



2024:DHC:2001-DE



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 12.03.2024.

+ LPA 199/2024, CM APPL. 13775/2024 –Stay, CM APPL. 13776/2024 -Ex. & CM APPL. 13777/2024 -Delay 120 days.
GOVT. NCT OF DELHI THROUGH STATE CONSUMER
DISPUTES REDRESSAL COMMISSION AND ORS

..... Appellants

Through: Mr.Yeeshu Jain, ASC, GNCTD with
Ms.Jyoti Tyagi, Ms.Manisha &
Mr.Hitanshu Mishra, Advs.

versus

REHMAT FATIMA

..... Respondent

Through: Mr. Syed Hasan Isfahani and Mr.
Syed Mohd. Hassan, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

REKHA PALLI, J (ORAL)

1. The present appeal under Clause X of the Letters Patent seeks to assail the order dated 06.10.2023 passed by the learned Single Judge in W.P.(C)13075/2019. Vide the impugned order, the learned Single Judge has partly allowed the writ petition filed by the respondent by directing the appellants to grant her maternity and medical benefits for a period of 26 weeks on account of her pregnancy as per the provisions of the Maternity Benefit Act, 1961 (hereinafter referred to



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as 'the Act').

2. On 05.03.2024, when the present appeal was listed for preliminary consideration, after some arguments, learned counsel for the appellants had sought time to obtain instructions whether in the light of the *Mukhyamantri Mahila Samman Yojna*, a recently announced scheme of the Govt. of NCT of Delhi to grant a monthly assistance to certain categories of adult women in Delhi, the appellants would still want to press their challenge to an order which directs grant of the benefits under the Act to a young woman in Delhi. Today, he submits that he has instructions to press the appeal.
3. In the light of this plea taken by the learned counsel for the appellants, we have no option but to proceed to deal with the appeal on merits, which we find is wholly misconceived and is in fact, in the teeth of various decisions of the Apex Court wherein it has been categorically held that even women working on contractual basis are entitled to be granted the benefits under the Act even if these benefits exceed the duration of their contractual engagement.
4. The only submission of learned counsel for the appellant is that the term of the contractual engagement of the respondent was expiring on 31.03.2018 and, therefore, the appellant could not be saddled with the liability to pay wages for the entire period of the purported maternity leave availed by her, which period extended till 31.08.2018 i.e., way beyond 31.03.2018. He, therefore, contends that the respondent could, at the best, be paid wages till 31.03.2018 and not for any period thereafter.
5. On the other hand, learned counsel for the respondent supports the



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impugned order and submits that the learned Single Judge has rightly allowed the writ petition filed by the respondent by holding that she ought to be released all medical, monetary and other benefits that accrued in her favour on account of her pregnancy, for which she made an application on 28.02.2018 while her contractual engagement was admittedly still continuing. He, therefore, prays that the appeal be dismissed.

6. In order to appreciate the aforesaid submissions of learned counsel for the appellants, it would be apposite to note the brief factual matrix of the matter as emerging from the record.
7. The respondent was appointed as a stenographer on contractual basis for a period of one year with the respondent no. 3 i.e., Delhi State Consumer Forum on 07.02.2013. The said contractual period was extended from time to time either without any break or with notional break of one or two days. After the respondent had rendered over five years of unblemished service, she on 28.02.2018 submitted an application for grant of maternity leave of 180 days w.e.f. 01.03.2018. This application, we may note, was made in accordance with the provisions of the Act.
8. The appellants, however, did not accede to her request and informed her that since her contractual period of engagement was set to expire on 31.03.2018, no maternity leave benefits would be granted to her. Consequently, the respondent was compelled to approach this Court by way of W.P.(C) 13075/2019 wherein she had not only made a prayer for grant of maternity benefits for the period of her maternity leave but also sought that her services be continued on the post of



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stenographer on contractual basis, on which post she had worked uninterruptedly for over five years since 2013.

9. Vide the impugned order, the learned Single Judge has rejected the respondent's prayer for re-engagement on the post of stenographer on contractual basis, which order has been assailed by the respondent by way of LPA No. 146/2024 which is pending adjudication before this Court. The appellants have, however, by way of present appeal, approached this Court assailing the direction of the learned Single Judge to release to the respondent, all medical, monetary and other benefits of 26 weeks as per the provisions of the Act.
10. We may now proceed to note the relevant extracts of the impugned order passed by the learned Single Judge, which read as under:

"58. This Court is of the view that under Section 5 of the Act, the petitioner is entitled to the maternity benefits, despite the fact that such petitioner's contract ended during her pregnancy. The Act has incorporated within itself a suo-motu extension of such benefits to such employee and hence, the benefits would accrue to the said employee despite the period of her contract has ended. Upon fulfilment of the conditions specified in Section 5(2) of the Act, the maternity benefits extend beyond the contractual period of her employment of the petitioner.

59. The Act creates a fiction in favour of the petitioner to be treated as an employee of the respondent no. 3 for the purpose of giving her the maternity benefits to which she is entitled to. The attempt to enforce the contract duration term within such period by the respondent no.3 is "discharge" and attract the embargo specified in Section 12(2)(a) of the 1961 Act and does not fall within the exception as enunciated under proviso to the Section



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12(2)(a) since, there is no allegation of gross misconduct of the petitioner made by the respondent no.3.

60. It is ironic that the petitioner in the instant case, worked with the State Consumer Forum as a stenographer, is a court staff and assisted in the dispensation of justice by the Forum, however, she had to herself approach this Court for justice since she was not being able to secure the benefits that were necessary for the best interest and welfare of her own child.

61. This Court is of the considered view that the State being a model employer, is expected to act in line of Constitution and set the benchmark for other employers. Under the veil of contractual service, principles of natural justice and facets of constitutionality cannot be given go bye.

62. The social welfare legislation of the Maternity Benefit Act certainly does not discriminate on the basis of the nature of employment of the beneficiaries. It is also certain that the mere creation of the welfare legislation is not enough. A duty is cast upon the State and also upon all those who are the subjects of the Act, to uphold the integrity, the objective and the provisions of the legislation in its true letter and spirit. Moreover, even the Constitution of India advances the ideals which have been culminated and translated into the Maternity Benefit Act.

63. Therefore, in view of the discussions, the facts, circumstances, the submissions made and the contentions raised, this Court is of the considered view that the respondent no. 3 should have extended the benefits and reliefs under the Act to the petitioner as were being extended. The law stands settled in this regard that the nature of employment shall not decide whether a woman employee would be entitled to maternity benefits.



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64. Accordingly, issue no. 1 is decided by this Court.”

11.From a perusal of the aforesaid, we find that the learned Single Judge has by placing reliance on Section 5 of the Act come to a conclusion that the benefits payable to the respondent would not come to an end on expiry of the term of her contractual engagement. Having perused Section 5 of the Act, we see no infirmity in the approach adopted by the learned Single Judge. We, therefore, find no merit in the appellant’s plea that the respondent was not entitled to receive any benefits under the Act for the period beyond 31.03.2018, the date when the term of her contractual engagement was expiring. In fact, we are surprised that the Govt. of NCT of Delhi, which is giving great publicity to the steps being taken to promote the interest of women in Delhi and has under its recently announced scheme i.e., *Mukhyamantri Mahila Samman Yojna* promised to pay all adult women in the city except those who are tax-payers/government employees or are drawing pension, a monthly sum of Rs.1,000/- in the future has chosen to file such a misconceived appeal to assail an order which grants the benefits under the Act to a young woman, who has with utmost dedication served in the Delhi State Consumer Forum over 5 years.

12.For the aforesaid reasons, we find absolutely no reason to interfere with the impugned order insofar as it directs the appellants to pay to the respondent salary and other monetary benefits for a period of 26 weeks for which period she had sought maternity benefits. The appeal being misconceived is alongwith all pending applications dismissed



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with costs of Rs.50,000/-. Costs be paid to the respondent within four weeks from today.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

MARCH 12, 2024
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