

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

R.A Nos.291 of 2004

Date

Order with signature of Judge

For hearing of Main case

02.05.2016

Mr. Javed Akbar, advocate for applicant.

None present for the Respondent.

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This revision is directed against the appellate decree in civil appeal No.216/2003 whereby IInd Additional District Judge, East, Karachi on an appeal filed by the applicant against a decree in suit No.864/1998 passed by IInd Senior Civil Judge, East, Karachi for payment of Rs.13500/- plus damages amounting to Rs.1500/- with 4% mark up from April 1998 till realization was modified and the applicant was held liable to deposit **Rs.27567/-** toward salary for the notice period which the applicant was required to serve on the respondent.

2. The brief facts of the case are that the applicant joined the respondent as montessori teacher on 2.4.1997. She was already pregnant therefore on 1.8.1997 she applied for maternity leave for 40 days with pay. The respondent declined the leave on the ground that “we do not have such kind leave facility”, however only 20 days leave was granted. She got complication in pregnancy and gave birth to a baby girl with serious problem. The baby could not survive and died. In this background she was forced to resign from service. After usual correspondence the respondent filed civil suit for recovery of **Rs.48000/-** by relying on condition No.6 of the appointment letter dated

02.4.1997. The Applicant contested the suit and in her written statement she disclosed all the circumstances, in which she could not attend school for six months and a baby was born on 19.8.1997 had died in April 1998 because baby was suffering from Adenoid syndrome. She also filed all medical reports including death certificate of the child.

3. I have heard learned counsel for the applicant. Mr. Gul Malik, advocate for the respondent is not present.

4. The only point involved in this case was that whether the applicant was entitled for the maternity leave as per West Pakistan Maternity Benefit Ordinance, 1958. The appointment letter on which the respondent rely for six months' salary in lieu of notice does not speak about any other provision which deals that the issue of leave of an employee. Even otherwise the appointment letter alone cannot be determining factor for holding that how much should be the penalty payable in case of termination of service of an employee or in case of resignation by the employee. Both the courts below have failed to appreciate that the institution in which married women are working are required to follow **Section 4** of the West Pakistan Maternity Benefit Ordinance, 1958 whereby women are entitled to the grant of 12 weeks leave. However, leave can be extended keeping in view the medical condition, or in case the applicant was physically handicapped. She employee cannot be penalize for more than a leave without pay. The respondents were unreasonable in not accepting her leave application and

keeping in view the physical condition, at least leave without pay on medical grounds should have been granted. This is not the case of respondent that the applicant was not medical unable to perform her duties. Nor the respondent has pleaded that the applicant has joined some other institution on better salary. The courts are supposed to decide cases with equity and on the basis of evidence. The respondent has not disputed the physical and mental condition of applicant's daughter, pregnancy and post birth complications. Therefore, both the courts below failed to appreciate the status of the applicant on maternity ground and she was not able to attend the school and opted for resignation under pressure from respondent.

In view of the above facts, the findings of the courts below being devoid of proper appreciation of facts and ground realities about the circumstances of the applicant and the respondent are set aside. This revision application is allowed with no order as to cost.

JUDGE

SM