

FRADEJAS, JESSICA G.

Re: Maternity Leave

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RESOLUTION NO. 991052

Jessica Fradejas appeals the opinion rendered by Assistant Commissioner Adelina B. Sarmiento denying her request to be entitled to full maternity leave benefits for her pregnancy in 1998 on the occasion of her contractual employment at the House of Representatives (HOR).

She anchored her instant appeal on the fact that her retirement from MWSS did not result in the severance of her membership in the GSIS; that she has not received her retirement benefits from the GSIS considering that what she received only as a retiree was the special package granted by MWSS without the GSIS counterpart; that female married employees must be entitled to maternity leave benefits regardless of employment status in conformity with the Paternity Leave Act of 1996 and the Social Justice and Human Rights provision of the Philippine Constitution; and that the service requirement needed for purposes of maternity leave benefits has already been met inasmuch as she earlier rendered 13 years of service as a permanent employee of the Philippine Cotton Corporation (PCC) and later on, of the MWSS. Records show that Fradejas took an optional retirement effective July 31, 1996 from the Metropolitan Waterworks Sewerage System (MWSS) pursuant to the Water Crisis Act. It is also of record that her service from MWSS to HOR was uninterrupted; hence, no gap in her service is reflected in her service record.

Scrutiny of the above arguments of Fradejas shows that most thereof were already sufficiently addressed by Asst. Commissioner Sarmiento's opinion, pertinent portion of which states as follows:

"Please be informed that a permanent married female employee's right to maternity leave ceases upon her separation from the service, if her right thereto has not yet accrued (i.e., being pregnant days before actual separation from the separation). In your case, you severed your connection with the government when you voluntarily retired from MWSS. The implication of this is that when you rejoined government, you had to be considered as a newly-hired employee. This means that your leave credits will start from zero inasmuch as the number of years service you rendered had been obliterated by your resignation and the fact that you, we presume, already received your terminal leave benefits." (underscoring supplied)

"As earlier mentioned, you returned to government service under a contractual status of appointment. In this regard, we call your attention to Section 12 of Rule XVI, Omnibus Rules Implementing Book V of EO 292, as follows."

"Married women in the government service who have rendered two (2) years or more of continuous service shall, in addition to the vacation and sick leave granted to them, be entitled to Maternity Leave of sixty (60) days with full pay". (underscoring supplied)

"From this provision, the pertinent elements that must be existing before one becomes entitled to full maternity leave benefits are the following:"

** the employee is entitled under the law to vacation and sick leave benefits*

** the employee rendered two years or more of continuous service*

"It is clear from the above provision that only those earning vacation and sick leaves are entitled to maternity leave. Hence, the question now is whether or not a contractual employee is entitled to VL/SL"

"In CSC Resolution No. 77-600, the Commission answered this question in the negative, saying that contractual employees are not entitled to leave privileges. A copy of said resolution is attached for your reference."

"Thus, should you thereafter be appointed in a permanent capacity, we hold the view that still you have to wait for two (2) years from the date of your appointment to be entitled to full maternity benefits notwithstanding your purported continuous service (no gap from MWSS to the House) and the fact of your many years of government service prior to your retirement. Both factors are non-issues in this particular case."

Fradejas contends that her continued GSIS membership and non-receipt of retirement benefits when she optionally retired from MWSS can lead the way to her entitlement to maternity leave benefits. On the other hand, it must be emphasized that the abovequoted last sentence, first paragraph of Assistant Commissioner Sarmientos's opinion speaks of terminal leave and nowhere in the same opinion is GSIS membership ever mentioned as a bar to maternity leave benefit entitlement. It must be emphasized that retirement benefits and terminal leave benefits are of two different nature and character of employee benefits. The latter is relevant to the issue but the former is not.

Terminal leave is applied for by an employee who intends to sever or has actually severed his official connection or relationship with her employer. In so doing, all the employees's accrued leave credits without limitation and regardless of the period when such leave was earned must be commuted and the corresponding money value thereof be paid to the separated employee in the form of terminal leave benefits. Once the official connection with the agency is terminated, all the prerogatives arising from such employment must likewise necessarily cease and one of them is entitlement to maternity leave benefits. Indeed, voluntary retirement as a valid mode of severance of official connections is tantamount to a renunciation of employees's right to hold on to the office as well as the office's attendant responsibilities, privileges and benefits.

The fact that Fradejas was hired at the House of Representatives the day following her optional retirement from MWSS is of no moment. Section 12, Rule XVI of the Omnibus Civil Service Rules

provides that only married women employees who have rendered an aggregate of two (2) or more years of service shall be entitled to full maternity leave benefits. As it is, Fradejas, in the eyes of the Civil Service Law and Rules is a new employee who has yet to comply with the two years service requirement. It must be made clear, however, that a permanent employee who has rendered less than two (2) years of service is also entitled not to full maternity leave benefits but to an amount corresponding to her length of service. But one delivers her child at the time her employment is on contractual basis, no matter for how long, is definitely not entitled to maternity leave benefits. Further, the Paternity Leave Act of 1996, under which married male employees regardless of appointment status become entitled to 7-day leave, does not have a parallel law, rule, or policy for married female contractual employees.

WHEREFORE, the appeal of Jessica G. Fradejas is denied. Assistant Commissioner Adelina B. Sarmiento's opinion stating that Fradejas is not entitled to maternity leave benefits is hereby affirmed.

Quezon City; MAY 21 1999

CORAZON ALMA G. DE LEON
Chairman

THELMA P. GAMINDE
Commissioner

JOSE F. ERESTAIN, JR.
Commissioner

Attested by:

ARIEL G. RONQUILLO
Director III

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