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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3491 OF 2018

Archana D/o. Nanabhau Dahifale .. Petitioner
Vs.
The State of Maharashtra & anr. .. Respondents

.....
Ms. Rutuja Shinde h/f. Mr. Devendra Dilip Pawar for the
petitioner.

Mr. V.M. Mali, AGP for respondent Nos. 1 and 2.

.....

CORAM : B.R.GAVAI &
M.S. KARNIK, JJ.

DATE : 19th OCTOBER, 2018

JUDGMENT (PER M.S.KARNIK, J.) :-

Rule. Rule is made returnable forthwith.

2. Heard by consent of the parties.

3. The jurisdiction of this Court is invoked by the petitioner under Article 226 of the Constitution of India for appropriate directions to the respondent No.2 -Director General, Dr. Babasaheb Ambedkar Research and Training Institute, Pune, to pay the salaries of the petitioner on the pay scale of

Rs.25,000/- per month for the period of her maternity leave, from 13th June, 2017 to 30th November, 2017.

4. The facts of the case in a nutshell are thus :-

The petitioner was working as a Project Officer with the respondent No.2 – Institute from the year 2015 on contractual basis. The petitioner's contract was renewed for the period of 11 months from 3rd June, 2017 to 2nd May, 2018 on the consolidated monthly honorarium of Rs.25,000/- per month. By an application dated 12th June, 2017, the petitioner requested for permission from the respondent No.2 to proceed on maternity leave for the period from 13th June, 2017 tentatively till the month of November, 2017. The petitioner was permitted to proceed on maternity leave. The petitioner was on maternity leave for the period from 13th June, 2017 to 30th November, 2017.

5. The petitioner by letter dated 13th December, 2017 requested the respondent No.2 to release her salary during the

maternity leave period. The petitioner pointed out that the respondent No.2 is not complying with the Maternity Benefit Act, 1961 (hereinafter referred to as 'the said Act' for short). The petitioner also made a representation to the Minister, Social Justice Department of the respondent No.1 on 5th January, 2018 bringing to his notice the failure on the part of the respondent No.2 in complying with the provisions of the said Act. The petitioner having received no response, is constrained to file this Petition.

6. Learned Counsel for the petitioner submits that though she is a contractual employee of the respondent No.2, she is nevertheless entitled to the salary for the maternity leave period in view of the provisions of the said Act. She has invited our attention to the circular dated 12th April, 2017 issued by the Ministry of Labour & Employment, Government of India, pointing out that the stand of the Central Government that the Act is applicable to all women who are employed in any capacity directly or through any agency i.e. either on contractual or as

consultant. In her submission, the Central Government having clarified the applicability of the said Act vis-a-vis the women employee on contractual basis, having regard to the benevolent object of the Act, the position of the State Government in respect of grant of salary during the maternity leave period can be no different.

7. She relied upon the following decisions of the Hon'ble Supreme Court in support of her submissions :

(i) Municipal Corporation of Delhi Vs. Female Workers (Muster roll) & anr. -AIR 2000 SC 1274

AND

(ii) J.K. Cotton Spinning & Weaving Mills Co. Ltd. Vs. Badri Mali - (1964) 3 SCR 724

Learned Counsel also invited our attention to the following decisions of various High Courts in support of her propositions :

(i) Mrs. Priyanka Gujarkar Shrivastava vs. Registrar General & another in Writ Petition No.17004 of 2015 of Madhya Pradesh High Court.
(ii) Smt. Archana Pandey vs. State of Madhya Pradesh & ors. in Writ Petition No.15523 of 2016 of Madhya Pradesh High Court.

(iii) Rakhi P.V. & ors. Vs. The State of Kerala, dated 27th February, 2018 in Writ Petition (L) No.30561, 39828 and 40564 of 2017 of High Court of Kerala.

(iv) Anima Goel Ms. Vs. Haryana State Agricultural Marketing Board of the High Court of Punjab and Haryana reported in 2007-III-LLJ-64.

8. In the light of the provisions of the said Act and the authoritative pronouncement of the Apex Court regarding applicability of the said Act regarding grant of maternity leave benefit to women employees appointed on contractual basis or on ad-hoc or on temporary basis, in her submission, the action of the respondent No.2 denying petitioner's claim for grant of maternity benefits runs contrary to the legislative mandate of the said Act.

9. Per contra, learned AGP appearing for the respondent Nos. 1 and 2 invited our attention to the affidavit-in-reply affirmed by Shri Umesh Sonawane, Deputy Commissioner, on behalf of respondent Nos. 1 and 2. The claim of the petitioner that she is appointed on the pay scale of Rs.25,000/-

per month is denied. It is contended that the petitioner is engaged on consolidated monthly honorarium of Rs.25,000/- and not on any pay scale like permanent officers or employees. It is the stand of the respondents that the petitioner has no right to demand the salary for the period of maternity leave taken by her. It is the further stand of respondents that in view of condition No.10 of agreement regarding the terms and conditions on which the petitioner came to be appointed, the petitioner is entitled to only 8 days casual leave during the period of 11 months and not for any other leave, more particularly maternity leave. A specific stand is taken by the respondent No.2 that the Finance Department of the Government has not taken any decision adopting the provisions of the said Act to contractual women officers/employees, nor such provision is in existence for contractual female employees, therefore they are not entitled to any maternity benefits.

10. In the submission of the learned AGP, the petitioner while proceeding on maternity leave was fully aware that she

was not entitled to the said leave except 8 days casual leave during the contractual period of 11 months. In the submission of the learned AGP, the petitioner is therefore not justified in claiming the maternity benefit under the said Act.

11. Heard learned Counsel.

12. It is not disputed that the petitioner is working on contractual basis since 2015 as a Project Officer on consolidated monthly honorarium of Rs.25,000/- per month. The petitioner's contract was renewed for 11 months from 3rd June, 2017 to 2nd May, 2018. The petitioner proceeded on maternity leave from 13/6/2017 to 30/11/2017. Thus the issue involved in the present Petitioner is :-

- (i) Whether the petitioner who is admittedly working on contractual basis as a Project Officer on consolidated monthly honorarium is entitled to the benefits under the said Act ; and
- (ii) Whether the condition No.10 of the agreement specifying the terms and conditions of service, which provides that the petitioner was entitled to 8 days casual leave only during the

contractual period of 11 months, has the effect of dis-entitling her to the maternity benefits available to women employees under the said Act.

13. Let us first examine some of the relevant provisions of the said Act in the light of the respondents stand. The stand of the respondents appears to be that though the said Act is applicable to the respondent No.2 which is undoubtedly an establishment of the respondent No.1 – State Government, however in the absence of there being any provision made for contractual female employees, the said Act would not be applicable to such contractual female employees. Thus, there is no dispute that the respondent No.2 is an employer within the meaning of Clause (d) of Section 3 of the said Act.

14. Clause (h) of Section 3 of the said Act defines “maternity benefit” means the payment referred to in sub-section (1) of section 5.

Clause (n) of Section 3 defines “wages” which reads thus :

“Wages” means all remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, were fulfilled and includes -

(1) such cash allowances (including dearness allowance and house-rent allowance) as a woman is for the time being entitled to ;

(2) incentive bonus ; and

(3) the money value of the concessional supply of food-grains and other articles,

but does not include -

(i) any bonus other than incentive bonus ;

(ii) over-time earnings and any deduction or payment made on account of fines ;

(iii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force ; and

(iv) any gratuity payable on the termination of service.

Clause (o) of section 3 defines “woman” means a woman employed, whether directly or through any agency, for wages in any establishment.

15. From the point of view of deciding the present controversy it would be material to also refer to Section 4 of the

said Act which reads thus :

“4. Employment of, or work by, women prohibited during certain period. - (1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, [miscarriage or medical termination of pregnancy].

(2) No woman shall work in any establishment during the six weeks immediately following the day of her delivery, [miscarriage or medical termination of pregnancy].

(3) Without prejudice to the provisions of section 6, no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do during the period specified in sub-section (4) any work which is of an arduous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

(4) The period referred to in sub-section (3) shall be -

(a) the period of one month immediately preceding the period of six weeks, before the date of her expected delivery ;

(b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 6.

16. Section 5 provides for “right to payment of maternity benefits”.

17. We now refer to the relevant decision of the Hon'ble Apex Court in this context. A profitable reference can be made to the decision of the Hon'ble Supreme Court in the case of **J.K. Cotton Spinning & Weaving Mills Co. Ltd. Vs. Badri Mali - (1964) 3 SCR 724** where it is observed thus :-

“Indeed the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claims of social justice in dealing with industrial disputes. The concept of social justice is not narrow, one-sided, or pedantic, and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basis ideal of socio-economic equality and its aim is to assist the removal of socio-economic disparities and inequalities; nevertheless, in dealing with industrial matters, it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions, but adopts a realistic and pragmatic approach.”

The observations made by the Apex Court in the case of J.K. Cotton Spinning & Weaving Mills Co. Ltd. based on socio-economic equality and the concept of adopting a realistic and pragmatic approach is carried forward by the Hon'ble Supreme Court in the case of **Municipal Corporation of Delhi vs. Female Workers (Muster Roll)** (*supra*) wherein the following

observations are made :-

“33. A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre or post-natal period.”

Thus, the Hon'ble Supreme Court has expressed its concern in the matter of treatment given to women and went on to observe that women constitute half the segment of our society and that they have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties and avocation, in the place where they

work, they must be provided with all facilities to which they are entitled to. The Apex Court has specifically observed that whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realize the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre or post-natal period.

18. As indicated earlier, the benefits contemplated by the Maternity Benefit Act, 1961 have been extended by the Hon'ble Supreme Court not only to work women in an 'industry' but to the muster roll women employees of the Municipal Corporation working on daily wages also.

19. Identical issue of granting maternity benefit to woman employee on contract or on ad-hoc basis has been considered by various High Courts wherein petitions have been allowed and directions issued to grant maternity benefits to the woman employees.

20. The High Court of Kerala in the case of **Rakhi P.V. Vs. The State of Kerala** (*supra*) while dealing with the case of a Programme Manager appointed on contract basis considered the case vis-a-vis women employees directly employed by the Government held that they would be entitled for 180 days of maternity leave, going by the provisions of the Kerala Service Rules. It would be material to reproduce para 9 and 10 of the said decision which reads thus :-

“9. The petitioners are also admittedly women employees working on a contractual basis under state funded projects. The benefits of enhanced maternity leave to woman employees is undoubtedly a piece of welfare legislation which is intended to give women equal opportunities in public employment. In the above view of the matter, the contention raised to the effect that the contract employees under the projects are entitled only to 90 days of maternity leave, according to me, cannot be

countenanced, since it would amount to discrimination against woman employees only for the reason that they are engaged in projects in contractual capacities. The inalienable obligations of maternity should not and cannot be a reason to deny equal opportunities to woman employees. This precisely would be the result of limiting maternity leave to women employees, irrespective of the nature of their employment. The further contention to the effect that the contractual appointment of the petitioners have a duration of only one year and the grant of six months paid leave would obliterate the benefit to the project of the engagement is also not tenable because the petitioners are persons who are continuing in service on the basis of successive extension of contract. The contention therefore can have no application in the instant cases.

10. In the above view of the matter, I am of the opinion that in the light of the principles laid down by this Court in **Mini's** case (supra) the contention raised that the petitioners herein are entitled only to 90 days of maternity leave cannot be countenanced. The petitioners herein will also be entitled to maternity leave as is due to women employees under the Service Rules applicable to State and Central Government servants and to women employees under the Maternity Benefit Act, 1961. In the above view of the matter, the impugned orders are set aside. There will be a direction to the respondents to grant 26 weeks of maternity leave to the petitioners. Orders shall be passed within a period of two weeks from the date of receipt of a copy of this judgment. These writ petitions are ordered accordingly.”

21. In the present case, the petitioner is working as a Project Officer with the respondent No.2 – Institute continuously since the year 2015 on contractual basis. The contract is renewed from time to time. Even according to the contention of the respondent No.2 she is working on a contractual basis on a consolidated pay of Rs.25,000/- per month. In our opinion, the contention of the respondents that in view of condition No.10 of the agreement, the petitioner is not entitled to salary during the maternity leave period, cannot be countenanced. The said contention apart from falling foul of Section 27 of the said Act, would defeat the very purpose for which the Act is enacted. Sub-section (1) of Section 27 of the said Act clearly contemplates that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act.

22. Furthermore, the proviso to Section 27 clearly stipulates : where under any such award, agreement, contract

of service or otherwise, a woman is entitled to benefits in respect of any matter which are more favourable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that she is entitled to receive benefits in respect of other matters under this Act. Subsection (2) of Section 27 of the said Act further provides that nothing contained in this Act shall be construed to preclude a woman from entering into an agreement with her employer for granting her rights or privileges in respect of any matter which are more favourable to her than those to which she would be entitled under this Act.

23. In the light of these salutary provisions, the respondents cannot be heard to contend that the condition No.10 in the agreement would override the beneficial and benevolent provisions of the said Act. The stand of the respondent that the petitioner is dis-entitled to the said benefits in view of the agreement regarding the terms and conditions of

her service is unsustainable in the teeth of the Section 27 of the said Act. The petitioner therefore cannot be deprived of the beneficial provisions of the said Act or any other rules which may entitle her to benefits which are more favourable than those contained in the agreement.

24. In our opinion, the provisions so construed, would indicate that not only is the woman employee assured of the benefits under the said Act, but if rules are framed by the State Government providing for benefits which are more favourable, then the petitioner would be entitled to the benefits which are more favourable than what is provided under the said Act.

25. At this juncture, we may refer to the decision of the Division Bench of this Court in the case of ***Smt. Prerna Ramchandra Kalunkhe - Kulkarni in Writ Petition (L) No. 6789 of 2018*** to which one of us (M.S. Karnik, J.) was a party. In paragraph 17 of the said decision it has been mentioned that

it is not in dispute that the women Government servants of State of Maharashtra are entitled to the benefit of 180 days of maternity leave as per the provisions of the Maharashtra Civil Service (Leave) Rules, 1981 ('Rules of 1981' for short). This Court was considering the question as to whether the petitioner therein who was appointed on a tenure basis as a member of District Consumer Disputes Redressal Forum was entitled to the same benefits as a women Government servant of the State of Maharashtra is entitled. It has been held that having regard to the benevolent object of grant of 180 days maternity leave to the woman employees cannot be and should not be limited to the women Government servants of the State of Maharashtra only as that would frustrate the principles enunciated by the Hon'ble Supreme Court in the case of (1) **J.K. Cotton Spinning & Weaving Mills Co. Ltd. Vs. Badri Mali** (*supra*) and (2) **Municipal Corporation of Delhi Vs. Female Workers (Muster roll) and anr.** (*supra*). This Court thus held that for the purpose of granting maternity leave, the petitioner therein was entitled to 180 days leave as provided in the said Rules of 1981 since the

petitioner therein was working on tenure basis of the District Forum established by the State Government.

26. In the present case, the Finance Department has opined that as the Government has not taken the decision adopting the provisions of the said Act to contractual women officers/employees, and as no such provision is made for contractual female employees, they are not entitled to any maternity benefits. There is no dispute that the petitioner though appointed on contractual basis, is continuously working since the date of her appointment in 2015 and also from 3rd June, 2017 and 2nd May, 2018 during which period her contract came to be renewed. There is no dispute that the respondent No.2 is an establishment of the respondent No.1.

27. The Division Bench of the Madhya Pradesh High Court in the case of **Mrs. Priyanka Gujarkar Shrivastava** (*supra*) had an occasion to consider whether the petitioner therein who was working as a Court Manager on a contract basis

on consolidated salary is entitled to maternity leave at par with regular employees of the State Government. After considering the observations made by the Apex Court in the case of (1) **J.K. Cotton Spinning & Weaving Mills Co. Ltd. Vs. Badri Mali** (*supra*) and (2) **Municipal Corporation of Delhi Vs. Female Workers (Muster roll) and anr.** (*supra*), the Division Bench of the Madhya Pradesh High Court held thus :-

“ 12. If we take note of the aforesaid principle laid down by the Hon'ble Supreme Court, it is crystal clear that the Supreme Court has expressed its concern in the matter of treatment given to women and goes to observe that women constitute half the segment of our society. They have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties or avocation, in the place where they work, they must be provided with all facilities to which they are entitled to. If the anxiety expressed by the Hon'ble Supreme Court is taken note of, we find that the Hon'ble Supreme Court does not approve the act of discriminating a woman based on the place where she works and the nature of avocation and the nature of duties performed by her. The Hon'ble Supreme Court says that all facilities available to a woman should be provided irrespective of the place where their work, the nature of duties performed by them which would also include the nature of appointment provided to them. Hon'ble Supreme Court goes on to say that this is more so necessary because she becomes a mother, which is the most natural phenomena of life of a woman and for the same and for giving birth to a child she needs all the facilities which are to be provided to her and therefore, the employer while doing so has to be considered and sympathetic towards her. The employer should be more realistic to the physical disabilities which a woman has to face when on family way and therefore taking note of all these aspects, the conclusion arrived at is that for a woman irrespective of the place where

she is working, the benefit of Maternity Benefit Act should be conferred as the aim of this law is to provide all facilities to a working women in a dignified manner so that she can overcome the state of motherhood honorably, feasibly and without any clear victimization or without being a victim of forced absence from her place of work. If we analyse each and every word and the anxiety expressed by the Hon'ble Supreme Court in the judgment, we have no hesitation in holding that in the case of a woman irrespective of the place where she is working and irrespective of capacity of her appointment, the nature and tenure of her appointment and the duties performed by her, when it comes to granting her the benefit of facilities required to give birth to a child the employer is duty bound under the Constitution to provide her all the benefits and that is why it has been held by the Hon'ble Supreme Court that the benefit of Maternity Benefit Act, 1961 should be conferred to even muster role employees working in the Delhi Municipal Corporation and if the aforesaid principle is applied in the present case, we see no reason as to why the benefit of Maternity Benefit Act should not be given to a woman contractual employee even if she is working in the establishment of the District and Sessions Judge.”

28. It has further been observed that identical issue of granting maternity leave to women employees appointed on contract basis or on ad-hoc or temporary basis has been considered by the Allahabad High Court, the Rajasthan High Court, the Punjab & Haryana High Court and the Uttarakhand High Court and based on the law laid down by the Supreme Court in the case of Female Workers (Muster Roll) (Supra), petitions have been allowed and directions issued to grant

benefit to the employees. Though the view of the Division Bench of the Madhya Pradesh High Court is not binding on us, as the same has only persuasive value, we are nonetheless persuaded to accept the said view as we are in respectful agreement with the view taken. In this view of the matter, we hold that the petitioner, who is appointed as a Project Officer with respondent No.2 on contractual basis on a consolidated monthly honorarium of Rs.25,000/- per month is entitled to the maternity leave benefits of salary from 13th June , 2017 to 30th November, 2017.

29. In our opinion, therefore, the action of the respondents in denying the claim of the petitioner for grant of maternity benefits during her maternity leave period runs contrary to the legislative mandate flowing from the provisions of the said Act. Since this Court has already held that the benevolent object of grant of 180 days maternity leave to the woman employees cannot be and should not be limited to the women Government servants of the State of Maharashtra only,

the same are also extended to the petitioner who is working as a Project Officer with the respondent No.2 on contractual basis. Hence, the following order :

ORDER

- (i) The Writ Petition is allowed.
- (ii) It is declared that the petitioner is entitled to the consolidated monthly honorarium of Rs.25,000/- per month for the period from 13th June, 2017 to 30th November, 2017.
- (iii) The arrears thereof be paid to the petitioner within a period of four weeks from today.

30. Rule is made absolute with no order as to costs.

(M.S. KARNIK, J.)

(B.R.GAVAI, J.)