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

% **Date of order : 26th July, 2023**

\+ W.P.(C) 11016/2017 & CM APPL. 2071/2022

ANNWESHA DEB ..... Petitioner

Through: Dr. Charu Wali Khanna, Advocate along with petitioner in-person

versus

DELHI STATE LEGAL SERVICES AUTHORITY ..... Respondent

Through: Mr. Sarfaraz Khan, Advocate

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

> *"a) Issue a writ in the nature of MANDAMUS, or any other appropriate WRIT, Order directing the Respondent to grant all the consecutive maternity benefits to the petitioner which is applicable to regular female employees of the respondent.*
> *b) Issue such other Writ, direction or order, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case."*

2. The facts necessary for the adjudication of the instant petition are delineated hereunder:

a. The petitioner was appointed in the Juvenile Justice Board-I, Sewa Kutir, Kingsway Camp, New Delhi as a legal aid counsel on a daily fee basis, fixed at Rs. 1750/-, vide appointment letter dated 9th May 2016.

b. During the period of her contractual employment, the petitioner conceived a child in April 2017 and hence, she applied for maternity leave of seven months vide application dated 6th October 2017. A letter was also served upon the Member Secretary by the petitioner regarding the application requesting the grant of maternity benefits to her. Subsequently, an email was also sent to the Delhi State Legal Services Authority (hereinafter "DSLSA") on 21st October 2017.

c. The petitioner received a reply dated 31st October 2017 to her email addressed to DSLSA, stating therein that her request for maternity benefit had been declined since there is no provision for the grant of maternity benefits for Legal Services Authorities.

d. The petitioner being aggrieved by the decision of the concerned authorities/respondent has approached this Court, having left with no alternate remedy.

3. The following submissions culminated from the petition as well as the submissions made before the Court on behalf of the petitioner, contending

that she is entitled to the maternity benefits that accrue to her:

a. The learned counsel appearing on behalf of the petitioner submitted that as per Section 5 of the Maternity Benefit (Amendment) Act, 2017, (hereinafter "the Maternity Benefit Act") the petitioner is entitled to the right to maternity benefits and while denying such benefits, the respondent is violating the petitioner's legal rights. Section 3(o) of the said Act includes women employed for wages in any establishment and as per Section 3(n), wages include all remuneration paid to a woman in terms of a contract of employment etc. Therefore, the petitioner is entitled to the benefits.

b. The petitioner had worked till the 7th month of her pregnancy as a legal aid counsel and it was upon doctor's advise, for bed rest upon finding her deteriorating health, that the petitioner had to stop working till the time of her delivery and hence, she is entitled to the time she took off for her delivery and post-delivery child care.

c. It is further submitted that the women contractually employed in the Juvenile Justice Board with the respondent for tenure of 3 years are not being granted maternity benefits whereas the permanent employees of the respondent authority are being provided with the same.

d. The learned counsel for the petitioner submitted that the rights of the petitioner as laid down under Articles 14, 15(3), 16, 19(1)(g)

and 42 of the Constitution of India are being severely violated by the inaction of the respondent.

e. It is further submitted that the maternity benefits granted to women are substantial for their personal health as well as for the well-being of her children and denial of the same would amount to economic and social injustice.

f. It is submitted that the respondent is denying maternity benefits arbitrarily and there is no valid or material reason given by the respondent in the email dated 31st October 2017.

g. The learned counsel for the petitioner also relied upon the judgment passed in ***Municipal Corpn. of Delhi v. Female Workers (Muster Roll),*** **(2000) 3 SCC 224** (hereinafter "***Female Workers (Muster Roll) case***") to submit that the Hon'ble Supreme Court had observed that a woman cannot be compelled to undertake hard labour at the time of advanced stage of her pregnancy and that she would be entitled to maternity leave for certain period prior to and after her delivery. It is also submitted that there is no provision in the Maternity Benefit Act which suggests that women employees working on contractual/casual basis are not entitled to the maternity benefits during the course of their contract/tenure.

4. In view of the said contentions, the learned counsel for the petitioner, along with the petitioner in-person, prayed that a writ of mandamus may be

issued directing the respondent to grant all consequential maternity benefits to the petitioner that are available for the regular employees of the respondent.

5. *Per Contra*, the learned counsel appearing on behalf of the respondent opposed the arguments advanced on behalf of the petitioner and submitted as under, during the course of the arguments as well as by way of the short affidavit filed:

a. The learned counsel for the respondent submitted that the petitioner is not entitled to claim maternity benefits since she was only an empanelled advocate who discharges her services and is not an employee of the respondent organisation to whom such benefits accrue.

b. It is submitted that advocates empanelled with the respondent and deputed with the Juvenile Justice Boards are paid honorarium as per the fee scheduled by the DSLSA for which they are required to submit a report by the end of each month they performed their duties. Such reports are supported by attendance certificates based on which the payment is made depending upon the number of hours put in by the counsel.

c. It is also submitted that the Legal Services Authorities Act, 1987, the Regulations of the National Legal Services Authority as well as the DSLSA Rules regulate the empanelment of the advocates

with the respondent, however, the empanelled advocates are not employees of the DSLSA, neither contractual nor even *ad hoc*. The empanelled advocates only render their services when called upon or required by the respondent for which they are paid the honorarium.

d. It is submitted that there exists a client-lawyer relationship between the DSLSA and the empanelled lawyers and as such the respondent is not bound to provide benefits to the lawyers engaged by them in a professional capacity, which the regular employees may be entitled to. Further, it is submitted that since there is no employer-employee relationship between the parties, there is no entitlement that arises in favour of the petitioner under Section 5 of the Maternity Benefit Act.

e. The petitioner is not a regular employee of DSLSA and was only tasked to provide legal services to the children who are produced before the Juvenile Justice Boards for which she was paid honorarium for the number of days on which she discharged her duties with the respondent. It is submitted that empanelment is merely a process by which advocates are selected to provide legal aid on behalf of DSLSA to the needy applicants but they do not become obligated to receive benefits which the regular employees get.

f. It is further submitted that the appointment letter dated 9th May 2016 lays down the terms and conditions and makes it abundantly

clear that the appointment of the petitioner was for three years and the payment was to be made as per the fee schedule of the respondent for which the empanelled advocates are required to submit monthly bills along with their attendance certificate and the work report verified by the Principal Magistrate of Juvenile Justice Boards. The empanelled advocates are paid honorarium from public money and giving maternity benefits in such circumstances would be contrary to the intent and purpose of the Legal Services Authority Act, 1987.

g. The learned counsel further submitted that out of the three-year contractual period, the petitioner was on leave for 10 months, which in no manner grants any benefit in her favour. It is further submitted that the petitioner has failed to establish that she was an employee of the DSLSA.

6. It is, hence, submitted on behalf of the respondent that the claims raised by and on behalf of the petitioner are misconceived and there is exists no entitlement in favour of the petitioner regarding maternity benefits. Therefore, it is prayed that the instant petition be dismissed.

7. Heard the learned counsel for the parties and perused the record.

8. In totality, the matter before this Court is that the petitioner is seeking maternity benefits from the respondent on account of her leave during and post pregnancy. However, the respondent had communicated to the petitioner that there was no provision under which such maternity benefits

could be granted to her. The petitioner conceived during the course of her contractual employment with the respondent authority. She was admittedly in her third trimester, 7th month of pregnancy, when she was advised by the doctors to stay on bed rest till the time of her delivery and had accordingly, sought leave of absence from the respondent for the same. Once denied, the benefits of maternity leave, she approached this Court seeking its interference to help her get the benefits that a woman may need, to take care of herself and the child she is bearing. The consideration hence remains regarding the validity and legality of the claims raised on behalf of the petitioner.

9. On the question of validity of the claims, at the very outset, this Court is having clear conscience that there is nothing extraordinary or outrageous that the petitioner is seeking from the respondent. Having to tender to her own person and the child that she is bearing is not only in the best interest of herself and her child but also an entitlement of a woman. The health and well-being of both the mother and the child are paramount during the gestation period.

10. Maternity benefits do not merely arise out of statutory right or contractual relationship between an employer and employee but are a fundamental and integral part of the identity and dignity of a woman who chooses to start a family and bear a child. The liberty to carry a child is a fundamental right that the Constitution of the Country grants its citizens under Article 21. Further, the choice not to carry a child is an extension of

this fundamental right. However, to stand in the way of exercise of this right by a woman, without procedure or intervention of law, is not only violative of the fundamental rights granted by the Constitution of India but also against the basic tenets of social justice.

11. For centuries, in the conventional concept of family, the men were assigned the role of gatherers and the women were assigned the role of bearers. It was only gradually that women of the family started to find their place in the society and stepped out of the four walls of their home. However, the liberty did not come easy to them. For decades, women had to fight their way towards equal treatment in services, whether skilled or unskilled.

12. At this stage, it is extremely important to understand that equal treatment does not mean identical treatment. There are certain inherent differences amongst the natural biological beings. A woman is bestowed the gift and blessing of motherhood. Hence, when a woman chooses to conceive and carry a child, she undergoes changes in her body that are beyond the biological aspects of a woman but also bring about a great deal of hormonal, emotional, psychological and other changes in her. To push a woman, undergoing such degree of dynamic changes while she is in the process of childbirth, to work at par with those who are not, at the same extent of labour, physical and/or mental, tantamount to grave injustice and is in no manner reasonable. This is certainly not the definition of equity and equality of opportunities that the framers of the Constitution had in their mind. Even

Article 15(3) of the Constitution of India provides that there shall be no embargo upon the State to make special provisions for women and children, which in itself is a testament to qualitative equality as stipulated under the Constitution.

13. As a society, we must ensure that all citizens are made to feel secure in all aspects of their life. To make sure that the women of the society are made to feel safe and secure, she should be able to make decisions in her personal and professional life, without having an implication or bearing of one on the other. The work environment should be conducive enough for a woman to facilitate unimpaired decision making regarding personal and professional life and to ensure that a woman who chooses to have both, a career and motherhood, is not forced to make an 'either-or' decision.

14. A conducive environment would also mean a workplace that creates and provides equality in opportunities, pay, liberties, protection, security of job and facilitates gender equality etc. To create a conducive environment is all the more essential when a woman working is carrying a child so as to make sure that she is provided with an atmosphere that is positive and encouraging. In such environment the productivity of the woman is also bound to increase.

15. Having said so, while the liberty, decision and welfare of the woman is of extreme importance when considering the implication of maternity benefits, the consideration of welfare and well-being of the child so birthed

is also tremendously necessary, especially at the very beginning phase of his/her life. There is crucial care and nurturing which the newborn child needs and which cannot be dispensed with for his/her essential development. Apart from the nutritional and bodily requirements, there are essential physical and emotional bonding requirements that need to be taken care of right after the birth of a child. The newborn babies do not realise that they are a separate person and hence most of their movements and physical activity is involuntary. To communicate with the newborn babies is essential to ensure that they understand the basics of being and existing and they are able to understand human connection.

16. The UNICEF says that a newborn baby, for some time right after birth, should be provided ways to see, hear, move freely and touch the parent. It is suggested that to make the baby feel comforted, calm and secure, he/she should be held, gently stroked and soothed. Skin to skin contact is also found fruitful in aiding the baby to become familiar with the presence of his/her parent and also for him/her to feel secured. The UNICEF also recommends that when a child is 1-6 months old, the parent should laugh and smile with the child. To tend to such sensitive needs of the child, the mother needs her time with the child so as to ensure that the right amount of care is being received by the baby.

17. The importance of maternity leave and benefits is, hence, recognized worldwide to secure the health and best interest of the mother and the child. Such benefits also are a benefactor for ensuring that women are given the

liberty to thrive in their work, which in turn would also mean a boost in the economic growth of the country. Amongst several other national and international documents, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention of the Elimination of All Forms of Discrimination against Women make provision for maternity benefits to the working women, showcasing the importance of granting such reliefs.

18. The legislature in India, has also time after time laid down the law for the welfare of the child and the mother. The Maternity Benefit Act, 1961, is one such legislation introduced with the objective to regulate the employment of women for certain periods before and after childbirth. An overview of the Act reveals that the intent to provide for health benefits, leaves before, during and after childbirth, payment/renumeration and medical bonus etc., provision for breast feeding facilities and crèche facilities, job protection and non-discrimination amongst others. Vide its 259th Law Commission Report, the Law Commission of India, regarding the made a strong recommendation for amendment to the Act of 1961 and suggested that the Maternity Benefit Act be amended in accordance with the forward-looking provisions in the Central Civil Services Rules, whereby maternity benefits should be increased from twelve weeks to 180 days. The Law Commission was also of the view that the provision of maternity benefits should be made obligatory on the State and not left to the will of the employers. Moreover, the provisions for maternity benefits should accrue to

all women, including women working in the unorganized sector and private sector as well. The strong recommendation by the Law Commission of India led to the amendment in the Maternity Benefit Act in the year 2017 which extended the time period for the maternity benefits from 12 weeks to 26 weeks.

19. The petitioner herein has also invoked certain provisions of the said Act for seeking the benefits for the period she was in the process of childbirth. Therefore, considering the indispensable need for maternity benefits for the welfare of the mother and her child, there is nothing to show that the claims raised on behalf of the petitioner regarding the grant of maternity benefits are invalid or extraneous. The question of validity of the claims is, hence, decided accordingly.

20. The question which now remains to be addressed is of the legality of the claims raised by the petitioner. The objection raised on behalf of the respondent to the reliefs and benefits claimed by the petitioner is that the petitioner being a contractual empanelled advocate could not be placed at par with the permanent and regular employees of the respondent who are entitled to the maternity benefits. Hence, the issue which falls for consideration by this Court is that whether the petitioner is entitled to maternity benefits while working on a contractual basis and consequently, whether the respondent is liable to pay the maternal benefits to the petitioner which are being granted to the employees similarly placed with the respondent on regular basis.

21. To adjudicate upon the issue, the provisions of the Maternity Benefit Act invoked by the petitioner may be examined to understand the nature of claims so raised. The applicability of the Act is discussed under Section 2, which reads as under:

> *"2. Application of Act.—[(1) It applies, in the first instance,—*
>
> *(a) to every establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;*
>
> *(b) to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months:]*
>
> *Provided that the State Government may, with the approval of the Central Government, after giving not less than two months' 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.*
>
> *(2) [Save as otherwise provided in [sections 5A and 5B], nothing contained in this Act] shall apply to any factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), apply for the time being."*

22. In the clause 1(b) of the provision, the bare language of the statute

indicates that the benefits arising out of the Act are also to be made applicable to an establishment within the meaning of law in force in a State in which ten or more persons are/were employed on any day of the preceding twelve months. The word 'establishment' has been defined under Section 3(e) of the Maternity Benefit Act as follows:

> *"(e) "establishment" means—*
> *(i) a factory;*
> *(ii) a mine;*
> *(iii) a plantation;*
> *(iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;*
> *[(iva) a shop or establishment; or]*
> *(v) an establishment to which the provisions of this Act have been declared under sub-section (1) of section 2 to be applicable;"*

23. As per the conjoint reading of the aforesaid provisions it is apparent that an establishment, in the sense as has been stipulated under the Act, means to include an establishment in a State in which ten or more persons are employed and to which the implications under Section 2(1) are extended. Further, the petitioner has invoked Section 5 of the Maternity Benefit Act, which reads as under:

> *"5. Right to payment of maternity benefit.—*
>
> *[(1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period*

immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.]

Explanation.—For the purpose of this sub-section, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, [the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 (11 of 1948) or ten rupees, whichever is the highest].

(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 a 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.

[(3) The maximum period for which any woman shall be entitled to maternity benefit shall be 4[twenty-six weeks of which not more than eight weeks] shall precede the date of her expected delivery:]

[Provided that the maximum period entitled to maternity benefit by a woman having two or more than two surviving children

shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery:]

[Provided further that] where a woman dies during this period, the maternity benefit shall be payable payable only for the days up to and including the day of her death:

[[Provided also that] where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the Child.]

[(4) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

(5) In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.]

24. The extent of benefits regarding maternity leaves and the payment/remuneration thereto being provided under the Act are summed up in this provision. The beneficiaries of the Act are entitled to maternity benefits at the rate of the average daily wage for the period of their actual absence, that is, the period immediately preceding the day of their delivery, the actual day of their delivery and any period immediately following that

day. The provision also lays down the extent to which such benefits may be granted by the employer and as such put certain bars of time period which may be sought to be claimed as maternity leave. The provision extends the protection or reliefs to surrogate and adopting mothers, which shows the intent to secure the interests of the child, irrespective of how the child may be conceived, keeping in mind the natural care that is required by a child.

25. The women who are subject matters of the Act have also been defined under Section 3(o) as under:

> *"(o) "woman" means a woman employed, whether directly or through any agency, for wages in any establishment."*

26. The words used *'for wages in any establishment'* can be construed upon perusing the definition of wages which states that the same shall include the following:

> *"(n) "wages" means all remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, were fulfilled and includes—*
>
> > *(1) such cash allowances (including dearness allowance and house rent allowance) as a woman is for the time being entitled to;*
> >
> > *(2) incentive bonus; and*
> >
> > *(3) the money value of the concessional supply of foodgrains and other articles, but does not include—*
> >
> > > *(i) any bonus other than incentive bonus;*

> *(ii) over-time earnings and any deduction or payment made on account of fines;*
>
> *(iii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force; and*
>
> *(iv) any gratuity payable on the termination of service;"*

27. Admittedly, the petitioner was being paid a fixed daily fee @Rs. 1750/- in exchange of her services arising out a contract between the parties. It is apparent that she was receiving remuneration in terms of her appointment which required her to be paid a fee prescribed in terms of the Schedule. There is no doubt that the case of the petitioner is covered under the definition of wages as provided under the Maternity Benefit Act.

28. The appointment letter of the petitioner dated 9th May 2016 also shows that the petitioner was working for a number of fixed hours, as per the time schedule of the Juvenile Justice Boards, and was also required to report to the Observation Homes after the working hours of the Court. Therefore, in view of the requirements of the petitioner's appointment, this Court finds no force in the argument on behalf of the respondent that the relationship between the parties was of a client and advocate and not that of an employer and employee. The petitioner was not being paid a professional fee, but was being paid remuneration for her services and was also required to work as per a specific fixed time scheduled.

29. Apart from above findings, it is pertinent to reiterate the position that has been time and again taken by the Hon'ble Supreme Court as well as the various Courts of the Country regarding the extension of maternity of benefits equally across organisations, irrespective of the nature of employment of the female worker. To this effect, the Hon'ble Supreme Court in ***Female Workers (Muster Roll) case*** observed as under:

> *"**6.** Not long ago, the place of a woman in rural areas had been traditionally her home; but the poor illiterate women forced by sheer poverty now come out to seek various jobs so as to overcome the economic hardship. They also take up jobs which involve hard physical labour. The female workers who are engaged by the Corporation on muster roll have to work at the site of construction and repairing of roads. Their services have also been utilised for digging of trenches. Since they are engaged on daily wages, they, in order to earn their daily bread, work even in an advanced stage of pregnancy and also soon after delivery, unmindful of detriment to their health or to the health of the new-born. It is in this background that we have to look to our Constitution which, in its Preamble, promises social and economic justice. We may first look at the fundamental rights contained in Part III of the Constitution. Article 14 provides that the State shall not deny to any person equality before law or the equal protection of the laws within the territory of India. Dealing with this article vis-à-vis the labour laws, this Court in Hindustan Antibiotics Ltd. v. Workmen [AIR 1967 SC 948 : (1967) 1 SCR 652 : (1967) 1 LLJ 114] has held that labour to whichever sector it may belong in a particular region and in a particular industry will be treated on equal basis. Article 15 provides that the State shall not discriminate against any citizen on grounds only of*

religion, race, caste, sex, place of birth or any of them. Clause (3) of this article provides as under:

> *"15. (3) Nothing in this article shall prevent the State from making any special provision for women and children."*

7. *In Yusuf Abdul Aziz v. State of Bombay [AIR 1954 SC 321 : 1954 SCR 930] it was held that Article 15(3) applies both to existing and future laws.*

8. *From Part III, we may shift to Part IV of the Constitution containing the Directive Principles of State Policy. Article 38 provides that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life. Sub-clause (2) of this article mandates that the State shall strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities.*

11. *It is in the background of the provisions contained in Article 39, specially in Articles 42 and 43, that the claim of the respondents for maternity benefit and the action of the petitioner in denying that benefit to its women employees has to be scrutinised so as to determine whether the denial of maternity benefit by the petitioner is justified in law or not.*

12. *Since Article 42 specifically speaks of "just and humane conditions of work" and "maternity relief", the validity of an executive or administrative action in denying maternity benefit has to be examined on the anvil of Article 42 which, though not enforceable at law, is nevertheless available for determining the legal efficacy of the action complained of.*

13. *Parliament has already made the Maternity Benefit Act, 1961. It is not disputed that the benefits available under this Act*

have been made available to a class of employees of the petitioner Corporation. But the benefit is not being made available to the women employees engaged on muster roll, on the ground that they are not regular employees of the Corporation. As we shall presently see, there is no justification for denying the benefit of this Act to casual workers or workers employed on daily-wage basis.

27. *The provisions of the Act which have been set out above would indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other articles, specially Article 42. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery. We have scanned the different provisions of the Act, but we do not find anything contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis or on muster roll on daily-wage basis.*

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 phenomenon 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 workplace 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.

34. *Next it was contended that the benefits contemplated by the Maternity Benefit Act, 1961 can be extended only to workwomen in an "industry" and not to the muster-roll women employees of the Municipal Corporation. This is too stale an argument to be heard. Learned counsel also forgets that the Municipal Corporation was treated to be an "industry" and, therefore, a reference was made to the Industrial Tribunal, which answered the reference against the Corporation, and it is this matter which is being agitated before us.*

37. *Delhi is the capital of India. No other city or corporation would be more conscious than the city of Delhi that India is a signatory to various international covenants and treaties. The Universal Declaration of Human Rights, adopted by the United Nations on 10-12-1948, set in motion the universal thinking that human rights are supreme and ought to be preserved at all costs. This was followed by a series of conventions. On 18-12-1979, the United Nations adopted the "Convention on the Elimination of all Forms of Discrimination against Women". Article 11 of this Convention provides as under:*

> *"Article 11*
>
> > *1. States/parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:*

(a) the right to work as an inalienable right of all human beings;

(b) the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States/parties shall take appropriate measures:

(a) to prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) to provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary."

30. The aforesaid judgment passed by the Hon'ble Supreme Court created a spur across the Country, leading several Courts to grant benefits to the working women who had been denied such reliefs on hyper-technical grounds. The findings of the Hon'ble Supreme Court laid out the nexus between the intent and objective of the framers of the Constitution in granting liberties, freedoms, and rights to its citizens, in this context to women, and the benefits which accrue to them by way of the Maternity Benefit Act. The judgment led the way for granting equitable rights to women employees in an organization with respect to maternity benefits irrespective of the nature of their employment. It was observed that the words used in the Maternity benefit Act are not to be taken in their plain

meaning to say that the Act and the entitlements arising thereto are only for the women working in industries but shall extend to women employees working in both organized and unorganized sector. The view taken by the Hon'ble Supreme Court has been followed for the subsequent two decades and has been reiterated by the Courts of the Country.

31. The High Court of Himachal Pradesh in ***State of H.P. and Ors. vs. Sudesh Kumari*** and connected matter ***State of H.P. and Ors. vs. Alpana***, collectively reported as **2014 SCC OnLine HP 4844,** while upholding the decision of the writ court quashing the Office Memorandum in question, on the issue of maternity benefits being extended to all employees equally held as follows:

> *"8. In law, there is no difference between a female regular employee and a contractual employee/ad hoc employee because a female employee whether regular, temporary or ad hoc, is a female for all intents and purposes and she has a matrimonial home, matrimonial life, and after conception, she has to undergo the entire maternity period, same treatment, pains and other difficulties which a regular employee has to undergo. Thus, there is no occasion for making discrimination and if, less period of maternity leave is granted to a contractual employee, it will amount to discrimination, in terms of Article 14 of the Constitution of India.*
>
> *9. The claim of maternity leave is founded on the grounds of fair play and social justice. There cannot be discrimination and if any discrimination is made, it is in breach of Articles 14 and 15 of the Constitution…*
>
> *****

> *15. Having said so, the office memorandum dated 31.7.2009 and circular dated 2.9.2009, made by the State are quashed and all female employees whether on contract, ad hoc, permanent and temporary are held entitled to materiality leave at par with the regular employees."*

32. This Court in ***Govt. of NCT of Delhi vs. Shweta Tripathi*, 2014 SCC OnLine Del 7138**, while dismissing a challenge to a decision of the Central Administrative Tribunal, whereby it was held that GNCTD could not treat two women employees differently on the question of grant of maternity benefits due to the nature of their employment, held as under:

> ***6**. The CAT's reasoning is premised upon its previous ruling in Dr. Shilpa (supra) which has, in turn, relied upon several other judgments, including that of the Supreme Court in the Female Workers (Muster Roll) (supra) as well as Neetu Chaudhary (Smt.) v. State of Rajasthan 2008 (2) RLW 1404 (Raj). The reasoning adopted by the CAT, for proceeding in the way it did, is that the higher benefit which is given to employees who are not contractual but are borne in the establishment of the GNCTD itself, is a standard which should not have been deviated. This Court is of the opinion that keeping in mind the larger public interest sub-served in the grant of maternity benefit, the GNCTD, as a model employer, which is bound by Articles 14 and 16(1), could not have discriminated between two female employees, for the purpose of maternity benefit, on the basis that one of them is a contractual employee and thus entitled to lesser extent of pay, whereas the other, being a permanent employee, could be favoured with a better term. This cannot be treated as a reasonable classification, considering the object of the rule for grant of maternity benefit."*

33. In the case of ***Dr. Deepa Sharma vs. State of Uttarakhand & Ors.***

2016 SCC OnLine Utt 2015, the High Court of Uttarakhand was also faced with a similar situation where the maternity leave of the petitioner, being a contractual employee, was not sanctioned. While allowing the claims of the petitioner, the High Court passed the following observations and directions:

> *"**10.** Maternity benefit is a social insurance. There should be a system for breast feeding/nursing care at the workplace. The maternity leave is key for maternal and child health and family support. The maternity leave is of utmost importance to fight against social injustice, poverty and gender inequality.*
>
> ***11.** The 44th Session of Indian Labour Conference (ILC) has also recommended for enhancing maternity leave under Maternity Benefit Act, 1961. This recommendation was reiterated in 45 and 46 Session of ILC.*
>
> ***12.** A male government servant is also entitled paternity leave for a period of at least three weeks to enable the father to look after the mother and child. A female employee appointed on regular basis, contractual basis, ad hoc/tenure or temporary basis is also entitled to child adoption leave for a period of 135 days' in case of valid adoption of child below the age of one year.*
>
> ***13.** A female government employee is also entitled to Child Care Leave (CCL), as per the recommendation of the 6 Central Pay Commission of 730 days' during the entire service. However, it will not be admissible, if the child is 18 years of age or older. The women employees shall be paid leave salary equal to the pay drawn immediately before proceeding on leave. It can be availed of in more than one spell. As per the Government of India, Department of Personnel and Training order dated 11.09.2008, it can be combined with leave of the kind due and admissible.*

15. *The International Labour Organization (ILO) has conducted the survey for maternity and paternity at work (Law and practice across the world) in 2014. The survey has covered the period w.e.f. 1994-2013 for duration of maternity leave across the world, maternity cash benefits, finance of maternity cash benefits, scope and eligibility requirements.The survey has also been undertaken for paternity, parental and adoption leave as well as protection of employment during maternity and non-discrimination in employment in relation to maternity, healthy arrangement of working time and arrangement of nursing breaks.*

16. *We are required to make labour laws in conformity with the recommendations made by the International Labour Organization read with Article 42 of the Constitution of India.*

17. *According to the Article 42 of the Constitution of India, "the State is required to make provision for securing just and humane conditions of work and for maternity relief."*

18. *The objective of ILO to conduct the survey was to promote motherhood and child care as well as to promote gender equality. Every female employee and male employee whether appointed on regular basis, contractual basis, ad hoc/tenure or temporary basis have a fundamental right to reasonable duration of maternity leave as well as paternity leave, child care leave (CCL) and adoption leave to promote motherhood and child care under Article 21 of the Constitution of India read with Article 42 of the Constitution of India.*

20. *Thus, the petitioner cannot be denied the maternity leave w.e.f. 07.01.2015 to 07.06.2015 with full pay. The decision to deny the maternity leave to the petitioner was arbitrary, thus, violative of Articles 14 and 16 of the Constitution of India.*

21. *Accordingly, the writ petition is allowed with the following*

mandatory directions : -

a.) Respondents are directed to grant maternity leave to the petitioner with full pay w.e.f. 07.01.2015 to 07.06.2015 within eight weeks from today.

b.) The respondent-State is also directed to grant maternity leave to all the female employees with full pay for 180 days, even working on contractual basis, ad hoc/tenure or temporary basis.

c.) The State Government is further directed to grant at least 60 days' maternity leave to the daily wage female employees working for more than 240 days' in a block of 12 months calendar with full wages.

d.) The State Government is directed to provide every establishment to have the facility of crèche having 50 or more than 50 employees with liberty reserved to the mother to visit the crèche/nursing care at least four times daily, including the interval for rest allowed to the employees.

e.) The State Government is also directed to grant Child Care Leave (CCL) of 730 days' to all the female employees, whether appointed on regular basis, contractual basis, ad hoc/tenure or temporary basis having minor children with a rider that the child should not be more than 18 years of age or older. The female employees shall be entitled to paid leave equal to the pay drawn immediately before proceeding on leave. CCL can be combined with leave of the kind due and admissible.

f.) The State Government is also directed to grant 15 days' paternity leave to a male employee appointed on regular basis, contractual basis, ad hoc/tenure or temporary basis to enable the father to look after the mother and child. This

leave can be combined with leave of any other kind.

g.) The State Government is also directed that a female employee appointed on regular basis, contractual basis, ad hoc/tenure or temporary basis, with fewer than two surviving children, on valid adoption of a child below the age of one year be granted child adoption leave for a period of 135 days' immediately after the date of valid adoption.

h.) The State Government shall not dismiss, terminate, remove any female employee whether appointed on contractual basis, ad hoc/tenure or temporary basis immediately before her delivery and thereafter to deprive her of maternity leave, adoption leave and child care leave etc.

i.) The Chief Secretary shall personally be responsible to comply with these mandatory directions in letter and spirit."

34. The High Court of Madhya Pradesh in ***Smt. Brijlata Sharma vs. the State of Madhya Pradesh,* 2017 SCC OnLine MP 958** also observed that the question whether a contractual employee is entitled to the benefit of child care leave is no more *res integra* after the decision of the Hon'ble Supreme Court in ***Female Workers (Muster Roll) case*** and while observing so passed the decision in favour of the female employee holding that her claim for child care leave could not be rejected because she is a contractual teacher.

35. Further, the Punjab and Haryana High Court also upheld the view that the benefit of maternity leave and consequential benefits extend to

employees who are working on contractual basis, as has been held in ***Raj Bala vs. State of Haryana*, 2002 SCC OnLine P&H 1297** and followed in ***Harjinder Kaur vs. State of Haryana and Ors*., 2019 SCC OnLine P&H 1153.**

36. The Maharashtra High Court in the judgment of ***Archana vs. State of Maharashtra and Anr., 2018,* SCC OnLine Bom 4136,** while deciding the issue of *'maternity benefit: entitlement to claim benefit'* referred to the various pronouncements on the issue whether contractual employees are entitled to get the benefits pertaining to maternity and held as under:

> *"**29.** In our opinion, therefore, the action of the respondents in denying the claim of the petitioner for grant of maternity benefits during her maternity leave period runs contrary to the legislative mandate flowing from the provisions of the said Act. Since this Court has already held that the benevolent object of grant of 180 days maternity leave to the woman employees cannot be and should not be limited to the women Government servants of the State of Maharashtra only, the same are also extended to the petitioner who is working as a Project Officer with the respondent No. 2 on contractual basis..."*

37. Recently, this Court in ***Dr. Baba Saheb Ambedkaar Hospital Govt. of NCT of Delhi and Anr. Vs. Krati Mehrotra*, 2022 SCC OnLine Del 742,** dealt extensively with the issue of maternity benefit, where it was found that the maternity benefit period spilled over and beyond the tenure of the contract of the employee and held that there was no error in the order of the Central Administrative Tribunal in passing directions to the

organisation/Hospital to consider the case of the employee sympathetically and to the GNCTD to release her unpaid salary, holding that the employee was entitled to maternity benefits. The employee, respondent before the Court, also preferred a fresh action and sought that her maternity benefits be extended for a period of 26 weeks from the date of her application, which was also partly allowed by the Tribunal. The Court observed that the Maternity Benefit Act is a social legislation that should be worked in a manner that progresses not only the best interest of the women employees but also of the child. The relevant portion of the judgment is reproduced hereunder:

> *"**41.** Clearly, the provisions of the 1961 Act seek to invest a woman with a statutory right to take maternity leave and seek payment for the period that she is absent from duty on account of her pregnancy, albeit in accordance with the provisions of the 1961 Act.*
>
> ***43.** The provisions of the 1961 Act do not differentiate between a permanent employee and a contractual employee, or even a daily wage (muster roll) worker. This position stands unambiguously articulated in the judgment of the Supreme Court rendered in MCD v. Female Workers (Muster Roll).*
>
> ***44.** Pertinently, the 1961 Act does not tie in the grant of maternity benefit to the tenure of the woman employee.*
>
> ***45**. There are two limiting factors for the grant of maternity benefits.*
>
> > *(i) First, the woman employee should have worked in an establishment of her employer for a minimum period of*

80 days in 12 months immediately preceding the date of her expected delivery.

(ii) Second, the maximum period for which she can avail maternity leave benefit cannot exceed 26 weeks, of which, not more than 8 weeks shall precede the date of her expected delivery.

46. *For a woman employee who has two or more surviving children, although the maximum period for which she can claim maternity benefit is 12 weeks, the period preceding the date of expected delivery cannot be more than 6 weeks.*

47. *Therefore, linking the tenure of employment, in this case, a contractual employee, with the period for which maternity benefits can be availed by a woman employee, is not an aspect that emerges on a plain reading of the provisions of the 1961 Act.*

48. *Section 27 of the 1961 Act, which embeds, a non obstante clause, expounds that the provisions of the said Act would apply notwithstanding the provisions contained, inter alia, in any other law, agreement or contract of service, to the extent it is inconsistent with the provisions of the said Act.*

49. *The object and purpose of the 1961 Act being, to not only regulate employment but also maternity benefits which precede and follow childbirth, point in the direction that tying up the tenure of the contract with the period for which a woman employee can avail of maternity benefit is contrary to the mandate of the legislation i.e. the 1961 Act.*

50. *Thus, as long as conception occurs before the tenure of the contract executed between a woman employee and her employer expires, she should be entitled to, in our opinion, maternity benefits as provided under the 1961 Act."*

38. It is clear, upon considering the view that has been repeatedly taken, that the Maternity Benefit Act is a welfare and social legislation and the intent of the legislature in no manner could have been to limit or restrict the extent and scope of reliefs that may be granted to all those falling within the ambit of the Act. There is nothing in the language of the Act or in its provisions which suggests that a working expecting woman would be barred from getting the reliefs due to the sole reason of the nature of their employment.

39. In the instant case as well, the employer, i.e., the respondent, admittedly extends benefits arising out of the Maternity Benefit Act to the permanent/regular employees attached with the respondent, however, has been denying such benefits to contractual employees, such as the petitioner herein. In reference to the discussion in the foregoing paragraphs, there is nothing to suggest that this Court shall take a separate view then that has been provided for under the Constitution of India, the Maternity Benefit Act and what has also been interpreted, established and reiterated by the Courts of the Country. The argument advanced on behalf of the respondent that the petitioner is entitled to her maternity benefits for the reason of being a contractual employee is completely devoid of merit.

40. Medical science may have advanced over the years to facilitate the needs of the mother and child, however, the natural care that a newborn child requires cannot be dispensed away with and is also of utmost importance for the development and growth of the baby. The nature

certainly does not discriminate on the basis of the nature of employment of a woman when it blesses her with a child. The miracle of childbirth and the process a woman goes through during such time must not be hampered by any extraneous events that may affect the health and well-being of the mother and cause her any degree of distress.

41. Even in this day and age, if a woman is made to choose between her familial life and a career progression, we would be failing as a society by not providing her the means to thrive, whether in professional life or in personal life. It is pertinent to note that the Act in place which grants the reliefs to an expecting or a new mother, considers such reliefs as a 'Benefit', when in fact the reliefs should come as a matter of right to the women employees who may be in that position. In this respect, a positive change of perspective is also required along with a more adaptive approach in the matter of grant of maternity benefits.

42. It is ironic that the petitioner in the instant case, being appointed with the Juvenile Justice Board, was hired to protect the interest and welfare of the children who may be suffering at the hands of the criminal justice system, however, was not able to secure the benefits that were necessary for the best interest and welfare of her own child.

43. 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 all those who are subjects of the Act to uphold the integrity, the objective and the provisions of the legislation in its letter and spirit. Moreover, even the Constitution of the India advances the ideals which have been culminated and translated into the Maternity Benefit Act.

44. Therefore, in view of the discussion, the facts, circumstances, the submissions made, contentions raised, this Court is of the considered view that the respondent should have extended the benefits and reliefs under the Act to the petitioner as were being extended to its own employees who were similarly situated. 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.

45. Accordingly, considering the entirety of the matter and the law laid down, the instant petition is allowed with following directions:

I. The respondent shall release all medical, monetary and other benefits that accrued in favour of the petitioner on account of her pregnancy, as per the terms of the Maternity Benefit Act, 2017.

II. Since, no extreme medical or other exigencies have been presented by the petitioner, *ante-natal* or *post-natal*, she shall be entitled to the benefits for the time period as provided under the Maternity Benefit Act, 2017 of 26 weeks.

III. The needful shall be done by the respondent within a period of three months from the date of receipt of this order.

46. In the aforesaid terms, the instant petition stands allowed.

47. It is, however, made clear that the decision as aforesaid has been made in the peculiar facts and circumstances of the instant case and shall not be treated as a precedent.

48. Pending applications, if any, stand disposed of.

49. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 26, 2023
gs/ms

Click here to check corrigendum, if any