

DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (L) NO. 6789 OF 2018

Smt. Prerna Ramchandra Kalunkhe-Kulkarni ...Petitioner

Vs.

State of Maharashtra & anr. ...Respondents

....

Mr. Gurudas S. Gorwadkar for the petitioner.

Mr. Sandeep Babar, AGP for respondent No.1.

....

**CORAM : SHANTANU S. KEMKAR &
M.S.KARNIK, JJ.**

RESERVED ON : 17th APRIL, 2018.

PRONOUNCED ON : 4th MAY, 2018.

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

Rule. Rule made returnable forthwith by consent.

2. Invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner who is working as a member, District Consumer Disputes Redressal Forum, Nashik, has filed this petition for grant of the benefits of maternity pay leave for a period of six months.

3. Brief facts in the nutshell are as under :-

The petitioner is discharging her duties as a Member of District Consumer Disputes Redressal Forum, Nashik since 2nd June, 2014. The petitioner was appointed as a Member Class – A by GR dated 17th May, 2014. The appointment was for a tenure of five years or till the age of 65 years, whichever is earlier. The member is entitled to pay as per Rule 3 (1) of the Maharashtra Consumer Protection Rules, 2000 (hereinafter referred to as “the rules” for short). The service conditions of the petitioner are governed by the rules called as 'Seva Pravesh Niyam’ which were brought into effect on 3rd January, 2012. These rules are framed under the provisions of the Consumer Protection Act, 1986 as per the powers conferred under sub-section (3) of Section 10 and sub-section (2) of Section 30 of the said Act.

4. The petitioner on completion of 18 weeks of pregnancy submitted a representation on 4/12/2017 to the President of State Consumer Commission, Mumbai, requesting grant of maternity leave. The Registrar (Administration) of State Consumer Commission addressed a letter to respondent No.1 on

12/1/2018 seeking clarification to the request for grant of maternity leave. The petitioner received no response on her representation and therefore, she is constrained to file this petition.

5. Learned Counsel for the petitioner submits that the petitioner is entitled to maternity pay leave. In the submission of the learned Counsel, the petitioner has to be regarded as Government employee and the said benefit cannot be denied to her on the ground that her appointment is for fixed tenure. Learned Counsel further submitted that in order to protect the dignity of motherhood as well as the dignity of the child in womb by providing for full and healthy maintenance of the petitioner and her unborn child at this critical point of time it would only be reasonable to grant the benefits of maternity pay leave to the petitioner. Learned Counsel for the petitioner invited our attention to the relevant provisions of the Consumer Protection Act and the rules framed thereunder. He also invited our attention to the provisions of Maternity Benefit Act, 1961 and the provisions of Maharashtra Civil Service (Leave) Rules,

1981 (“said rules of 1981” for short).

6. Learned Counsel heavily relied upon the decision of the Apex Court in the case of **Municipal Corporation of Delhi Vs. Female Workers (Muster roll) and anr.** reported in **AIR 2000 SC 1274** in support of his contentions. Learned Counsel therefore submits that even the Female workers on muster roll engaged on daily wages are extended benefit of maternity leave by the Apex Court. Following this decision of the Apex Court even employees working on contractual basis have been granted the benefit of the Maternity Act by different High Courts.

7. Learned Counsel relied upon the following decisions in support of his contentions :-

(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. Learned AGP for the respondents on the other hand invited our attention to the affidavit in reply filed on behalf of respondent No.1 by Shri Suresh D. Redekar. In his submission, the petitioner's appointment is made as a member on tenure post in District Forum, Nashik. As per appointment order dated 17th May, 2014, the petitioner's conditions of service are governed as per Consumer Protection Act, 1986 and Maharashtra Consumer Protection Rules, 2000 and as per the amendment made therein periodically. He therefore submits that as per terms and conditions of the petitioner's appointment order, the petitioner is appointed on tenure post and said 'rules of 1981' are not applicable to the petitioner. The benefit of grant of maternity leave is denied because said 'rules of 1981' are not applicable to the petitioner and the same was communicated to the State Consumer Redressal Commission by letter dated 2nd April, 2018. It is further the stand of the respondents that opinion regarding the entitlement of the maternity leave to the

petitioner in accordance with the said 'rules of 1981' has been sought from the Finance Department. According to the Finance Department, sub-clause (6) of Rule 74 of the said 'rules of 1981' is applicable only to the woman Government servant of State of Maharashtra and not applicable to the members on tenure post of Forum.

9. Learned AGP further submits that various decisions relied by the petitioner are not applicable as the petitioner is not a woman Government servant of the State of Maharashtra. It is therefore the stand of respondent No.1 that without consent of the Finance Department the decision cannot be taken and therefore there is no deliberate inaction by the Department.

10. Heard learned Counsel at length.

11. To appreciate the controversy it would be material to refer to the relevant provisions of the Consumer Protection Act, 1986. Section 2(h) defines “District Forum” to mean a Consumer

Disputes Redressal Forum established under clause (a) of section 9. Section 2(jj) defines “Member” includes the President and a member of the National Commission or a State Commission or a District Forum, as the case may be. Section 9 provides that there shall be established for the purposes of this Act a Consumer Disputes Redressal Forum to be known as the “District Forum” established by the State Government in each district of the State by notification. The composition of the “District Forum” as provided by Section 10 of the said Act mentions that every member of the District Forum shall hold office for a period of 5 years or upto the age of 65 years, whichever is earlier. Sub-section 3 of Section 10 provides that the salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government.

12. In exercise of the powers conferred by Consumer Protection Act, 1986 and all other powers enabling it in that behalf, the Government of Maharashtra has made the following

rules called as 'Maharashtra Consumer Protection Rules, 2000' which have come into force from 16th February, 2000. Rule 3 provides for the salaries and other allowances and terms and conditions of the President and other members of the District Forum.

13. The Parliament has made the Maternity Benefit Act, 1961. It is not disputed that the benefits available under this Act have been made available to woman Government servant of State of Maharashtra only as per rule 74(6) of the 'said rules of 1981'. The benefit of the Act and the 'rules of 1981' is not made available to the petitioner as her appointment is on a fixed tenure. Section 2 of the Maternity Benefit Act, 1961 deals with the applicability of the Act. Section 3 contains "definitions". The word "child" as defined in Section 3(b) includes a still-born child. "Delivery" as defined in Section 3 (c) means the birth of a child. "Maternity benefit" has been defined in Section 3 (h), which means the payment referred to in sub-section (1) of section 5. "Woman" has been defined in Clause (o) of Section 3

which means “a woman employed, whether directly or through any agency, for wages in any establishment.” “Wages” have been defined in Clause (n) of Section 3 which provides *inter alia*, as under :

“Wages” means all remuneration paid or payable in case to a woman.”

Section 5 provides, *inter alia*, as under :

“5. Right to payment of maternity benefit.”

14. The Apex court in the case of **Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) and anr.** (*supra*) has placed reliance on an earlier judgment of the Apex Court in the case of **J.K. Cotton Spinning & Weaving Mills Co. Ltd. Vs. Badri Mali** (1964) 3 SCR 724 where it is said 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 paragraph 33 of the judgment 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 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.

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

16. 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.”

17. As indicated earlier, 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 'rules of 1981'. The petitioner is working on a fixed tenure of five years. 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. The stand of the respondent – State that the petitioner having been appointed on a tenure post is not entitled to 180 days of maternity leave cannot be

countenanced, since it would amount to discrimination against woman employees only for the reason that they are engaged on tenure posts. As observed by learned Judge of the Kerala High Court in the case of **Rakhi P.V.** (*supra*), 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.

18. In our opinion, 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*). The provisions of the Consumer Protection Act itself provides that the State Government in each District of State by Notification establish a Consumer Dispute

Redressal Forum to be known as “District Forum”. In our opinion, there can be no discrimination in the matter of granting the maternity leave benefit of 180 days to a member of the District Forum who is appointed on a fixed tenure of five years only on the ground that the member cannot be said to be a woman Government servant of the State of Maharashtra.

19. We are of the considered view that for the purpose of granting maternity leave, the petitioner is entitled to 180 days of leave as provided in the 'said rules of 1981' since the petitioner is working in a tenure post of the District Forum established by the State Government. The petition therefore deserves to be allowed.

20. Rule is therefore made absolute in terms of prayer clause (a) with no order as to costs.

21. Parties to act on authenticated copy of this order.

(M.S.KARNIK, J.)

(SHANTANU S. KEMKAR, J.)