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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision : 21.01.2020

+ W.P.(C) 12064/2019 & CM No.49384/2019

NATIONAL HIGHWAYS AUTHORITY OF INDIA

.... Petitioner

Through Ms.Asha Gopalan Nair and
Ms.Navedita Nair, Advs.

versus

NATIONAL COMMISSION FOR WOMEN AND ANR.

..... Respondents

Through None

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed challenging the orders dated 02.09.2019 and 11.10.2019 passed by the respondent no.1 on a complaint filed by the respondent no.2 against the denial of maternity leave to her by the petitioner.

2. By the Order dated 02.09.2019, the respondent no.1 has directed the petitioner to pay all dues including the Maternity Benefits as per the Maternity Benefits (Amendment) Act, 2017 to the respondent no.2. By the subsequent communication dated 11.10.2019, the petitioner has been directed to appear before the respondent no.1 with a detailed Action Taken Report.

3. The learned counsel for the petitioner submits that the Impugned Directions cannot be sustained inasmuch as the respondent no.2 had been appointed under the “NHAI/Policy Guidelines/External Professionals & Young Professionals/2017” dated 21.06.2017 (hereinafter referred to as the ‘Guidelines’) on a contractual basis and for a limited period of two years. Referring to the Agreement executed between the petitioner and the respondent no.2, she submits that the period of employment/engagement of the respondent no.2 was only two years commencing from 01.09.2017 and Clause 3(ii) of the Agreement has specifically stated that she will be entitled to only 8 days paid Causal Leave and 15 days paid Sick Leave in a calendar year; the Clause further provides that she will not be entitled to any other kind of leave. In her submissions, therefore, the respondent no.2 shall not be entitled to avail leave under Maternity Benefit Act, 1961.

4. The learned counsel for the petitioner further submits that even as per the Guidelines, the respondent no.2 cannot be treated as an employee of the petitioner as she was being paid only an honorarium and not salary; there was no employer and employee relationship between the petitioner and the respondent no.2.

5. Further relying upon Clause 12 of the Agreement, the learned counsel for the petitioner submits that all dues and differences between the parties were to be settled through Arbitration and therefore, the respondent no.1 lacked jurisdiction to entertain the complaint of the respondent no.2.

6. The learned counsel for the petitioner further submits that the respondent no.2 had worked only for a period of 11 months and

therefore, even otherwise was not entitled to the benefit under the Maternity Benefit Act, 1961.

7. I have considered the submissions made by the learned counsel for the petitioner, however, find no merits in the same.

8. Clause 12 of the Guidelines clearly provides that the petitioner shall comply with the provisions of all applicable Acts including the Maternity Benefit Act, 1961. Clause 12 of the Guidelines is reproduced hereinbelow:

“Statutory Provisions

The Authority shall be liable to comply with the provisions of all applicable Acts/Rules like the Employees Provident Funds Act, 1952, Maternity Benefits Act, 1961, Income Tax Act etc. as amended from time to time.”

9. Similarly, the Agreement executed between the petitioner and the respondent no.2 in Clause (iii) clearly provides for the applicability of the Maternity Benefit Act, 1961 to the respondent no.2. The same is reproduced hereinbelow:

“(iii) EPF & Statutory Provisions

The EP shall be entitled to the benefit of Employee Provident Fund as per applicable statutory provisions on the subject. The Authority will also comply with the provisions of all applicable Acts/Rules like the Employees Provident Funds Act, 1952, Maternity Benefit Act 1961, Income Tax Act etc. as amended from time to time.”

10. In view of the above Clauses, the petitioner cannot contend that the Maternity Benefit Act, 1961, would not apply to the employment in question.

11. Even otherwise, the Maternity Benefit Act, 1961 has been enacted with the objective to safeguard the employment of women in certain establishments for certain period before and after the birth of a child and to provide the maternity benefit and certain other benefits. It is the social welfare legislation and, therefore, needs to be given full effect.

12. In ***Municipal Corporation of Delhi v. Female Workers (Muster Roll) & Anr.*** (2000) 3 SCC 224, the Supreme Court has held that the provisions of the Maternity Benefit Act, 1961 are wholly in consonance with the Directive Principles of State Policy as set out in Article 39 and in other Articles, specially Article 42 of the Constitution of India. It was further held as under:

“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 phenomenon 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 workplace 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.”

13. Relying upon the above judgment, the Court in ***Govt.of NCT of Delhi & Ors. v. Shweta Tripathi & Anr.***, 2014 SCC OnLine Del.7138, has held that:

“....This Court is of the opinion that keeping in mind the larger public interest sub-served in the grant of maternity benefit, the GNCTD, as a model employer, which is bound by Articles 14 and 16(1), could not have discriminated between two female employees, for the purpose of maternity benefit, on the basis that one of them is a contractual employee and thus entitled to lesser extent of pay, whereas the other, being a permanent employee, could be favoured with a better term. This cannot be treated as a reasonable classification, considering the object of the rule for grant of maternity benefit.”

14. In view of the above, the submissions of the learned counsel for the petitioner that the respondent no.2, being a contractual employee, was not entitled to the benefits of the Maternity Benefit Act, 1961, cannot be accepted.

15. As far as the jurisdiction of the respondent no.1 is concerned, Section 10(1)(a) of the National Commission for Women Act, 1990 specifically empowers and, in fact, casts a duty on the respondent no.1 to investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws. Section 10(1)(e) further empowers the respondent no.1 to take up the cases of violation of the provisions of the Constitution and of other laws relating to women with appropriate authority. Section 10(1)(f) of the

Act, in fact, empowers the respondent no.1 to look into the complaints and take *suo moto* notice of matters relating to and including deprivation of women's right, non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development and take up the issues arising out of such matters with appropriate authorities.

16. The remedy before the respondent no.1 would, therefore, be in the alternative nature and merely because of the presence of Arbitration Clause in the Employment Agreement between the petitioner and the respondent no.2, the jurisdiction of the respondent no.1 cannot be ousted. Reference can be made to the judgment of the Supreme Court in *National Seeds Corpn. Ltd. v. Madhusudhan Reddy & Anr.*, (2012) 2 SCC 506, where similar argument in relation to the Consumer Protection Act were rejected holding arbitration to be an optional remedy. Keeping in view the object of the Maternity Benefit Act, 1961, similar finding has to be rendered in this case.

17. As far as the period of employment of the respondent no.2 is concerned, if she is otherwise entitled to the benefits under the Maternity Benefits Act, 1961, she could not have been denied the same only because of her period of employment with the petitioner.

18. In view of the above, I find no merits in the present petition. The same is dismissed, with no order as to costs.

NAVIN CHAWLA, J

JANUARY 21, 2020/Arya