

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3249 OF 2021

Debashree Mitra
C-702, Swarna CHS Ltd.,
Sector 7, Kharghar,
Navi Mumbai 410210

...Petitioner.

Versus

1. Tilak Maharashtra Vidyapeet
Through its Chairperson,
Vidyapeeth Bhavan,
Mukundnagar, Gultekdi,
Pune – 411037

2. Lokmanya Tilak College of
Physiotherapy
Through its Principal,
Plot No.3, Sector 14,
Kharghar, Navi Mumbai-411210

..Respondents.

— — —
Ms. Meenaz Kakalia, Advocate for the Petitioner.
Smt. Neha Bhide, Advocate for Respondent Nos. 1 and 2.
— — —

CORAM : NITIN W. SAMBRE &
SHARMILA U DESHMUKH, JJ.

Date : December 1, 2022.

JUDGMENT (Sharmila U Deshmukh, J) :

1. Rule. Rule made returnable forthwith. With the consent

Corrected pursuant to the Speaking to the Minutes order dated 14th December, 2022.

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of the parties, taken up for final disposal.

2. By this petition, the Petitioner seeks the payment of her salary for the period when she was on maternity leave i.e. from 11th November, 2019 to 10th May, 2020, in terms of Section 5 of The Maternity Benefit Act, 1961 (for short, "**the Act of 1961**") and a revised experience certificate including the period during which she was on maternity leave.

3. Heard learned Counsel appearing for the parties.

4. Vide appointment order dated 20th April, 2018, the Petitioner was appointed as an Assistant Professor with the Respondent No.2-College, which functions under the aegis of Respondent No.1-University, which is a "deemed University" under Section 3 of the University Grants Commission Act, 1956. The appointment was on contractual basis for a period of one academic year commencing from 1st June, 2018 until 10th May, 2019, with consolidated salary of Rs.33,000/- p.m. Upon expiry of the period of contract on 10th May, 2019, the contract was renewed for a further period of one year from 10th June, 2019 until 10th May, 2020. Whilst the contract was subsisting, on 22nd August, 2019, an application was filed by the Petitioner for availing maternity leave from 1st October 2019. It is the case of the Petitioner that although she had

given an application seeking maternity leave from 1st October, 2019, the actual commencement of maternity leave was from 11th November, 2019. During the period of the Petitioner's maternity leave, her salary for the month of November and December 2019 was credited by the Respondent No.1 in her account, however, she was subsequently informed by the Respondent No.1-College, that the maternity leave would be "leave without pay", and she was therefore, liable to return the amount that was credited to her account. Accordingly, without verifying her entitlement, the Petitioner returned the amount to the Respondent No.2-College on 24th January, 2020. On the expiry of the Petitioner's contract on 10th May, 2020, when the Petitioner inquired with Respondent No.2 about the renewal of her contract, there was no response. Subsequently, the Respondent No.2-College asked the Petitioner to apply afresh. After it became clear to the Petitioner that her contract was not going to be renewed by the Respondent No.2-College, the Petitioner requested for her experience certificate to which there was no positive response from the Respondent No.2-College. Various communications were addressed by the Petitioner to the Respondent No.2-College in the month of October, 2020. On 30th October, 2020, the Petitioner received soft copy of her experience certificate over the email, which records that the

Petitioner was “relieved from services” on 9th November, 2019, which was the last date before the Petitioner went on her maternity leave. Another round of communication started with the Respondent No.2 seeking revised experience certificate as also the maternity benefit that the Petitioner was entitled to during period of her maternity leave. As there was no compliance with the requisition of the Petitioner by the Respondent No 2, the present petition came to be filed.

5. Learned Counsel appearing for the Petitioner submits that the Respondents have violated the provisions of the Act of 1961, by denying her the salary for the period the Petitioner was on maternity leave. Learned Counsel contends that the contract was subsisting during the period when she was on maternity leave from 11th November, 2019 to 10th May, 2020 and the maternity benefits cannot be denied to her. Learned Counsel relies upon the following judgments:

- (a) *Municipal Corporation of Delhi v. Female Workers (Muster Roll) & Anr. (2000) 3 SCC 224;*
- (b) *Archana D/o. Nanabhau Dahifale v. The State of Maharashtra & Anr. in Writ Petition No. 3491 of 2018);*
- (c) *Prerna Ramchandra Kalunkhe-Kulkarni v. State of Maharashtra & Anr. in Writ Petition (L)*

No.6789 of 2018;

(d) Bharti Gupta v. Rail India Technical and Economical Services Lts. (Rites) & Ors. in Writ Petition (C) No. 4798 of 2003;

(e) Janet Jeyapaul Vs. SRM University and Others, (2015) 16 SCC 530.

6. *Per contra.* Learned Advocate for Respondent nos.1 & 2 raised preliminary objection about maintainability of the petition on two grounds : one is that the Petitioner has an alternate remedy under Section 17 of the Act of 1961 and second that the Respondent No.2 being a deemed university, was not amenable to the writ jurisdiction under Article 226 of the Constitution of India.

7. We have considered rival submissions of the parties. The appointment of the Petitioner was on a contractual basis initially for a period from 1st June, 2018 until 10th May, 2019, which was subsequently renewed for further period from 10th June, 2019 to 10th May, 2020. There is no dispute that the contract between the Petitioner and the Respondent No.2 was subsisting at the time the Petitioner availed of the maternity leave. By the present petition, the Petitioner is claiming the benefits i.e. the salary for the period from November, 2019 until May, 2020 and is also seeking revised experience certificate. During the hearing of this petition,

by order of 17th August, 2022, it has been recorded that the institution would give the required experience certificate to the Petitioner and hence, the only issue which remains for determination is the payment of salary for the period of six months from November, 2019 to May, 2020.

8. The issue in the present case is squarely covered by the two Division Bench decisions of this Court in *Archana (supra)* and *Prerna (supra)*. In the case of *Archana (supra)*, the facts of which are similar to the case in hand, the Petitioner therein was working on contractual basis in Dr. Babasaheb Ambedkar Research and Training Institute, Pune on consolidated monthly honorarium and during the period of contract had proceeded on a maternity leave and was denied her salary for the period during which she was on maternity leave. The two issues which arose for determination in the said case was regarding the entitlement of contractual employees to the benefits of the Act of 1961 and whether the terms of contract override the provisions of Act of 1961. After considering the provisions of the Act of 1961, and the authoritative pronouncement of Apex Court in the case of *Municipal Corporation of Delhi (supra)* and the decisions of various High Courts this court held that the action of the Respondents therein in denying the claim of the Petitioner for grant of maternity benefits during her maternity period runs

contrary to the legislative mandate of the said Act and directed the grant of maternity benefit to the Petitioner therein.

9. It is not disputed before us that the provisions of the Act of 1961 is applicable to the Respondent No.2-College. Section 5 of the Act of 1961, reads as under:

“5. Right to payment of maternity benefit : (1)
Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

Explanation.- For the purpose of this sub-section, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 (11 of 1948) or ten rupees, whichever is the highest.

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery:

Provided that the qualifying period of eighty days aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

Explanation.- For the purpose of calculating under this sub-section the days on which a woman has actually worked in the establishment, the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery:

Provided that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

Provided further that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then for the days up to and including the date of the death of the Child."

10. There is no argument advanced by the Learned Counsel for Respondent No.2 on the issue of entitlement of the Petitioner

to the salary for the maternity leave period and in our opinion no such argument denying the Petitioner's claim can be raised in view of the settled position in law. The only argument that is raised before us is about the maintainability of the petition on two grounds:

(a) the Respondent No.2 being a deemed university is amenable to the writ jurisdiction of this Court.

The issue is no longer *res-integra* and is covered by the judgment of the Apex Court in the case of *Janet (supra)* wherein the Apex Court has observed in paragraph no.30 as under:

"30. This we say for the reasons that firstly, Respondent 1 is engaged in imparting education in higher studies to students at large. Secondly, it is discharging "public function" by way of imparting education. Thirdly, it is notified as a "Deemed University" by the Central Government under Section 3 of the UGC Act. Fourthly, being a "Deemed University", all the provisions of the UGC Act are made applicable to Respondent 1, which inter alia provides for effective discharge of the public function, namely, education for the benefit of the public. Fifthly, once Respondent 1 is declared as "Deemed University" whose all functions and activities are governed by the UGC Act, alike other universities then it is an "authority" within the

meaning of Article 12 of the Constitution. Lastly, once it is held to be an "authority" as provided in Article 12 then as a necessary consequence, it becomes amenable to writ jurisdiction of the High Court under Article 226 of the Constitution."

(b) there is an alternate remedy available under Section 17 of the Act of 1961.

Section 17 confers power on the inspector to direct payments to be made, upon receipt of a complaint that the maternity benefits have been denied to any woman. The present petition has been filed seeking not only payment of salary for the maternity leave period but also the issuance of revised experience certificate, which is beyond the purview of Section 17 of the Act of 1961. Considering prayers that are sought in the present petition, we find that the remedy under section 17 is not an alternate efficacious remedy.

11. Considering the aforesaid, in our view, the Petitioner is entitled to the monthly salary for the period during which she was on maternity leave for the period from 11th November, 2019 to 10th May, 2020. Hence, the following order:

ORDER

(I) The Writ Petition is allowed.

(II) The Petitioner is entitled to the monthly salary of Rs.33,000/- p.m. for the period from 11th November, 2019 until 10th May, 2020.

(III) The payment to be made to the Petitioner within a period of four weeks from today.

(IV) Rule is made absolute in above terms. No order as to costs.

[Sharmila U. Deshmukh, J.]

[Nitin W. Sambre, J.]