IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

TUESDAY, THE 21ST DAY OF MAY 2024 / 31ST VAISAKHA, 1946

WP(C) NO. 1873 OF 2020

PETITIONER:

VIJILA R.S.
AGED 27 YEARS
W/O.SURESHKUMAR.R., STAFF NURSE NIMS HOSPITAL (NOW UNDER TERMINATION), ARALUMOODU, RESIDING AT VELAMTHATTU PUTHANVEEDU, NEYYATTINKARA.

BY ADVS.
C.S.AJITH PRAKASH
SRI.T.K.DEVARAJAN
SMT.T.N.SREEKALA
SRI.FRANKLIN ARACKAL
SRI.PAUL C THOMAS
SRI.M.B.SOORI
SRI.JAISON JOSEPH(KOOTHATTUKULAM)
SHRI.BABU M.

RESPONDENTS:

1 **THE DISTRICT COLLECTOR,**
OFFICE OF THE DISTRICT COLLECTOR, CIVIL STATION, THIRUVANANTHAPURAM-695 043.

2 **THE DEPUTY THAHASILDAR (RR),**
OFFICE OF THE DEPUTY THAHASILDAR (RR), THIRUVANANTHAPURAM DISTRICT, THIRUVANANTHAPURAM-695 043.

3 **THE DISTRICT LABOUR OFFICER,**
OFFICE OF THE DISTRICT LABOUR OFFICER, THOZHIL BHAVAN, VIKAS BHAVAN P.O., THIRUVANANTHAPURAM-695 033.

4 **THE ASSISTANT LABOUR OFFICER AND INSPECTOR,**
UNDER THE MATERNITY BENEFIT ACT, 1961, OFFICE OF THE ASSISTANT LABOUR OFFICER, NEYYATTINKARA, THIRUVANANTHAPURAM DISTRICT-695 121.

5 M.S.FAIZAL KHAN,
THE MANAGING DIRECTOR, NIMS MEDICITY,
ARALUMMOODU, NEYYATTINKARA P.O., PIN-695 121.

6 THE MANAGER (HR), NIMS MEDICITY,
ARALUMMOODU, NEYYATTINKARA P.O., PIN-695 121.

BY ADVS.
GOVERNMENT PLEADER SRI.JUSTIN JACOB.
SRI.P.RAMAKRISHNAN
SMT.PREETHI RAMAKRISHNAN (P-212)
SRI.PRATAP ABRAHAM VARGHESE
SMT.ASHA K.SHENOY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03.04.2024,ALONG WITH WP(C)15131/2020, THE COURT ON 21.05.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

TUESDAY, THE 21ST DAY OF MAY 2024 / 31ST VAISAKHA, 1946

WP(C) NO. 15131 OF 2020

PETITIONER/S:

**THE MANAGING DIRECTOR, NIMS MEDICITY
ARALUMMOODU, NEYYATTINKARA, THIRUVANANTHAPURAM-695123.**

**BY ADVS.
P.RAMAKRISHNAN
SMT.PREETHI RAMAKRISHNAN (P-212)
SRI.T.C.KRISHNA
SRI.C.ANILKUMAR (KALLESSERIL)
SMT.ASHA K.SHENOY
SRI.PRATAP ABRAHAM VARGHESE**

RESPONDENTS:

1 **THE ASSISTANT LABOUR OFFICER AND INSPECTOR UNDER THE MATERNITY BENEFIT ACT 1961
OFFICE OF THE ASST. LABOUR OFFICER,
NEYYATTINKARA-695123.**

2 **THE DEPUTY LABOUR COMMISSIONER AND SECRETARY,
STATE ADVISORY LABOUR BOARD, THIRUVANANTHAPURAM-695001.**

3 **VIJILA R.S.,
W/O.SURESH KUMAR, VELAMTHATTU PUTHENVEEDU,
ARALUMMOODU, NEYYATTINKARA-695123.**

**BY ADVS.
GOVERNMENT PLEADER SRI. JUSTIN JACOB.
SRI.C.S.AJITH PRAKASH
SRI.T.K.DEVARAJAN
SMT.T.N.SREEKALA
SRI.FRANKLIN ARACKAL
SHRI.BABU M.**

SMT.ANCY THANKACHAN
SHRI.NIDHIN RAJ VETTIKKADAN
SRI.HAARIS MOOSA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03.04.2024 ALONG WITH WP(C).1873/2020, THE COURT ON 21.05.2024 DELIVERED THE FOLLOWING:

JUDGMENT

Since common issues arise for consideration in these writ petitions, they are disposed of by this common judgment. The status of the parties and the documents produced will be as obtaining in W.P.(C) No.15131 of 2020, unless specifically mentioned.

2. The petitioner is the Managing Director of a Multi Specialty Hospital at Neyyattinkara. The Hospital is covered under the provisions of the Employees' State Insurance Act, 1948 (for short, 'ESI Act'). The 3rd respondent was appointed as a Staff Nurse in the Hospital with effect from 01.03.2015. While so, the 3rd respondent was sanctioned leave in view of her pregnancy, from 25.11.2018. According to the Hospital management, she informed them that

she is not interested to continue in service due to personal reasons and on account of the tender age of her child.

3. The 3rd respondent, thereafter, submitted a complaint before the 1st respondent, the Assistant Labour Officer and the Inspector, under the Maternity Benefit Act, 1961 stating that she has been denied maternity benefits and is not permitted to rejoin duty on 26.05.2019. Based on the said complaint, the 1st respondent carried out an inspection at the petitioner's Hospital on 13.08.2019 and on the same day, issued Ext.P2 order directing the petitioner to pay Rs.1,21,800/- as maternity benefit for the period from 16.11.2018 to 15.05.2019. In response to Ext.P2, the petitioner submitted Ext.P3 reply stating that the Maternity Benefit Act is not applicable to the Hospital since the Hospital is

covered under the provisions of the ESI Act.

4. The 1st respondent did not consider Ext.P3 and instead, issued Ext.P4 order dated 14.10.2019 in exercise of powers under Section 17(2)(b) of the Maternity Benefit Act directing the petitioner to reinstate the 3rd respondent and to report compliance.

5. The petitioner preferred Exts.P5 and P6 appeals against Exts.P2 and P4 respectively, before the Director of Factories and Boilers. However, when the petitioner was informed that the notified appellate authority is the Deputy Labour Commissioner, the 2nd respondent, the petitioner preferred the appeal before the said authority. However, the 2nd respondent noting that there is no provision for condonation of delay in filing the appeal, took the appeal to file and posted on

24.02.2020 with notice to the petitioner and the 3rd respondent. However, the petitioner was absent on the said day and the 2nd respondent passed Ext.P7 order dismissing the appeal. The petitioner preferred Ext.P8 application for restoration of the appeal. However, the 2nd respondent has not passed any orders on Ext.P8. Accordingly, W.P(C) No.15131 of 2020 is filed to quash Exts.P2, P4 and P7 and to declare that the petitioner is not liable to pay maternity benefit to the 3rd respondent in view of Section 5B of the Maternity Benefit Act, 1961.

6. In the meantime, the 3rd respondent had filed W.P.(C) No.1873 of 2020 to enforce Exts.P2 and P4 and to initiate prosecution against the petitioner.

7. According to the petitioner, the Hospital is covered under the ESI Act and in view of Section 5B of the Maternity Benefit Act, 1961, the petitioner is

not liable to pay maternity benefit to the 3rd respondent. It is contended that, even going by Ext.P2 order, the salary of the 3rd respondent as on the date on which she availed leave was Rs.20,300/- and her wages for a month exceeds the amount specified in sub clause (b) of Clause (9) of Section 2 of the ESI Act read with Section 5B of the Maternity Benefit Act and she is not eligible for benefits under the Maternity Benefit Act, 1961. It is contended that on the basis of the complaint of the 3rd respondent, the 1st respondent conducted inspection at the Hospital on 13.08.2019 and on the same day, issued Ext.P2 order directing the petitioner to pay Rs.1,21,800/- as maternity benefit to the 3rd respondent and that the petitioner was not afforded an opportunity of hearing before issuing Ext.P2 order. It is further contended that Exts.P2 and

Ext.P4 do not reveal the subjective satisfaction of the 1st respondent that the payment had been wrongly withheld or that the complainant has been discharged or dismissed during or on account of her absence from work, as required under Section 17(2)(b) of the Maternity Benefit Act. It is contended that the 1st respondent has no authority to order reinstatement as per the provisions contained in Section 12(b) or Section 17(2) of the Maternity Benefit Act. It is also contended that the 1st respondent rejected the statutory appeal on the first posting date itself without providing sufficient opportunity to pursue the appellate remedy.

8. Heard Sri.Pratap Abraham Varghese, the learned counsel for the petitioner in W.P.(C) 15131 of 2020 and Sri.C.S Ajith Prakash, the learned counsel for the petitioner in W.P.(C) No.1873 of 2020 and

Sri.Justin Jacob, the learned Government Pleader.

9. It is not in dispute that the ESI Act is applicable to the petitioner Hospital. Section 5A of the Maternity Benefit Act provides that every woman entitled to the payment of maternity benefit under the Maternity Benefit Act shall, notwithstanding the application of the ESI Act to the factory or other establishment in which she is employed, continue to be so entitled until she becomes qualified to claim maternity benefit under Section 50 of the ESI Act. Section 50 of the ESI Act provides that the qualification of an insured woman to claim maternity benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government. Section 5B(b) of the Maternity Benefit Act deals with payment of maternity benefit in

certain cases and provides that every woman whose wages (excluding remuneration for overtime work) for a month exceed the amount specified in Section 2(9)(b) of the ESI Act shall be entitled to the payment of maternity benefit under the Maternity Benefit Act. Section 2(9) (b) of the ESI Act defines an employee to mean any person employed for wages in or in connection with the work of a factory or establishment to which the Act applies but does not include any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government, a month. According to the petitioner, the wages prescribed by the Central Government under Section 2(9)(b) of the ESI Act is Rs.21,000/- with effect from 01.01.2017. As per the averment of the petitioner and Ext.P2 order, the salary of the 3rd

respondent as on the date on which she availed leave was Rs.20,300/- which is less than the wage limit prescribed by the Central Government under Section 5B(b) of the Maternity Benefit Act read with Section 2(9)(b) and Section 50 of the ESI Act. Therefore, it is contended that since the wages of the 3rd respondent for a month is less than Rs.21,000/-, prescribed by the Central Government under Section 5B(b) of the Maternity Benefit Act read with Sections 2(9)(b) and Section 50 of the ESI Act, the provisions of the Maternity benefit Act will not apply so far as the 3rd respondent is concerned.

10. The 1st respondent has not considered whether the 3rd respondent has become qualified to claim maternity benefit under Section 50 of the ESI Act read with Section 5B(b) of the Maternity Benefit Act even while finding that the salary of the 3rd

respondent was Rs.20,300/- as on the date on which she availed leave. Further, from the documents produced, it appears that the 1st respondent has passed Ext.P2 order on the date of inspection itself. I find that Ext.P2 order is vitiated by non application of mind and in violation of the principles of natural justice.

Accordingly, Ext.P2 order is set aside. Consequently, Ext.P4 order cannot sustain and the same is also set aside. There will be a direction to the 1st respondent to pass fresh orders on the claim of the 3rd respondent for maternity benefit after affording an opportunity of hearing to the petitioner and the 3rd respondent in the light of the discussion and observations above, as expeditiously as possible, at any rate, within a period of two months from the date of receipt of copy of this judgment. It will be

open to both parties to raise all contentions including the applicability of the Maternity Benefit Act to the 3rd respondent.

The writ petitions are disposed of accordingly.

Sd/-

MURALI PURUSHOTHAMAN
JUDGE

al/-

APPENDIX OF WP(C) 1873/2020

PETITIONER EXHIBITS

EXHIBIT P1	**A TRUE COPY OF THE CERTIFICATE OF EXPERIENCE ISSUED BY THE NIMS HOSPITAL AUTHORITY TO THE PETITIONER.**
EXHIBIT P2	**A TRUE COPY OF THE PETITION SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT DATED 01.10.2019.**
EXHIBIT P3	**A TRUE COPY OF THE REQUEST DATED 06.07.2019.**
EXHIBIT P4	**A TRUE COPY OF THE COMPLAINT SUBMITTED BEFORE THE DISTRICT LABOUR OFFICER AGAINST DENIAL OF EMPLOYMENT DATED 26.06.2019.**
EXHIBIT P5	**A TRUE COPY OF THE NOTICE OF THE DEPUTY LABOUR OFFICER DATED 20.08.2019.**
EXHIBIT P6	**A TRUE COPY OF THE PROCEEDINGS OF THE RESPONDENT NO.496/2019 DATED 13.08.2019.**
EXHIBIT P7	**A TRUE COPY OF THE PROCEEDINGS NO.496/2019 DATED 14.10.2019 OF THE 4TH RESPONDENT ORDERING REINSTATEMENT OF THE PETITIONER.**
EXHIBIT P8	**A TRUE COPY OF THE PETITION FILED BY THE PETITIONER DATED 31.12.2019.**

APPENDIX OF WP(C) 15131/2020

PETITIONER EXHIBITS

EXHIBIT P1	**TRUE COPY OF OFFER LETTER DATED 25.2.2015, ISSUED BY NIMS.**
EXHIBIT P2	**TRUE COPY OF ORDER NO.496/2019 DATED 13.8.2019 ISSUED BY THE 1ST RESPONDENT.**
EXHIBIT P3	**TRUE COPY OF LETTER FROM THE PETITIONER TO THE 1ST RESPONDENT.**
EXHIBIT P4	**TRUE COPY OF ORDER DATED 14.10.2019 ISSUED BY THE 1ST RESPONDENT.**
EXHIBIT P5	**TRUE COPY OF APPEAL MEMORANDUM DATED 14.11.2019 AGAINST EXHIBIT P-2 ORDER.**
EXHIBIT P6	**TRUE COPY OF APPEAL MEMORANDUM DATED 26.11.2019 AGAINST EXHIBIT P4 ORDER.**
EXHIBIT P7	**TRUE COPY OF ORDER DATED 24.2.2020 ISSUED BY THE 2ND RESPONDENT IN MBA 1/2020.**
EXHIBIT P8	**TRUE COPY OF I.A. IN MBA NO.1/2020 FILED BY THE PETITIONERS SEEKING RESTORATION OF THE APPEAL.**

RESPONDENT EXHIBITS

EXHIBIT R3(A)	**A TRUE COPY OF THIS CERTIFICATE ISSUED BY THE NURSING SUPERINTENDENT DATED 21.06.2014.**
EXHIBIT R3(B)	**A TRUE COPY OF THE COMPLAINT OF THE DEPONENT TO THE DISTRICT LABOUR OFFICER DATED 26.06.2019 WITH ITS TRANSLATION.**

EXHIBIT R3(C)	**A TRUE COPY OF THE COMMUNICATION FROM THE ASSISTANT LABOUR OFFICER TO THE PETITIONER DATED 01.10.2019 WITH ITS TRANSLATION.**
EXT.R2(A)	**TRUE COPY OF THE GOVERNMENT ORDER G.O. (MS)No.46/73/LBR DATED 06.08.1973.**