

BERROYA, Jessie Rina Leonardo
Re: Maternity Leave, Contractual/Casual Employee

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RESOLUTION NO. 001298

Jessie Rina Leonardo Berroya, Teacher I, Paranaque National High School (PNHS), La Huerta, Paranaque City, requests a ruling relative to her entitlement to Maternity Leave Benefits as Casual/Contractual Teacher who gave birth during the long vacation albeit the non issuance of appointment or contract of employment during that period.

In her letter, Berroya alleges, among others, the following:

"x x x I have been teaching at the said school for five years now and my status is still casual. As a casual employee, my contract is renewable. Teachers falling under this category are given contracts every first month of the year to be accomplished and to be filed at the personnel department of our local government unit. The mode of appointment goes like this: June- November, January - March. So from April - May, casual teachers are not connected with the 'agency' (PNHS).

"My question is, if casual teacher like me gives birth during vacation - i.e. from April - May are we not entitled to a maternity leave with pay? Can your good office furnish me with the policy governing this? I just would like to be enlightened about the matter because I'm quite confused. Allow me to explain to you my case. I gave birth May 25 of this year. I was instructed by a certain Ms. Cecile Cruz, the person in charge of leave and absences froms of teacher stationed at Paranaque National High School (Main), to file my maternity leave. Upon compliance with the rules governing the filing of the leave, she told me to just relax and she'll do the rest. Uncontended, I still asked her on several occasions, what else there is for me to know regarding the status of my Maternity Leave. She always gives me the same reply that my Maternity Leave will be approved and that I would receive the salary due me. So in short, I received my June-July salary.

"Come September 2, 1999, I was asked to appear before the Personnel Officers of our municipality. I was really shocked when they told me that I am not entitled to such benefit for I gave birth at the time I am not yet appointed to the service. So I have to return the amount I received through salary deduction- i.e. more than five thousand per month for three months starting September - as per order of the said officers.

"x x x If that is the case, why I was allowed to receive a Maternity benefit in the first place? Is it legal for them to deduct more than fifty percent from my salary without any written notice or receipt? These officers received a copy of my maternity leave last June 7, why did it take them three months to review my papers? Granted that I'm not really entitled to such privilege. I'm very much willing to return the amount given me on the condition that I won't be at the losing end. If the inevitable can't be prevented from happening, can I file a case against these people for damage that they are going to create. Another thing, if casual teacher are not connected to the 'agency' during summer vacation as insisted by these personnel

officers, why we are forced to serve as election officers during the May 11, 1995 and 1998 elections? And why are casual teacher given salaries for the months of April and May each year?"

When asked to comment, the following PNHS officials represented their own respective version on the matter, which reads, among others, as follows:

"ROSALIA M. TONGSON City Government Department Head II Human Resource Management Office

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"We would like to make some clarifications on the issue raise by Ms. Berroya. Since our office is open to provide assistance to employees, it would have been proper for Ms. Berroya to directly coordinate with the authorized personnel of HRMO in charge of the preparation of Maternity Leave before giving birth/end of the school year/expiration of her appointment. Any inconvenience for both parties concerned could have been avoided considering our personnel are more familiar with the Civil Service Laws pertaining to the said benefit.

"We believe our casual teachers have already been oriented regarding Maternity Leave since this is one of the topic discussed during the seminar on TOPEO (Employee Orientation) conducted by the HRMO in Paranaque National High School las September 16-17, 1997. It was stressed that all pregnant employees/teachers must coordinate with the personnel of the HRMO three (3) months before the expected date of delivery.

"As for the compensation or salaries received for the months of April and May, please be informed that their payroll for said payment never pass our office.

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"FELIXBERTO E. JOVES Human Resource Management Office

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"The monthly payroll of teachers are usually prepared at the school and submitted only to HRMO through yours truly for checking. Since there was no indication in the payroll that she was on Maternity Leave, my attention was not focused on her. I could have verified and checked the validity of her Maternity Leave application and referred of her Maternity Leave application and referred to Ms. Galleguez if such notation was clearly indicated in the payroll, hence these case should have been avoided.

"COLARITA A. GALLEGUEZ Human Resource Management Officer II

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"Finally in the third week of August 1999, I assisted Mr. Joves with regards to the action on the pending application for leave which I discovered that the date Mrs. Berroya gave birth happened to fall on May 25, 1999, during school vacation, a period not covered by an appointment. As per CSC rules and regulations she is not qualified to receive Maternity Leave benefits which prompted me to consult Mrs. Lourdes L. Ubaldo regarding the matter. Then I immediately requested Mr. Joves to inform the concerned and the school regarding the matter. Since Mr. Joves was at that time checking their payroll, he noted on the payroll and likewise inform their school representative to let Mrs. Berroya report to HRMO to determine the status of her maternity leave. On September 2, 1999, Mtrs. Berroya appeared in the HRMO, then we talked the matter together with Mrs. Ubaldo and she agreed for the refund of such overpayment thru a staggered basis/salary deduction. Mrs. Berroya also inquired if she can appeal to the CSC to clarify some matters regarding Maternity Leave and all we said was "go ahead", we are just following the rules of CSC.

"However, this instance could have been avoided if Mrs. Berroya had coordinated directly to the HRMO prior to her Maternity Leave, hence any inconveniences between Mrs. Berroya and the HRMO could have prevented."

Records show that Berroya has been teaching for five years as casual/contractual Teacher in the PNHS. Her contract of employment is renewed twice in the same year, that is from January to March and June to November. From April to May and for the month of December of the same year, Berroya's contract of employment, normally expired and has to be renewed again at the start of the same year and mid-year. In other words, there is no contract of employment issued to her during the long vacation, but she received her corresponding salary for that period. Interestingly, Berroya gave birth during vacation on May 25, 1999. In view thereof, the PNHS claims that since she has no appointment during the long vacation when the period of delivery occurs on May 25, 1999, she is not entitled to maternity benefits. Hence, this request for a ruling.

The issue obtaining in this case is whether or not Casual/contractual Teachers who gave birth during the long vacation, i.e. April-May, are entitled to Maternity Leave Benefits even when their contract of employment as Teacher expired or has not yet been renewed in the meantime by the authorities concerned.

Of significance is Section 11 of CSC Memorandum Circular No. 14, s. 1999 (Re: Additional Provisions and Amendments to CSC Memorandum Circular No. 41, s. 1998), which provides as follows:

"Section 11. Conditions for the grant of maternity leave. - Married women in the government service who have rendered an aggregate of two (2) years or more years of service, shall, in addition to the vacation and sick leave granted them, be entitled to maternity leave of sixty (60) calendar days with full pay.

"IN THE CASE OF THOSE IN THE TEACHING PROFESSION, MATERNITY BENEFITS CAN BE AVAILED OF EVEN IF

THE PERIOD OF DELIVERY OCCURS DURING THE LONG VACATION, IN WHICH CASE, BOTH THE MATERNITY BENEFITS AND THE PROPORTIONAL VACATION PAY SHALL BE RECEIVED BY THE TEACHER CONCERNED.

"Maternity leave of those who have rendered one (1) year or more but less than two (2) years of service shall be computed in proportion to their length of service, provided that those who have served for less than one (1) year shall be entitled to 60-day maternity with half pay.

"It is understood that enjoyment of maternity leave cannot be deferred but IT should be AVAILED OF EITHER BEFORE OR AFTER the actual period of delivery in a continuous and uninterrupted manner, not exceeding 60 calendar days."

Likewise, Section 18, Rule XVI (Leave of Absence) of CSC Memorandum Circular No. 41, 2. 1998, Re: Amendments to Rules I and XVI of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 (Executive Order No. 292), provides as follows:

"Sec. 18. Maternity Leave of contractual employees. - Married contractual employees whether or not receiving 20% premium on their salary shall be entitled to maternity leave benefits like regular employees in accordance with the provisions of Section 11 hereof." (As amended by CSC MC No. 14, s. 1999)

There is thus no doubt that married teachers are entitled to maternity benefits and proportional vacation pay (PVP), during the long vacation i.e. April-May and for the month of December. Likewise, undisputed is that married contractual employees whether or not receiving 20% premium on their salary shall be entitled to maternity leave benefits like regular employees.

However, one who has no valid appointment to a position in the government service is not entitled to a salary or any other benefits.

Consequently, Section 15, of CSC MC 41, s. 1998, provides, as follows:

"Section 15. Maternity leave with pay may be granted even if delivery occurs just a few days after the termination of employee's service. - Maternity leave with pay maybe granted even if the delivery occurs not more than 15 calendar days after the termination of employee's service as her right thereto has already accrued."

In the present case, Berroya's contract of employment started from January and expired in March 1999. She gave birth on May 25, 1999. Hence, more than fifteen (15) days had elapsed after the termination of her contract of employment with the PNHS and thus making her disqualified from claiming maternity leave benefits. Nonetheless, the Commission took note of the following circumstances to warrant a favorable ruling for Berroya:

Firstly, Berroya's Service Record show that since 1994 to present, her casual appointment was renewed every start of the

semester and would correspondingly end every last day thereof. And during the long summer vacations she was allowed to enjoy the same with pay. Records also show that after she gave birth on May 25, 1999 her casual appointment was again renewed on June 1, 1999. Thus, notwithstanding the fact that she was not in possession of an appointment at the time she gave birth, as far as all parties are concerned, she has no gap in the service; and Secondly, it is not the fault of Berroya that she is not being issued any appointment paper during summer vacation and thus she should not be made to suffer the consequences thereof. The grant of maternity leave and benefits are in the nature of social legislation which must be liberally construed so as to give essence to equity, spirit of the law and substantial justice. Hence, if there is doubt as to the employees entitlement to said benefit, the doubt should be resolved in favor of the employee.

WHEREFORE, the Commission hereby resolves to rule that Jessie Rina Leonardo Berroya of Paranaque National High School is entitled to receive the Maternity Leave Pay of sixty (60) calendar days. As such, should not be made to refund the same.

Quezon City. June 01, 2000

(Sgd.) CORAZON ALMA G. DE LEON

Chairman

(Sgd.) JOSE F. ERESTAIN, JR.

Commissioner

(Sgd.) ELMOR D. JURIDICO

Commissioner

Attested by:

(Sgd.) ARIEL G. RONQUILLO

Director III