IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13098 of 2021 (O&M)

DATE OF DECISION: 26.07.2021

Bank of India …..Petitioner

versus

Labour Commissioner-cum-Appellate Authority
under the Maternity Benefits Act, 1961 & Ors. .....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Varun Katyal, Advocate for the petitioner

ALKA SARIN, J.:

Heard through video conferencing.

The challenge in the present writ petition under Article 226 of the Constitution of India is to the impugned orders dated 16.12.2020 (Annexure P-2) and 30.03.2021 (Annexure P-4). Vide the impugned order Annexure P-2 passed by respondent No.2, the application filed by respondent No.3 was allowed and directions were given to the petitioner-Bank to pay her the maternity benefits and the petitioner-Bank was also directed to comply with the provisions of the Maternity Benefit (Amendment) Act, 2017 meticulously in future. Vide impugned order

Annexure P-4, the appeal filed by the petitioner-Bank against the order Annexure P-2 was dismissed by respondent No.1.

The learned counsel for the petitioner would contend that in the present case the service conditions of the employees of the petitioner-Bank are governed by the Bank of India (Officers') Service Regulations, 1979 (for short, 'the Service Regulations of 1979') and that these regulations have been made in exercise of the powers conferred by Section 19 read with sub-section (2) of Section 12 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 by the Board of Directors of the petitioner-Bank in consultation with the Reserve Bank of India and with the previous sanction of the Central Government and have the force of law. According to the learned counsel, the Service Regulations of 1979 would have precedence over the provisions of the Maternity Benefit Act, 1961 (hereinafter referred to as the 'Maternity Benefit Act'). The learned counsel appearing for the petitioner-Bank would contend that the authorities below have ignored Regulation No.36 contained in the Service Regulations of 1979 which provides for maternity leave for its female employees/staff and have instead upheld the contention of respondent No.3 that she would be entitled to the maternity benefits as per the Maternity Benefit Act as amended by the Maternity Benefits (Amendment) Act, 2017.

The brief facts relevant to the present case are that respondent No.3 joined the services of the petitioner-Bank on 05.03.2015 as a Staff Officer and was posted at Lakhimpur Kheri Branch, Lucknow Zone.

Thereafter, on the request of respondent No.3, she was transferred to Chandigarh Zone on 15.06.2015. The respondent No.3, for the first time, sought maternity leave from 07.04.2016 and delivered a child on 24.06.2016 and remained on maternity leave till 06.10.2016 i.e. for a total of 183 days. Thereafter, respondent No.3 again applied for maternity leave on 22.10.2016. Unfortunately, she had a miscarriage on 25.10.2016. She was sanctioned 44 days maternity leave on the said account till 04.12.2016. On 02.09.2019 the respondent No.3 again applied for maternity leave which was sanctioned and she was on leave from 02.09.2019 and gave birth to her second child on 05.09.2019 and thereafter remained on maternity leave till 17.01.2020. From 18.01.2020 to 29.02.2020 the respondent No.3 was on leave which was treated as sick leave during which half the salary was paid to respondent No.3.

Respondent No.3 approached respondent No.2 by filing an application dated 02.12.2020 (Annexure P-1) seeking a direction that the period from 18.01.2020 to 29.02.2020 be treated as maternity leave as per Section 5(3) of the Maternity Benefit Act instead of sick leave during which period she was paid half the pay. Respondent No.2, vide the impugned order dated 16.12.2020 (Annexure P-2), held that respondent No.3 would be entitled to receive her maternity benefits starting from 02.09.2020 for 26 weeks and ordered the petitioner-Bank to pay the remaining maternity leave for 44 days which had been deducted on account of miscarriage leave to respondent No.3 as per Section 6 of the Maternity Benefit Act and also directed the petitioner-Bank to comply with the provisions of Maternity Benefits (Amendment) Act, 2017 meticulously in future. Aggrieved by the said order dated 16.12.2020 (Annexure P-2), the petitioner-Bank preferred an appeal before respondent No.1. Vide order dated 30.03.2021 (Annexure P-4), the appeal filed by the petitioner-Bank was dismissed. Hence, the present writ petition.

It may be mentioned here that the date 02.09.2020 mentioned in the documents attached with the writ petition, including the impugned orders, should actually read 02.09.2019 since admittedly respondent No.3 proceeded on leave on 02.09.2019 and gave birth to her second child on 05.09.2019.

Learned counsel for the petitioner-Bank would contend that while passing the impugned orders the authorities below have ignored Regulation No.36 of the Service Regulations, 1979 and further that the said Regulation No.36 of the Service Regulations, 1979 has never been challenged by respondent No.3. The learned counsel for the petitioner-Bank has further contended that as per Regulation 36 not more than 12 months of maternity leave shall be available during the entire period of service of an officer. The following law points have been raised in the writ petition:

> *"A. Whether grave and manifest injustice has been to the petitioner-Bank ?*
>
> *B. Whether the regulations contained in the Bank of India (Officers') Service Regulations, 1979 are binding upon the respondent no.3 and therefore her application is liable to be dismissed ?*

C. Whether the Impugned Orders (Annexure P-2 & P-4) are liable to be set aside as the same have been passed ignoring the Regulation No.36 of the Bank of India (Officers') Service Regulations, 1979 which is statutory in nature ?

D. Whether the Impugned Orders (Annexure P-2 & P-4) are bad in law particularly when the vires of Regulation No.36 of the Bank of India (Officers') Service Regulations, 1979 which deals with the grant of maternity leaves have never been challenged ?"

A perusal of the writ petition reveals that it is not the case set up by the petitioner-Bank that it is not covered under the provisions of the Maternity Benefit Act, rather it is the case that the regulations contained in the Service Regulations, 1979 are binding on respondent No.3 and since the same have not been challenged she could not be given the benefit under the Maternity Benefit Act, 1961.

Section 27 of the Maternity Benefit Act reads as under:-

"27. Effect of laws and agreements inconsistent with this Act -

(1) 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: Provided that 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.*
>
> *(2) 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."*

A perusal of the above reproduced section clearly reveals that in case any award, agreement, contract or service or otherwise provides for benefits more favourable to the employee than those to which she is entitled under the Maternity Benefit Act then the woman employee would be entitled to the more favourable benefits in respect of the matter. Section 27(1) specifically provides that the provisions of the Maternity Benefit 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. That being so, the Regulation 36 of the Service Regulations, 1979 being inconsistent with the provisions of the Act, the provisions of the Maternity Benefit Act would have an overriding effect. The Maternity Benefit Act is a beneficial piece of legislation enacted to regulate the employment of women in certain establishments for certain periods before and after childbirth and provide maternity benefits and certain other benefits. It is a social welfare legislation under which every woman employee is entitled to and her employer is liable to pay the maternity benefits as envisaged in the Maternity Benefit Act. The learned counsel for the petitioner-Bank has not been able to show as to how the Maternity Benefit Act is not applicable to the petitioner-Bank. The Service Regulations, 1979 may have been framed in consultation with the Reserve Bank of India and with the previous sanction of the Central Government, but a statutory Regulation, as is well known, is subject to the provisions of a Parliamentary Act. Regulations framed by the petitioner-Bank do not provide the same maternity leave and other benefits to which a woman employee would be entitled to in terms of the Maternity Benefit Act. A subordinate legislation, as is well known, must be made in conformity with the Parliamentary Act.

Further, the learned counsel for the petitioner-Bank has referred to Section 3 of the Punjab Shops and Commercial Establishments Act, 1958 to contend that the petitioner-Bank is not covered under the Punjab Shops and Commercial Establishments Act and, therefore, the Maternity Benefit Act would not be applicable. Section 3(a) of the Punjab Shops and Commercial Establishments Act, 1958 (hereinafter referred to as the Establishment Act) reads as under :

> *"3. Act not applicable to certain establishments and persons.*
>
> *Nothing in this Act shall apply to -*

(a) offices of or under the Central or State Governments (except commercial undertakings), the Reserve Bank of India, any railway administration or any local authority;

xxx"

Learned counsel for the petitioner has not been able to show as to how the petitioner-Bank falls within the aforesaid exception. Section 2(1)(iv) of the Establishment Act reads as under :

"2. Definitions.

(1) In this Act, unless the context otherwise requires,-

xxx

(iv) 'commercial establishment' means any premises wherein any business, trade or profession is carried on for profit, and includes journalistic or printing establishment and premises in which business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on or which is used as hotel, restaurant, boarding or eating-house, theatre, cinema or other place of public entertainment or any other place which the Government may declare, by notification in the Official Gazette, to be a commercial establishment for the purposes of this Act;"

The definition of commercial establishment in the Establishment Act specifically includes banking making it clear that the petitioner-Bank is covered by the Establishment Act. The learned counsel for the petitioner-Bank is unable to show as to how the petitioner-Bank is excluded from the definition of commercial establishment. Once the petitioner-bank is covered within the definition of commercial establishment, the provisions of the Maternity Benefit Act would clearly apply to the petitioner-Bank.

Having given my thoughtful consideration to the matter in hand and keeping in mind the provisions of the Maternity Benefit Act, particularly Section 27 thereof, I do not find any merit in the present writ petition, which is accordingly dismissed.

Dismissed.

(ALKA SARIN)
JUDGE

26.07.2021
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NOTE:
Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO