IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.11.2025

CORAM

THE HONOURABLE MRS. JUSTICE N.MALA

WP.No.16964/2022

1.KM NU Hospital
C/o.Nu Hospitals, rep.by its
Managing Director, Dr.Prasanna Venkatesh
M.K.Solur, Ambur, Thirupattur District.

2.Dr.Prasanna Venkatesh
S/o.Late Murali Kanthiraj
KMNU Hospitals, Solur
Ambur, Thirupattur District 635 802.
Tamil Nadu. .. Petitioners

Versus

1.Dr.Beney Benjamin
"Bobency", LVMRA-113A
Vachiyoor Post,
Trivandrum 695031,
Kerala.

2.The Joint Commissioner of Labour
Labour Office, Melmonavoor
Vellore Taluk, Vellore District. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to the impugned Award dated 17.05.2022 passed by the 2nd respondent in Na.Ka.No.C1/1198/2022 and to quash the same by confirming the discontinue of service of the 1st respondent.

For Petitioners	:	Mr.P.Vinoth Raj
For R1	:	Mr.Abhijeett Lessli
For R2	:	Mrs.M.Jayanthy, AGP

ORDER

(1)The writ petition is filed to quash the Award dated 17.05.2022 passed by the 2nd respondent/Joint Commissioner, in Na.Ka.No.C1/1198/2022, by confirming the discontinuity of service of the 1st respondent.

(2)The facts in brief, are as follows:

(3)KMNU Hospital is a multi-speciality hospital having its registered office in Karnataka and having branches in Shimoga and Bangalore. The petitioner/Hospital, in the year 2020, opened a Speciality Hospital in Urology at Ambur. The Hospital appointed necessary staff, nurses and doctors for its Branch at Ambur. The 1st respondent was appointed as

Consultant on 03.11.2020, by executing an Agreement on terms and conditions stated therein. As per the aforesaid Agreement dated 03.11.2020, the 1st respondent was paid a fee of Rs.1,10,000/- per month and an additional amount of Rs.15,000/- per month, was kept aside to be paid in lump sum on completion of twelve months of service. Even though, due to Covid-19 pandemic, the Hospital Management did not earn profit, it nevertheless paid the fee to the Consultants. Initially, the 1st respondent rendered her services as per the Agreement. However, on 23.10.2021, the 1st respondent sent an e-mail to the HR of the Hospital, stating that she would be unavailable for three weeks since she was in first Trimester of pregnancy and requested for three weeks leave, which leave was also sanctioned by the HR. Due to lack of doctors in the department of the 1st respondent, the 1st respondent was directed to join duty as soon as possible. However, the 1st respondent refused to join and informed the HR that she will not be attending duty henceforth. While so, on 31.12.2021, an e-mail was sent to the 1st respondent, informing her that since she did not report for duty subsequent to the expiry of her leave period, it was decided to discontinue her services. The 1st respondent was directed to complete the formalities and to vacate the Hospital Quarters on or before 08.01.2022. The 1st respondent sent her reply through e-mail., and later, the HR of the Hospital sent a mail to the 1st respondent informing her that full and final settlement of her dues were sent to her Bank account and that, there were no dues. While so, the 1st respondent lodged a complaint before the Secretary to Government [Labour and Employment] Department, against her illegal termination on the ground of non-issuance of termination order and for deprivation of maternity benefits. The complaint was transferred to the 2nd respondent, who upon completion of enquiry, allowed the claim as sought for by the 1st respondent vide impugned order dated 17.05.2022. Aggrieved by the impugned order, the petitioners have filed the present writ petition for the aforesaid relief.

(4)The 1st respondent filed a detailed counter, denying all the allegations and averments made in the writ petition. The 1st respondent denied the contention of the petitioners that she was requested to join duty on completion of her leave. The 1st respondent submitted that it was the petitioners who were not interested in continuing her services and wanted her to leave. The 1st respondent further submitted that though she sent an e-mail to the HR, head of the Hospital, on 23.11.2021, for issuance of

Termination Order, since the petitioners had already decided to terminate her services, there was no response. It was on 15.12.2021, that she was informed that a new Doctor had joined in her place. The 1st respondent submitted that since the petitioners were making a mockery of the Beneficial Acts and Rules, enacted for the benefit of working woman, that she was constrained to lodge the complaint to the Tamil Nadu State's Women Commission, on 16.12.2021. In her complaint, the 1st respondent narrated the harassment, physical and mental trauma meted out to her by the 2nd petitioner and the denial of employment to her for the purpose of defeating her legitimate rights under the The Maternity Benefit Act, 1961. The 1st respondent, refuted the averments in the affidavit para-wise and submitted that there was absolutely no infirmity in the impugned order, passed by the 2nd respondent. The 1st respondent submitted that the petitioners approached the Court with unclean hands by suppressing material facts, twisted facts and deceitful tactics in order to suppress their illegal and irregular action. The 1st respondent, therefore prayed for dismissal of the writ petition with exemplary cost.

(5)The 1st respondent also filed an additional counter affidavit, in support of her contention that there was an employer-employee relationship between the petitioners and the 1st respondent. The 1st respondent further submitted that the impugned order of the 2nd respondent, in the absence of patent irregularity, could not be challenged in the writ petition. The 1st respondent prayed for initiation of contempt proceedings against the petitioners/Hospital for approaching the Court with false case. The 1st respondent further submitted that as the directions of the 2nd respondent in the impugned order, were not complied with, the petitioners were bound to pay interest for belated payment and litigation cost.

(6)The learned counsel for the petitioners submitted that the 1st respondent, being a Senior Registrar, was a Consultant / Contractor and as such, there was no employer-employee relationship between the Hospital Management and the 1st respondent herein. The learned counsel further submitted that since the 1st respondent, was only a Consultant, engaged on monthly consultation fees, she was not entitled to any benefit available to a regular employee/staff of the hospital. The learned counsel submitted that despite numerous opportunities given to the 1st respondent to join duty, she refused to join and hence, the Hospital Management discontinued her services by duly crediting her dues to her Bank Account. The learned counsel further submitted that the 1st respondent's complaint claiming benefits under the provisions of Section 5[2] of the Maternity Benefits Act, 1961, was illegal and unsustainable. The learned counsel submitted that the failure of the 1st respondent to follow the Rules and Regulations / Terms of the Agreement mutually agreed to between them, resulted in severe loss to the Hospital. The learned counsel therefore prayed that the writ petition be allowed.

(7)The learned counsel for the 1st respondent submitted that the 2nd respondent, framed appropriate issues and after considering the entire evidence on record, found that the 1st respondent was entitled to the benefits under the Maternity Benefits Act, and therefore, allowed the complaint, directing the petitioners to pay her, the maternity benefit. The learned counsel further submitted that the writ petition was liable to be rejected at the threshold for not exhausting the alternative and efficacious remedy of appeal provided under Section 17[3] of the Maternity Benefit Act, read with Section 11[1] of the Tamil Nadu Maternity Benefit Rules. The learned counsel for the 1st respondent submitted that in the absence of any justifiable reasons for by-passing the effective alternative remedy, the writ petition is liable to be rejected at the threshold. The learned counsel further submitted that the 2nd respondent, having rendered factual findings on proper appreciation of materials on record, this Court should be loath to interfere with the impugned order. The learned counsel therefore, prayed for the dismissal of the writ petition.

(8)Heard both sides and perused the materials placed before this Court.

(9)The facts are undisputed. The petitioners contend that there exists no employer-employee relationship between the 1st respondent and the petitioners, because the 1st respondent was engaged only as a Consultant / Contractor under the Agreement dated 03.11.2020 on Retainer fee of Rs.1,10,000/- and an additional amount of Rs.15,000/- payable at the end of the year, in lump sum. This Court has perused the impugned order and is satisfied that the finding of the 2nd respondent, based on a correct interpretation of the terms and conditions of the agreement, is infallible. The 2nd respondent has thoroughly and properly scanned all the terms and conditions of employment and has given valid and forceful reasons for the conclusion that the 1st respondent was an employee of the petitioners. Hence, this Court finds no compelling reasons to revisit the findings and interfere with the same.

(10)The next issue is whether the 1st respondent is entitled for maternity benefit under Section 5[2] of the Act.

(11)It is appropriate to refer to Section 5[2] of the Maternity Benefits Act, 1961, which reads as follows:-

*"**5. Right to Payment of maternity benefit:-***

[1]...

[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 the 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."*

(12)From a bare reading of the aforesaid provision, it is evident that an employee should have worked for not less than 80 days in an establishment of the employer from who she claims the maternity benefit for a period, not less than 80 days in the 12 months preceding the date of her expected delivery. Admittedly, the 1st respondent through her letter dated 23.10.2021, informed the petitioners that she was in her first trimester of pregnancy and informed them of her leave. The 1st respondent delivered a baby on 15.03.2022. As per the statute, 1st respondent ought to have worked for at least 80 days in the preceding 12 months from the date of her expected delivery, i.e., between 15.03.2021 and 14.03.2022. From the additional documents filed by the petitioners on 17.09.2025, it is evident that the 1st respondent, did work for more than 80 days during the relevant period. Therefore, on facts, it is clear the 1st respondent has satisfied the condition imposed in sub-section [2] of Section 5. In the light of the factual position, the contention of the petitioners that the 1st respondent is not entitled to the benefits of Section 5[2] of the Act, cannot be countenanced.

(13)The 1st respondent, along with the additional typed set of papers filed the Maternity benefit calculation table on 22.08.2025, claiming a sum of Rs.20,73,479/-, which is as follows:-

Maternity Calculation Table

1	<u>Maternity Benefits for 26 weeks</u>	
	a.Salary	Rs.1,25,000/- month
	b.Salary per day taking month as 30 days	Rs.4116.70p. / day
	c.Maternity benefits for 26 weeks	**Rs.7,49, 239/-** [Rupees Seven lakhs Forty Nine Thousand Two hundred and Thirty Nine]
	d.Amount due to 1st respondent as find for non payment of maternity as contemplated u/s.21 of the Maternity Benefits Act, 1961.	Rs.7,49, 239/- [Rupees Seven lakhs Forty Nine Thousand Two hundred and Thirty Nine]
	e.Salary during dismissal during pregnancy [23.11.2021 to 14.03.2022] Sec.12 of the Maternity Benefits Act, 1961	**Rs.3,75,000/-** [Rupees Three Lakhs Seventy Five Thousand only]
	f. Cost of Litigation	Limited to Rs.2,00,000/-
Total amount due Rs.20,73,479/- [Rupees Twenty Lakhs Seventy Three Thousand Four Hundred and Seventy Nine only]		

(14)The petitioners submitted a reply to the Calculation Memo of the 1st respondent denying the claim, among other grounds that the salary claimed was wrong and the 1st respondent was not entitled to full benefits of 26 weeks under Section 5[3] of the Act. The petitioners contend that the Consultation fees paid to the 1st respondent was only Rs.1,10,000/- and not Rs.1,25,000/- as claimed by the 1st respondent. In order to find out the actual fee paid to the 1st respondent, the appointment letter and agreement have to be looked into. In the appointment letter, it is clearly stated that the monthly professional fee of the 1st respondent is Rs.1,10,000/- subject to TDS and an additional amount of Rs.15,000/- would be kept aside and paid in lump sum on completion of 12 months of service per annum. The petitioners contend that the amount of Rs.15,000/- ought not to have be added to the professional fee. However, this Court is of the view that the sum of Rs.15,000/- though disbursed as a lump sum at the end of the year, constitutes an integral component of the professional fees, being part of the overall remuneration package. Hence, this Court is inclined to take Rs.1,25,000/- per month as the professional fees of the 1st respondent.

(15)The objection raised by the learned counsel for the petitioners that the 1st respondent was not entitled to full benefit of 26 weeks under Section 5[3] of the Act, deserves to be outright rejected since the 2nd respondent found that there was no termination of the 1st respondent's employment. The 2nd respondent, on the basis of the materials placed before him concluded that, the Agreement between the petitioners and the 1st respondent was subsisting since, neither of the parties had invoked the termination clause under Clause [6] of the Agreement dated 03.11.2020, for putting an end to the employment. This Court therefore finds no infirmity in the finding of the 2nd respondent. Since the procedure stipulated in the agreement was not followed by either party, there was no valid termination of service and the employment relationship continued. It appears that the petitioner has filed appeal against the said finding. However, this Court is of the view that, since the appeal is filed on the ground of illegal termination, either way, the 1st respondent will be entitled to claim full benefit. Hence, full benefit of 26 weeks is allowed.

(16)Though the 1st respondent has claimed Rs.7,49,239/- towards penalty/fine under Section 21 of the Maternity Benefits Act, the learned counsel for the 1st respondent, fairly conceded that the 1st respondent is not entitled to the said sum under the aforesaid section. However, the learned counsel submitted that the 1st respondent is entitled to interest for belated payment. This Court finds force in the submission of the learned counsel that the 1st respondent is entitled to interest. The impugned order was passed on 17.05.2022, and from that date, the petitioners have not paid a single pie to the 1st respondent. Therefore, this Court finds that the 1st respondent is entitled to reasonable interest for belated payment. The interest is fixed at 6% per annum. The claim of the 1st respondent for litigation cost, in the view of this Court, is exorbitant and exaggerated. This Court, on the facts of the case, finds that a sum of Rs.25,000/- would be a reasonable amount towards litigation cost of the 1st respondent.

(17)This Court finds that the 1st respondent has filed an appeal before the Commissioner of Labour, Chennai, against the finding of the 2nd respondent that the contract of employment subsist. Therefore, the issue of payment under Section 12 of the Act, for salary for dismissal period, is left open.

(18)In view of the above discussions, the writ petition is **disposed of with the direction that the petitioners shall pay the 1st respondent a sum of Rs.7,49,239/- along with 6% interest per annum, from the date of the order of the 1st respondent, i.e., 17.05.2022, till actual payment along with the litigation cost of Rs.25,000/- within a period of twelve weeks from the date of receipt of a copy of this order.**

No costs.

17.11.2025

AP
Index : Yes
Internet : Yes
Speaking Order: Yes
Neutral Citation: Yes

To

The Joint Commissioner of Labour
Labour Office, Melmonavoor
Vellore Taluk, Vellore District.

N.MALA, J.,

AP

WP.No.16964/2022

17.11.2025