* letter dated 10th August, 1983, Annexure R1, maternity leave is not admissible to female government employees appointed on *ad hoc* basis. Therefore, the claim made to this effect by the petitioner is not sustainable.

(3) I have heard the learned counsel for the parties. As regards the claim of the petitioner of her entitlement to regularisation of her services and direction sought by her to this effect, I find that no such relief can be granted in the present petition. The learned counsel for respondents has rightly relied on *Gian Chand and others* v. *The Director, Hydel Designs, Punjab, Chandigarh and others* (1), and *Om Parkash Sharma* v. *State of Haryana and others* (2), to submit that an *ad hoc* employee cannot claim regularisation as a matter of right. I, therefore, find no force in this part of claim of the petitioner.

Rule 8.137-A *ibid* provides as under:—

> "The competent authority under Rule 8.23 may grant to a female Government servant maternity leave on full pay for a period not ordinarily exceeding three months. The grant of leave should be so regulated that (1) the date of confinement falls within the period of this leave, and (2) the leave does not extend more than six weeks from the date of confinement. This leave may be extended to six

(1) 1976 (1) S.L.R. 570.
(2) 1981 (1) S.L.R. 314.

months on the certificate of the Civil Surgeon, or of a member of the Women's Medical Service, India. Maternity leave is not debited against the leave account."

(4) The petitioner has relied on instructions dated 31st August, 1983, Annexure P.10 issued by the State of Punjab giving clarification to the effect that the aforesaid provision of the rule is uniformly applicable to permanent and temporary Government employees. Accordingly, maternity leave may also be granted to such female government employees who have been recruited on *ad hoc* basis for a limited period. No doubt these instructions further lay down that the question of grant of maternity leave to a female government employee during the first six months of the employment would not arise because women candidates for recruitment to State service who at the time of medical examination on first entry into government service are found to be pregnant of 12 weeks standing or over are to be declared temporarily unfit until the confinement is over. An advice was, therefore, rendered that such temporarily unfit persons should not be recruited to service even on *ad hoc* basis till they are fit for duty after the confinement.

(5) The learned counsel for the respondents has rightly pointed out that the instructions at Annexure P10 cannot be made applicable to the petitioner as these have been issued by the Government of Punjab while the petitioner is an employee of the State of Haryana. He has placed reliance on the instructions of the State of Haryana, Annexure R1 wherein it has been clarified that maternity leave is not admissible to female government employees appointed on *ad hoc* basis. He further contends that the petitioner was not medically fit for first entry into government service even on *ad hoc* basis because of her pregnancy. I have considered the above submissions of the learned counsel. I am of the view that the petitioner has unnecessarily been harshly dealt with. No doubt at the time of her medical examination she had 10 to 12 weeks pregnancy but the Chief Medical Officer did not consider it to be a disability for her first entry into government service. Had the petitioner been appointed even temporarily but on regular basis, she would have been entitled to the privilege of grant of maternity leave as available to all other government servants of the State of Haryana. The mere fact that her appointment was on *ad hoc* basis should not disentitle her to this privilege because such a disentitlement results in one and the only consequence that the services of the *ad hoc* female employee who is pregnant and has reached the stage of confinement are to be

terminated. This would be highly unjust and virtually a discrimination against female *ad hoc* employees on the ground of sex which is violative of articles 14, 15 and 16 of the Constitution. I find support for this view from the ratio of judgment of the Supreme Court in *Rattan Lal and others* v. *State of Haryana and others* (3). I have, therefore, no doubt in my mind that the instructions dated 10th August, 1983, Annexure R1 issued by the Government of Haryana, are discriminatory on the ground of sex and, therefore, *ultra vires* of the Constitution and cannot be sustained.

(6) In all fairness to the learned counsel for the respondents, another contention raised by him may be noticed. He has submitted that the petitioner never applied for maternity leave nor was it ever declined to her. She cannot, therefore, make a grievance on that account. This, in my view, would be begging the question. Before the stage of confinement of the petitioner on account of pregnancy was to reach and she felt the necessity of applying for grant of maternity leave under rule 8.137-A *ibid*, her services were terminated,—*vide* the impugned order. This contention though forcefully urged is, therefore, rejected.

(7) As a result of the above discussion, I partly allow this writ petition, quash the impugned order, Annexure P.9 terminating the services of the petitioner. The petitioner shall be deemed to be in service of the respondent though on *ad hoc* basis from 6th May, 1987 onwards. She may apply for grant of maternity leave for the period of her confinement under rule 8.137-A *ibid* and the respondents are directed to sanction the same for a period not exceeding three months. Since the leave shall be sanctioned on full pay, the petitioner is entitled to the salary and allowances from 6th May, 1987 onwards. She should be allowed to rejoin her duty within one week from today. The arrears of her salary should be paid within two months. The parties are left to bear their own costs.

R.N.R.

(3) 1985(3) S.L.R. 548.