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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 3RD DAY OF JUNE 2024 / 13TH JYAISHTA, 1946

WP(C) NO. 13201 OF 2018

PETITIONER:

CHAIRMAN, PSM COLLEGE OF DENTAL SCIENCES & RESEARCH
BYE PASS ROAD, AKKIKAVU P.O, THRISSUR-680 519.

BY ADVS.
SRI.K.K.PREMALAL
SRI.VISHNU JYOTHIS LAL

RESPONDENTS:

1 RESHMA VINOD
MELEPURAKKAL HOUSE, P.O KARIKKAD, THRISSUR

2 INSPECTOR UNDER MATERNITY BENEFIT ACT 1961
(THE ASSISTANT LABOUR OFFICER) KUNNAMKULAM-680 503.

3 APPELLATTE AUTHORITY
UNDER MATERNITY BENEFIT ACT 1961(DEPUTY LABOUR
COMMISSIONER) CHEMBUKAVU, THRISSUR-680 020.

BY ADVS.
SMT.C.P.PRETTY
SRI.SUNNY XAVIER

OTHER PRESENT:

SRI. JUSTIN JACOB-SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03.06.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner is a Dental College & Research Centre, an educational institution established with the permission of Ministry of Health & Family Welfare, Government of India. The permission to conduct academic session 2017-2018 was renewed by order dated 3rd February 2017 of the Government of India.

2. The petitioner received a show cause notice dated 11th September 2017 from the second respondent, Inspector under Maternity Benefit Act, 1961 (The Asst.Labour Officer), Kunnamkulam alleging non-payment of maternity benefit to the first respondent under the provisions of Maternity Benefits Act, 1961 (hereinafter referred to as 'Maternity Act'). The petitioner submitted a detailed reply dated 15.9.2017 to the second respondent. However, the second respondent passed an order dated 20th September 2017 directing the petitioner to pay an amount of Rs.64,393.56 as maternity benefit and medical bonus to the first respondent under the provisions of the Maternity Act.

3. The petitioner filed an appeal under Section 17(3) of the

Maternity Act before the third respondent. The Appellate Authority vide the impugned order dated 25.01.2018 had dismissed the appeal. This Writ Petition has been filed impugning the orders passed by the 2nd and 3rd respondents in Exts.P4 and P6.

4. The learned counsel for the petitioner submits that the provisions of Maternity Act have no universal application. Section 2(a) of the Maternity Act provides that the provisions of the Act would be applicable to every factory, mine or plantation and establishments wherein persons are employed for the exhibition of equestrian, acrobatic and other performances. Further, Section 2(b) of the Act provides that provisions of the Act are applicable 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 where 10 or more persons are employed. The proviso to Section 2(b) provides that a State Government with the approval of the Central Government, after giving not less than two months' notice of its intention, by notification in the official gazette, declare that all or any of the provisions of the Act shall apply also to any other establishment or class of establishments, industrial,

commercial, agricultural or otherwise.

5. The submission of the learned counsel for the petitioner is that the petitioner is an educational institution and it is not a shop or establishment to which the provisions of the Maternity Act are applicable. The learned counsel for the petitioner, therefore, submits that the provisions of Maternity Act are not applicable to the petitioner Institution which is a medical educational institution, the orders impugned are unsustainable in law and liable to be set aside. The learned counsel for the petitioner, in support of his submission has placed reliance on the judgment in the case of ***Ruth Soren*** v ***Managing Committee, East ISSDA and others***[1]. It is therefore submitted that the impugned orders in Ext.P4 and P6 are to be set aside and the Writ Petition is to be allowed.

6. On the other hand, the learned counsel for the first respondent submits that Maternity Act is a beneficial legislation and it is an establishment for the purposes of Section 2(1)(b) of the Act. The Government has not exempted the medical

1 **2001(2) SCC 115**

educational institution from the purview of the provisions of Kerala Shops & Commercial Establishments Act, 1960 and therefore, the Maternity Act would be applicable to the petitioner institution and the impugned orders are not likely to be interfered with. In support of the submission, the learned counsel for the respondent has placed reliance on the judgment of the Division Bench of this Court in ***Noorul Islam Educational Trust*** v ***Asst. Labour Officer***[2].

7. No one can doubt that the Maternity Act is a beneficial legislation and has to be liberally interpreted. However, the question under consideration is whether the provisions of the Maternity Act would be applicable to the educational institutions which are not shops or establishments falling within the meaning of Kerala Shops & Establishments Act or under any other law.

8. The Supreme Court in the case of *Ruth Soren* (supra) has held that the educational institution will not come within the definition of "establishment", carrying on any business, trade or profession or any work in connection with, or incidental or

2 **(2008(1) KHC 123)**

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ancillary thereto. Under the provisions of Bihar Shops and Establishments Act, 1953 which has paramateria provisions to the Kerala Shops and Establishments Act, 1960, an "establishment" for the purposes of the Act would mean that establishment which carries on any business or trade or profession or anywork in connection with, or incidental or ancilliary thereto. The concept of industry as defined under the Industrial Disputes Act would include any business, trade, undertaking, manufacture or calling of employees and includes any calling service, employement, handicraft or industrial occupation or avocation of workmen. In an educational institution, there is an organised activity between employers and employees to impart education. Such an activity, though may be industry, however, would not be a profession, trade or business for the purpose of Article 19(1)(g) of the Constitution, would not be one falling within the definition of establishment under the Act. "Establishment" as defined under the Act, is not as wide as "industry" as defined under the Industrial Disputes Act. The Supreme Court held that an educational institution is not an establishment under the

provisions of Shops and Establishments Act.

9. Paragraphs 4 and 5 of the said judgment are extracted hereunder:

> *"An establishment for the purposes of the Act means an establishment which carries on any a business, trade or profession or any work in connection with, or incidental or ancillary thereto. Concept of industry, as defined under the Industrial Disputes Act, would include any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen. There is an organised activity between employers and employees to impart education. Such an activity, though may be industry will not be a profession, trade or business for the purposes off Article 19(1)(g) of the Constitution, would not be one falling within the scope of establishment under the Act. Therefore, the view taken by the Division Bench of the High Court is unexceptionable. The High Court did appreciate that Unni Krishnan case (1993) 1 SCC 645 itself made a distinction between what was stated in Bangalore Water Supply & Sewerage Board v A.Rajappa (1978) 2 SCC 213).*
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> *In corporation of City of nagpur v its Employees [1960] 1 LLJ 523 (540), this Court held that Education Department of the Corporation to be an industry. The reason given is that imparting education amounts to service and can be done by a private person also. In University of Delhi vs. Ramnath (1963) 2 LLJ 335, this Court held that imparting education is not industry as the work of the University cannot be assimilated to the position of trade, calling, business or service and hence cannot be industry. The majority view in Bangalore Water Supply & Sewerage Board v A.Rajappa (supra) a decision of seven-Judge Bench, is that in the case of an educational institution, the nature of activity is exhypothesi and imparting education being service to community is an industry. Various other activities of the institution such as printing press, transport department, clerical, etc. can be severed from teaching activities and*

> *these operations either cumulatively or separately form an industry. Even so, the question for consideration is whether educational institution falls within the definition of establishment carrying business, trade or profession or incidental activities thereto. Establishment, as defined under the Act, is not as wide as industry as defined under the Industrial Disputes Act. Hence reliance on Bangalore Water Supply & Sewerage Board v A.Rajappa [supra] for the appellant is not of any help.*

10. The Division Bench of this Court in its judgment in *Noorul Islam Educational Trust v Asst.Labour Officer and another* (supra) has failed to take note of the Supreme Court judgment in the case of *Ruth Soren* (supra). Therefore, I am ignoring the judgment passed by the Division Bench of this Court while deciding the present Writ Petition.

11. The State Government only by notification dated 6th March 2020 issued in exercise of the proviso to sub section 1of section 2(b) of the Maternity Act has extended the provisions of the Maternity Act to private educational institution including unaided school inclusive of teachers in the State of Kerala. Therefore, it can be safely inferred that the State Government did not concede that the provisions of the Maternity Act were applicable to the private educational institution and therefore it

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issued a notification dated 6th March 2020 as mentioned above to bring the private educational institution as well within the ambit of the provisions of the Maternity Act.

Considering the gazette notification and the judgment of the Supreme Court in the case of *Ruth Soren* and the provisions of the Maternity Act, it can be said that the provisions of the Maternity Act were not applicable to the private educational insitution before 6th March 2020, when the Government issued notification bringing the private educational institution including the school education within the ambit of the provisions of the Maternity Act. The impugned orders are with respect to the period prior to the notification dated 6th March 2020 and therefore, the impugned orders are not sustainable. The Writ Petition is thus allowed. The impugned orders in Exts.P4 and P6 are quashed.

Sd/- DINESH KUMAR SINGH, JUDGE

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APPENDIX OF WP(C) 13201/2018

PETITIONER EXHIBITS

EXHIBIT P1	**THE TRUE COPY OF THE ORDER DATED 03-02-2017 OF THE UNDER SECRETARY TO THE GOVERNMENT OF INDIA.**
EXHIBIT P2	**THE TRUE COPY OF THE SHOW-CAUSE NOTICE DATED 11-09-2017 FROM THE SECOND RESPONDENT.**
EXHIBIT P3	**THE TRUE COPY OF THE REPLY DATED 15-09-2017 TO THE SECOND RESPONDENT**
EXHIBIT P4	**THE TRUE COPY OF THE ORDER DATED 20-09-2017 BY THE SECOND RESPONDENT**
EXHIBIT P5	**THE TRUE COPY OF THE APPEAL FILED UNDER SECTION 17(3) OF THE MATERNITY BENEFIT ACT 1961 BEFORE THE THIRD RESPONDENT.**
EXHIBIT P6	**THE TRUE COPY OF THE ORDER DATED 25-01-2018.A TRUE COPY OF THE ORDER DATED 25-01-2018 BY THE THIRD RESPONDENT.**