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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CWP-10202-2002 (O&M)
Date of decision: 04.04.2025

Seema Kaushal

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. KL Arora, Advocate for the petitioner.
Mr. Satnam Preet Singh, DAG, Punjab.

AMAN CHAUDHARY, J. (ORAL)

1. Learned counsel submits that the respondents have wrongly passed the order (Annexure P7) directing the petitioner to apply for maternity leave without pay on the ground that it cannot be given to the female employees working on 89 days basis.

2. In **Municipal Corporation of Delhi vs. Female Workers (Muster Roll) and Another**, (2000) 3 Supreme Court Cases 224, it has been unequivocally held that the benefit under the Maternity Benefit Act is available to the employees who were working even on daily wage basis, relevant paras whereof read thus:

“ 10. Articles 42 and 43 provides as under :

"42 Provision for just and humane conditions of work and maternity relief - The State shall make provision for securing just and humane conditions of work and for maternity relief.

43. Living wage, etc., for workers - The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co- operative basis in rural areas."

28. The Industrial Tribunal, which has given an award in favour of the respondents, has noticed that

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women employees have been engaged by the Corporation on muster roll, that is to say, on daily wage basis for doing various kinds of works in projects like construction of buildings, digging of trenches, making of roads, etc., but have been denied the benefit of maternity leave. The Tribunal has found that though the women employees were on muster roll and had been working for the Corporation for more than 10 years, they were not regularised. The Tribunal, however, came to the conclusion that the provisions of the Maternity Benefit Act had not been applied to the Corporation and, therefore, it felt that there was a lacuna in the Act. It further felt that having regard to the activities of the Corporation, which had employed more than a thousand women employees, it should have been brought within the purview of the Act so that the maternity benefits contemplated by the Act could be extended to the women employees of the Corporation. It felt that this lacuna could be removed by the State Govt. by issuing the necessary notification under the Proviso to Section 2 of the Maternity Act. This Proviso lays down as under:

"Provided that the State Government may, with the approval of the Central Government, after giving not less than two month's notice of its intention of so doing, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply also to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise."

29. It consequently issued a direction to the management of the Municipal Corporation, Delhi to extend the benefits of Maternity Benefit Act, 1961 to such muster roll female employees who were in continuous service of the management for three years or more and who fulfilled the conditions set out in Section 5 of the Act.

33. A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the

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work place while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre or post-natal period.”

3. Relying on the aforesaid judgment, in **Shivani vs. State of Haryana**, 2018 SCC OnLine P&H 4282, the petitioner, working on contractual basis as Information-cum-Office-cum-Library Manager, was held entitled to the benefit of maternity leave.

4. As is evincible, the petitioner, as a matter of fact, had applied maternity leave for 180 days w.e.f. 14.06.1999 to 10.12.1999, which on having been duly sanction, she availed of and even received the salary for the said period, ergo, for the respondents to have initiated cancellation thereof that too three years was directly in teeth of the dictum of law refer to hereinabove.

5. The Maternity Benefit Act, 1961, is a beneficial piece of legislation designed to safeguard the rights of working women during pregnancy and motherhood enacted in consonance with the Articles 39 and 42 of the Constitution of India. To discriminate between them, on the premise of the nature of their engagement/appointment would be violative of Article 14 of the Constitution of India that ensures equality before the law and equal protection of laws.

6. In view of the aforesaid discussion, the present petition is allowed and the order (Annexure P7) is hereby set aside.

04.04.2025
ashok

(AMAN CHAUDHARY)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No