



2024:DHC:607



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

% Judgment delivered on: 25.01.2024

+ **W.P.(C) 3590/2022****DR. PRIYANKA VERMA**

..... Petitioner

versus

MEDEOR HOSPITAL LTD FORMERLY KNOWN AS**ROCKLAND HOSPITAL LTD**

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Shikar Srivastava and Ms. Perna Singh, Advocates

For the Respondent : Dr. Prateek Singh Chaudhary, Advocate

CORAM:**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]**

1. This is a writ petition under Article 226 of the Constitution of India seeking the following reliefs:-

“a) issue an appropriate writ, order or direction directing the Respondent to grant the Petitioner maternity benefits @ 1,70,000 p/m for 6 months i.e. from 09.03.2020 to 07.09.2020 amounting to Rs. 10,20,000/- and;

b) issue an appropriate writ, order or direction directing the Respondent pay the sum of Rs. 45,333/- towards unpaid salary at pro rata basis for 8 days of services rendered in

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the month of March 2020 i.e. from 01-03.2020- 08.03.2020 and;

c) issue an appropriate writ, order or direction directing the Respondent refund the sum of Rs. 14,800/- wrongly deducted for the month of January 2020 and;

d) direct the Respondents to pay interest @ 12% p.a. on the amounts mentioned in prayers (a) to (c) above from the date it became due till the period the said amount is repaid and;

e) direct the Respondent to release the Petitioner's experience certificate for the periods the Petitioner rendered her services to the Respondent and the relieving letter and;

f) direct the Respondent to bear the cost of the present litigation and;...”

2. The petitioner is a Medical Practitioner specialized in Obstetrics and Gynecology and was working for the respondent hospital during the period 2015 through 2020. It is not disputed that the petitioner was an employee on a contractual basis, with the respondent hospital, which was being renewed from time to time.

3. The petitioner submits that the petitioner, in the interregnum, got pregnant and sought maternity leave for a period of 26 weeks w.e.f. 09.03.2020 *vide* the e-mail dated 06.03.2020, particularly under the Maternity Benefits Act, 1961.

4. It is the case of the petitioner that the maternity leave of the petitioner was approved by the competent authority of the respondent. It is also the case of the petitioner that while approving the maternity leave, the approval for the 26 weeks' period was automatically inbuilt in



the same.

5. She submits that her salary for the month of January 2020 was wrongly deducted and she has received a lesser amount than what she was entitled to. This error came to her knowledge sometime in the month of March, 2020, while the petitioner had given birth to the child on 30.03.2020, and she was discharged from the hospital after delivery on 02.04.2020.

6. The petitioner submits that subsequently, despite contacting the respondent hospital for her dues, including salaries, there was no response from the hospital. She submits that on 07.09.2020, when the maternity leave was ending, she informed the respondent hospital through the Head of Human Resource Department that she would be resuming the work and joining the hospital from 07.09.2020. Despite such information having been served, it is the case of the petitioner that there was no response from the respondent hospital.

7. According to the petitioner, the petitioner was entitled to the benefit under the Act to the extent of 26 weeks which roughly amounted to Rs.10,80,136/-, towards the maternity benefits and unpaid salary. Despite the legal notice having been served, the petitioner claims that there was no response on behalf of the respondent hospital.

8. Being aggrieved of the aforesaid, the petitioner has filed the present petition under Article 226 of the Constitution of India.

9. On the issue of maintainability, the contention of learned counsel for the petitioner is that since there is an apparent violation of the statutory benefits under the Maternity Benefits Act, 1961, the writ petition would be maintainable.



10. Learned counsel submits that according to the judgment rendered by the Supreme Court, in the case of ***Federal Bank Limited vs. Sagar Thomas and Others*** reported in (2003) 10 SCC 733, particularly para 18, any institution like the present respondent which is under a liability to discharge any function under a statute, can be compelled to perform such statutory functions by invoking the writ jurisdiction under Article 226 of the Constitution of India.

11. Learned counsel elaborately refers to various paragraphs of the aforesaid judgment of the Supreme Court to submit that the petitioner's case would be squarely covered within the four corners of the ratio laid down therein.

12. He also refers to another judgment of the Supreme Court in the case of ***Uttar Pradesh Power Transmission Corporation Limited and Another vs. CG Power and Industrial Solutions Limited and Another*** reported in (2021) 6 SCC 15 to buttress the aforesaid submissions.

13. In fact, learned counsel refers particularly to paras 67 and 69 of the judgment in the case of ***Uttar Pradesh Power Transmission*** (Supra) to submit that an availability of an alternate remedy need not necessarily curtail or prohibit the High Court from exercising its jurisdiction under Article 226 of the Constitution of India in deserving cases. He submits that in the present case, since the statutory Act, which is undoubtedly applicable to the respondent, having not been complied with, confers the entitlement upon the petitioner to invoke the writ jurisdiction of this Court.

14. That apart, learned counsel also brings attention of this Court to the judgment of the learned Division Bench in ***Dr. Baba Saheb***



Ambedkar Hospital Govt. of NCT of Delhi and Another vs. Dr. Krati Mehrotra reported in **2022 SCC OnLine Del 742** to submit that in an identical case, that too in respect of an employee who was on a contract basis and whose contract had ended, learned Division Bench of this Court had directed that the said obligation to extend leave beyond the period of contract is necessary and in consonance with the terms of the law.

15. Simultaneously, according to learned counsel, learned Division Bench also upheld the entitlement of payment of the benefits of the Act for a period of 26 weeks. On that basis, learned counsel submits that the petition is maintainable not only on facts but also on law.

16. *Per Contra*, learned counsel appearing for the respondent vehemently opposes the aforesaid submissions made by learned counsel for the petitioner and submits that the present petition is not at all maintainable under Article 226 of the Constitution of India.

17. According to learned counsel, the entire controversy raised on the issue of maintainability can be cut short by clearly referring to the provisions of Section 17 of the Maternity Benefits Act, 1961, which according to the learned counsel, is squarely applicable to the facts of the present case.

18. Learned counsel further submits that not having availed the said efficacious and alternate remedy under Section 17 of the Act, the petitioner could not have invoked the writ jurisdiction of this Court. In any case, according to learned counsel, the issues are disputes on facts, which in any case, a writ Court is precluded from consideration.

19. In support of his contention, learned counsel relies upon the



judgment of the Supreme Court in *Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others*, reported in (1998) 8 SCC 1, particularly to para 15 which is extracted herein:-

"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged...."

According to learned counsel, the Supreme Court has clearly laid down three contingencies in which a writ petition could be filed and the present issues on facts clearly do not fall within the three parameters and as such, the writ petition would not be maintainable.

20. This Court has considered the rival contentions of the counsel for the parties and also considered the judgments relied upon.

21. At the outset, this Court is conscious of the fact that the Maternity Benefits Act, 1961 has to be give primacy for the reason that it is a benevolent Act and promulgated for the purpose of giving benefits to the citizens of this Country and also to protect and empower women in the times when most required.

22. That having been said, it would be apposite to extract Section 17 of the said Act as under:-

"17. Power of Inspector to direct payments to be made. --



(1) Any woman claiming that—

- (a) maternity benefit or any other amount to which she is entitled under this Act and any person claiming that payment due under section 7 has been improperly withheld;*
- (b) her employer has discharged or dismissed her during or on account of her absence from work in accordance with the provisions of this Act, may make a complaint to the Inspector.*

(2) The Inspector may, of his own motion or on receipt of a complaint referred to in sub-section (1), make an inquiry or cause an inquiry to be made and if satisfied that—

(a) payment has been wrongfully withheld, may direct the payment to be made in accordance with his orders;

(b) she has been discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Act, may pass such orders as are just and proper according to the circumstances of the case.

(3) Any person aggrieved by the decision of the Inspector under sub-section (2) may, within thirty days from the date on which such decision is communicated to such person, appeal to the prescribed authority.

(4) The decision of the prescribed authority where an appeal has been preferred to it under sub-section (3) or of the Inspector where no such appeal has been preferred, shall be final.

(5) Any amount payable under this section shall be recoverable by the Collector on a certificate issued for that amount by the Inspector as an arrear of land revenue.”

23. It is clear from the bare perusal of the provisions of Section 17



that a remedy and that too an efficacious and alternate one has already been provided by the Legislature to any person, who claims entitlement to the benefits under the Act and has been deprived of such benefits by the employer. A particular procedure also has been provided as to the manner in which the Inspector i.e., the competent officer under the Act, is to consider and dispose of any complaint and direct the benefits to be paid by the employer.

24. In fact, according to Section 21 of the said Act, there is a penalty provision against the employer in case the said employer is found to contravene provisions of such Act. Moreover, Section 22 of the said Act also empowers the Inspector to levy penalty for obstructing the Inspector in respect of the proceedings which may entail upon a complaint being filed by the aggrieved person.

25. In fact, the Rules promulgated under the Maternity Benefits Act, 1961 also provide the provision of an appeal to an aggrieved person against the decision of the Inspector under sub-section (3) of Section 17 of the said Act.

26. On an overall conspectus of the Act and the Rules provided therein, it appears to this Court that the same is a complete Code in itself. The alternative remedy through a statute, being effective and efficacious, the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India ought not to have been invoked. The aforesaid settled position of law has been reiterated in the judgment of the Supreme Court in *Jaipur Vidyut Vitran Nigam Ltd vs. MB Power (M.P.) Ltd* reported in 2024 SCC OnLine SC 26. The relevant paras of the aforesaid judgment is extracted hereunder :-



"138. ...In such circumstances, recourse to a petition under Article 226 of the Constitution of India in the availability of efficacious alternate remedy under a statute, which is a complete code in itself, in our view, was not justified.

139. No doubt that availability of an alternate remedy is not a complete bar in the exercise of the power of judicial review by the High Courts. But, recourse to such a remedy would be permissible only if extraordinary and exceptional circumstances are made out. A reference in this respect could be made to the judgments of this Court in the cases of Radha Krishan Industries v. State of Himachal Pradesh¹² and South Indian Bank Ltd. v. Naveen Mathew Philip¹³.

140. We may gainfully refer to the observation of this Court in the case of Radha Krishan Industries (supra), wherein this Court has laid down certain principles after referring to the earlier judgments:

"24. The High Court has dealt with the maintainability of the petition under Article 226 of the Constitution. Relying on the decision of this Court in CCT v. Glaxo Smith Kline Consumer Health Care Ltd. [CCT v. Glaxo Smith Kline Consumer Health Care Ltd., (2020) 19 SCC 681], the High Court noted that although it can entertain a petition under Article 226 of the Constitution, it must not do so when the aggrieved person has an effective alternate remedy available in law. However, certain exceptions to this "rule of alternate remedy" include where, the statutory authority has not acted in accordance with the provisions of the law or acted in defiance of the fundamental principles of judicial procedure; or has resorted to invoke provisions, which are repealed; or where an order has been passed in violation of the principles of natural justice. Applying this formulation, the High Court noted that the appellant has an alternate remedy available under the GST Act and thus, the petition was not maintainable.

25. In this background, it becomes necessary for this Court, to dwell on the "rule of alternate remedy" and its judicial exposition. In Whirlpool Corpn. v. Registrar of



Trade Marks [Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1], a two-Judge Bench of this Court after reviewing the case law on this point, noted : (SCC pp. 9-10, paras 14-15)

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

(emphasis supplied)

26. Following the dictum of this Court in Whirlpool [Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1], in Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107], this Court noted that :



(Harbanslal Sahnia case [Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107], SCC p. 110, para 7)

“7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies : (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks [Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1].) The present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants’ dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.”

(emphasis supplied)

27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.



27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in *Chand Ratan v. Durga Prasad* [*Chand Ratan v. Durga Prasad*, (2003) 5 SCC 399], *Babubhai Muljibhai Patel v. Nandlal Khodidas Barot* [*Babubhai Muljibhai Patel v. Nandlal Khodidas Barot*, (1974) 2 SCC 706] and *Rajasthan SEB v. Union of India* [*Rajasthan SEB v. Union of India*, (2008) 5 SCC 632] among other decisions.”

141. This Court has clearly held that when a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that



particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution of India."

27. It is admitted by the learned counsel that the petitioner did not invoke the provisions of Maternity Benefits Act, 1961 for claiming arrears for the period of maternity leaves for 26 weeks and has approached this Court seeking arrears in monetary terms under Article 226 of the Constitution of India.

28. In the opinion of this Court, keeping in view the fact that there could be rival contentions, ascertainment of the payment and the leaves for which the petitioner would be entitled to, would constitute disputed questions of facts, which cannot be decided in a writ jurisdiction summarily.

29. So far as the judgment of ***Federal Bank (supra)***, decided by the Hon'ble Supreme Court is concerned, there is no quarrel with the ratio laid down therein as to in what circumstances a writ petition would be maintainable against private institutions. However, in the present case, there is an alternate and efficacious remedy under a statute available for the petitioner to avail of and that coupled with disputed questions of facts involved in the present case propels this Court to take a different view.

30. The judgment of learned Division Bench of this Court relied upon by learned counsel for the petitioner arose from the proceeding which was hitherto filed before the learned Principal Bench, Central Administrative Tribunal by the respondent Doctor in the writ petition. The writ petition was filed against the order of the Tribunal by the Dr. Baba Saheb Ambedkar Hospital as a right, ostensibly under the ratio



laid down by the Constitution Bench of the Supreme Court in *L. Chandra Kumar vs. Union of India & Ors.* reported in (1997) 3 SCC 261 and as such cannot be said to be a case, which would propound that a writ petition under Article 226 of the Constitution of India is maintainable against a private institution.

31. Learned counsel for the petitioner does not dispute that the respondent is a private institution, however, submits that it is performing public functions and duties and as such, ought to be considered as an institution covered under Article 226 of the Constitution of India.

32. So far as this argument of learned counsel for the petitioner is concerned, an institution, which may be performing the public duty, may in certain cases be held to be a “State” or an “Instrumentality” falling within four corners of Article 12 of the Constitution of India. However, so far as the employees of such institutions are concerned, and whose services are governed by a private contract, could file and maintain a writ against the said private hospital or institution, is doubtful.

33. This Court is of the considered opinion that, in the present case, there is no such exclusivity in the fact, which would propel this Court to come to a conclusion that the respondent hospital is an institution covered under Article 226 of the Constitution of India.

34. As such, the present petition is dismissed on the question of maintainability, leaving open all the rights of the petitioner to be raised in an appropriate proceeding. In case any such proceeding is initiated, the competent authority would consider the pendency of the present writ petition, in case any issue on limitation arises.



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35. In view of the above, the petition is dismissed as not maintainable with no order as to costs.

TUSHAR RAO GEDELA, J.

JANUARY 25, 2024

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