2024:DHC:3146-DB

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

***Judgment delivered on: April 23, 2024***

\+ LPA 701/2023, CM APPLs. 52932/2023, 52933/2023, 63165/2023 & 64284/2023

DELHI STATE LEGAL SERVICES AUTHORITY

..... Appellant

Through: Dr. Amit George, Mr. Arkaneil Bhaumik, Mr. Rayadurgam Bharat, Mr. Adhishwar Suri, Mr. Piyo Harold Saimon, Mr. Rishabh Dheer and Mr. Shashwat Kabi, Advs. along with Mr. Abhinav Pandey, Secretary (Litigation)

versus

ANNWESHA DEB

..... Respondent

Through: Dr. Charu Wali Khanna and Mr. Hemant Kumar Yadav, Advs. with respondent in person

**CORAM:**
**HON'BLE MR. JUSTICE V. KAMESWAR RAO**
**HON'BLE MR. JUSTICE SAURABH BANERJEE**

**J U D G M E N T**

**V. KAMESWAR RAO, J**

**CM APPL. 52932/2023 (for exemption**

Exemption allowed subject to all just exceptions.

Application stands disposed of.

**CM APPL. 52933/2023 (for delay)**

This is an application filed by the appellant seeking condonation of 39 days delay in filing the present appeal.

For the reasons stated in the application, the same is allowed. The application is disposed of.

**LPA 701/2023**

1. This appeal has been preferred by the Delhi State Legal Services Authority (hereafter referred to as, Authority) / appellant against the impugned judgment dated July 26, 2023 passed by the learned Single Judge in W.P.(C.) 11016/2017, with the following prayers:

> *"It is therefore, prayed that in view of the aforesaid facts and circumstances, the Hon'ble Court may kindly be pleased to:*
>
> *1. Pass an order/direction for quashing/setting aside the judgment dated 26th July 2023 passed by the Learned Single Judge in W.P.(C.) 11016/2017;*
>
> *2. Pass any such order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."*

**THE FACTS**

2. The facts as noted from the record are, it was the case of respondent that she was appointed in the Juvenile Justice Board-I, Sewa Kutir, Kingsway Camp, New Delhi as a Legal Services Advocate ('LSA', for short) for a pay of ₹1750/-per day, vide letter dated May 09, 2016. During the period, of her appointment, in April, 2017, she conceived a child and hence applied for maternity leave of seven

months vide application dated October 06, 2017. A letter was also served upon the Member Secretary of the Authority by the respondent regarding her claim for grant of maternity benefits. Subsequently, an email was also sent to the Authority on October 21, 2017. The respondent received an email dated October 31, 2017 from the Authority, rejecting her request for maternity benefits, as there is no provision for the grant of same to LSA's. The respondent feeling aggrieved by the decision of the Authority approached the Ld. Single Judge vide ***W.P(C) 11016/2017*** in ***Annwesha Deb v. Delhi State Legal Services Authority.***

3. It was the respondent's case that:-

a. As per Section 5 of the Maternity Benefit Act, 1961 ('Act of 1961', for short), she has the right to maternity benefits and while denying such benefits, the Authority has violated her legal rights. It was also contended that the 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 contract of employment etc.

b. She had worked till the 7$^{th}$ month of her pregnancy as a LSA and it was upon Doctor's advice for bed rest on finding of her deteriorating health, she 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. Despite contractually employed in the Juvenile Justice

Board with the Authority for a tenure of 3 years, she was not paid maternity benefits, whereas the permanent employees of the Authority are being provided the same. It is in violation of Articles 14, 15(3), 16, 19(1) (g) and 42 of the Constitution of India.

d. The maternity benefits granted to women are substantial for their personal health as well as for the wellbeing of her children and denial of the same would amount to economic and social injustice. The decision of the Authority denying the maternity benefits is arbitrary, as there is no valid or material reason given by the Authority.

e. She relied on the judgment of the Supreme Court in the case of ***Municipal Corpn. of Delhi v. Female Workers (Muster Roll), (2000) 3 SCC 224***, to contend 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 was also submitted that there is no provision in the Act of 1961 which suggest that women employees working on contractual/casual basis are not entitled to the maternity benefits during the course of their contract/tenure.

4. The case of the Authority before the Learned Single Judge was that;-

a. The respondent/ petitioner is only an empanelled Advocate and is not its employee who is covered under the Act of 1961. The Advocates empanelled with them are paid

honorarium as per the Fee Schedule of the DSLSA for which they are required to submit a report by the end of each month on the duties they have performed. Such reports are supported by attendance certificates based on which the payment is made depending upon the number of hours put in by the Advocates.

b. The Legal Services Authorities Act, 1987 ('Act of 1987', for short), the Regulations of the National Legal Services Authority as well as the DSLSA Rules, regulate the empanelment of the Advocates with the Authority. The empanelled Advocates are not employees of the DSLSA, neither contractual nor even *ad-hoc*. The empanelled Advocates only render their services, as and when called upon or required by the appellant for which they are paid the honorarium.

c. The relationship between the Authority and the empanelled lawyers is of a client-lawyer (relationship) and as such, the Authority is not bound to provide benefits to the lawyers engaged by them in a professional capacity, which the regular employees may be entitled to. Hence, there is no entitlement that arises in favour of the respondent under Section 5 of the Act of 1961.

d. The respondent 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

Authority. It was also submitted that the empanelment is merely a process by which Advocates are selected to provide legal aid on behalf of DSLSA to the needy children but they do not become obligated to receive benefits which the regular employees are entitled to in law.

5. The learned Single Judge framed an issue for his decision, which was whether the respondent/petitioner therein, who is working on contractual basis can be extended the maternity benefits at par with the permanent/regular employees, who were similarly employed/ placed with the Authority.

6. While deciding the issue, the learned Single Judge has examined Section 2, 3(e), 3(o), 3(n) and 5 of the Act of 1961 and held that the respondent/petitioner therein has received remuneration in terms of her appointment and the fees was paid in terms of the schedule of the Authority. Hence, there is no doubt that the case of the respondent/petitioner therein is covered under the definition of *'Wages'* as provided under the Act of 1961. The learned Single Judge has, in view of the judgment of the Supreme Court in ***Female Workers (Muster Roll) (supra)***, held that the Supreme Court has extended the maternity benefits across all organisations irrespective of the nature of employment of the female workers. The learned Single Judge by referring to ***State of Himachal Pradesh & Ors v.Alpana, 2014 SCC OnLine HP 4844***, has held that the maternity benefits are to be extended to all the employees in the organisation.

7. The Ld. Single Judge had also referred to the judgment of this Court in the case of ***Government of NCT of Delhi v. Shweta Tripathi,***

***2014 SCC OnLine Del 7138***, and held that, GNCTD cannot treat two employees differently on the question of grant of maternity benefits due to the nature of the employment. The Court held that the contractual employees are entitled to the benefits under the Act of 1961. The learned Single Judge has also relied upon the following judgments:

1. ***Dr. Deepa Sharma v. Stateof Uttarakhand & Ors., 2016 SCC OnLine Utt 2015,***
2. ***Smt. Brijlata Sharma v. the State of Madhya Pradesh, 2017 SCC OnLine MP 958***
3. ***Smt. Brijlata Sharma v. the State of Madhya Pradesh, 2017 SCC OnLine***
4. ***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***
5. ***Govt. of NCT of Delhi vs. Shweta Tripathi, 2014 SCC OnLine Del 7138***
6. ***Raj Bala vs. State of Haryana, 2002 SCC OnLine P&H 1297***
7. ***Harjinder Kaur vs. State of Haryana and Ors., 2019 SCC OnLine P&H 1153.***
8. ***Archana vs. State of Maharashtra and Anr., 2018, SCC OnLine Born 4136,***
9. ***Dr. Baba Saheb Ambedkaar Hospital Govt. of NCT of Delhi and Anr. Vs. Krati Mehrotra, 2022 SCC OnLine Del 742***

8. The learned Single Judge in view of the above judgments has held that the Act of 1961, is welfare and social legislation and the intent

of the legislation in no manner could have been to limit or restrict the extent and the scope of reliefs. He held that there is nothing in the language of the Act or in its provisions which suggest that working women would be barred from getting the reliefs due to the nature of her employment. He held that the law stands settled that the nature of employment shall not decide the women's entitlement to maternity benefits. The paragraphs 38, 39, 44 and 45 of the impugned judgment are reproduced as under:-

> *"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.*
>
> *xxxx xxxx xxxx*
>
> *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 tenns of the Maternity Benefit Act, 2017.*

*IL 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."*

**SUBMISSIONS**

9. Dr. Amit George, the learned Counsel for the Authority stated that the Act of 1987, was enacted to provide free and competent legal services to the weaker sections of the Society and to ensure that opportunities for securing justice are not denied to any citizens by reason of economic or other disability. He also stated that the conclusion in the impugned judgment would make similarly placed empanelled Advocates/Standing Counsel of various organisations, Authorities, Government, to claim maternity benefits under the Act of 1961. He also stated that the Authority itself has around 1200

empanelled Advocates and does not have the wherewithal to pay maternity benefits to every empanelled woman Advocate, as it has limited resources with the intent to provide free legal aid to vulnerable and marginalised communities in the society.

10. In support of his submission, he has relied upon the judgment of the Supreme Court in the case of ***State of U.P. & Ors. v. UP State Law Officers Association & Ors., (1994) 2 SCC 204*** to contend that, just because an Advocate is engaged contractually to represent a particular entity, it does not mean that the service of the Advocate turns from professional engagement to that of an employee. He also stated that the learned Single Judge did not consider the stand of the Authority in proper perspective and has taken a contrary view on the premise that there is an employer-employee relationship between the parties, which is a misplaced conclusion, in view of the Regulations framed by the Central Authority governing the engagement of the Advocates/Counsel and also payment of Fees/honorarium to them.

11. Dr. George has stated that the benefits of the Act of 1961, are only provided to those cases where there is an employer-employee relationship. In the present case, there is only a client-Advocate relationship between the Authority and the respondent. He also stated that the learned Single Judge has erroneously relied upon the judgments which are not relevant to the issue in controversy as those were the cases where the maternity benefits were granted to persons who were in different kinds of employment and none of them pertain to persons having a client-Advocate relationship. He, therefore, contended that a contractual empanelment of an Advocate by an entity does not convert

a professional engagement into an employment.

12. He contended that the respondent was fully aware of the requirement of her engagement in the JJB including the requisite timings of the said engagement. It is after she applied for her empanelment, voluntarily without any compulsion from the Authority, that she made a claim for maternity benefits.

13. He also stated that the impugned judgment is against the scheme of Act of 1987. The Advocate providing the legal aid is doing a public service and an honorarium is paid using public money. He also stated that, an empanelment of 3 years is not equivalent to being a contractual employee of the Authority, as the Authority reserves the right to discontinue the engagement of the panel Advocate, if the performance of the Advocate is not up to the satisfaction of the Authority.

14. It is also his submission that the finding of the learned Single Judge is untenable because the respondent was paid honorarium as per the Fee Schedule of the Authority. The fees so paid will not come under the definition of '*Wages'* in the Act of 1961. This finding *ex-facie* does not hold water, as the definition of '*Wages'* as per the Act of 1961 i.e., *'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 ... '*, pre-supposes a contract of employment for grant of benefits under the Act of 1961.

15. Dr. George stated that the issue in controversy in the present proceeding is the following:-

Whether the finding of the learned Single Judge that the

respondent, in her capacity as an empanelled Advocate of the Authority, can be classified as its contractual employee and as a sequitur entitled to maternity benefits under the Act of 1961?

16. According to Dr. George, in terms of the engagement letter of the respondent, it is clear that the same was as an Advocate with the Authority, pursuant to the Authority statutory obligation under Regulation 9 of the Delhi Legal Services Authority Regulations, 2002 read with the Act of 1987, to maintain a 'Panel of Advocates' to prosecute cases on behalf of aided persons. Therefore, it is well settled that the empanelment of an Advocate by an entity reflects *'professional engagement'* and does not amount to a *'contractual employment'*.

17. In the present case, the fact that the respondent was an empanelled Advocate, does not convert a professional engagement into a contractual employment as erroneously held by the learned Single Judge. He also stated, the Bar Council of India Rules, 1975 [Chapter II, Section VII of the Bar Council of India Rules] categorically state that, an Advocate cannot be classified as an employee of any *'person/government, firm, corporation or concern, as long as he continues to practice'*.

18. He submitted that the Authority formally became aware of the impugned judgment after the Registry of this Court forwarded the copy of the impugned judgment to it, vide letter dated August 29, 2023.

19. According to him, no doubt the provisions of social welfare legislation are to be given a wide and liberal interpretation, but the interpretation should not be one which results in patently unanticipated

or absurd result which is plainly not in the contemplation of the legislature. The interpretation given in the impugned judgment opens up unanticipated situations. For instance, if an Advocate is empanelled with multiple entities at any one point in time, a piquant situation would arise as to which of these entities would be liable to pay the benefits under the Act of 1961. According to Dr. George, the learned Single Judge while allowing the petition has not considered the above aspects which are relevant to conclude that the respondent being an empanelled Advocate and not an employee is not entitled to the benefits. He seeks the prayers as made in the petition.

20. In support of his submissions, he has relied upon the following judgments, as under;-

1. ***State of Punjab and Anr.v. Rajesh Syal, (2002) 8 SCC 158,***
2. ***State of U.P. and Ors. v. U.P. Sate Law Officers Association and Ors. , (1994) 2 SCC 204,***
3. ***Ranjit Satardekar v. Rucmini Rathunath Narvekar and Anr. 2003 SCC OnLine Bom 877,***
4. ***P.K. Kunjukrishnan Nair v. State of Kerala and Ors., 1988 SCC OnLine Ker 316,***
5. ***D.R. Venkatachalam and Ors. v. Dy.Transport Commissioner and Ors., (1977) 2 SCC 273,***
6. ***The Young Men's Indian Association (Registered), Madras, by its Hon. Joint Secretary v. The Assistant Inspector of Labour, Madras, W.P.(C) 61/1963 decided by the Madras High Court on April 15, 1964.***
7. ***Employees' State Insurance Corporation, Bombay and Vyankatesh Co-operative Processors***

***Society, Ltd. Ichalkaranji and Anr., First Appeal No. 464/1985 decided by High Court of Bombay on November 3, 1992.***

8. ***Sunil v.State, , 2023 SCC OnLine Del 104,***

9. ***Hussainara Khatoon and Ors. (IV) v. Home Secretary, State of Bihar, Patna, (1980) 1 SCC98,***

10. ***Indian Council of Legal Aid and Advice and Ors. v. Bar Council of India and Anr. (1995) 1 SCC 732.***

21. On the other hand, Dr. Charu Wali Khanna, learned counsel appearing for the respondent would submit that the provisions of the Act of 1961 / Maternity Benefit (Amendment) Act, 2017 need to be distinguished from other Acts of law as the Act clearly states that, *"An Act to regulate the employment of women in certain establishments for certain periods before and after childbirth and to provide for maternity benefit and certain other benefits"*. She stated that, it is not necessary for a woman to be an employee, but it is sufficient to attract the provisions of the Act which includes right to maternity benefits, if a person is a woman and employed for wages. She also stated that the Act vide Section 5(1) creates the right of a woman to claim the benefits.

22. It is her submission that the learned Single Judge in the impugned order clearly mentioned that the said judgment shall not be treated as a precedent. It has been passed in the peculiar circumstances of the respondent's case. She also stated that the Office order dated May 9, 2016, issued by the Authority, clearly states that *the following transfers and postings shall come into force w.e.f. 16.05.2016* and name

of respondent is at Srl. No. 1. She has also relied upon the terms and conditions of appointment, as under:-

"***TERMS AND CONDITIONS OF THE APPOINTMENT:-***

1. *They shall deal with the cases assigned by the Juvenile Justice Boards.*

2. *They shall strictly follow the time schedule of Juvenile Justice Boards.*

3. *They shall file appropriate applications, bail bonds and do all the acts necessary to safeguard the interest of the juvenile.*

4. *They shall maintain a Register showing day to day working along with details of the action taken thereon.*

5. *The appointment of fresh LSAs is for a period of three years w.e.f 16.05.2016 and they shall be paid fees as per prescribed fee schedule of the Authority.*

6. *They shall submit the monthly bills alongwith the attendance certificate and work done report duly verified by the Principal Magistrate of Juvenile Justice Board."*

23. Dr. Khanna submitted that, on the first day of hearing of this appeal inspite of repeated requests made by the counsel appearing for the Authority, this Court had not stayed the impugned judgment dated July 26, 2023. The Court orally asked the said counsel to make the payment of the awarded amount to the respondent. However, the Authority is deliberately delaying the payment on the pretext of pendency of this appeal.

24. It is the submission of Dr. Khanna that the learned Single Judge had not come to an erroneous conclusion. The respondent was a contractual employee of the Authority having joined the Authority as

LSA on May 16, 2016 with work timings in JJB between 10:00 AM to 05:00 PM, and to mandatorily *"visit the Observation Homes after court working hours*".

25. She stated that, oral instructions were given to the respodent by the senior officials of the Authority that the respondent must not have any independent practice except the panel assignments of the Board and since her work timings in JJB were 10.00 am to 05.00 PM, it is quite noticeable that, after 05.00 pm, no court of law in India was open for the respondent to practice. She also stated that the respondent use to prepare a monthly bill mentioning the days on which she appeared before the JJB and same was duly verified by the Principal Magistrate of JJB-1, then sent to Authority (DSLSA) for payment. She has relied upon the appointment letter in this regard. Therefore, it is clear that there exists a clear employer-employee relationship between the Authority and the respondent. The respondent was totally under the supervision/control of the Authority and totally integrated into employer's establishment. Moreover, the Authority had exclusive power to continue or remove the Legal Services Advocate as per the Regulation 9(3) of Delhi Legal Services Authority Regulations, 2002. In that sense, she is an employee of the Authority.

26. She contended, since the respondent had to travel 54 Kms to JJB every day, at an advanced stage of pregnancy of 7 months, she was advised by her doctor to be on bed rest till her delivery which was expected on January 12, 2018. Hence, immediately on October 06, 2017, vide an application the respondent applied for maternity leave for 7 months. Subsequent to the respondent going on maternity leave the

Authority issued an office order dated October 23, 2017 deputing another Advocate in the place of respondent and on her re-joining again an email was sent to the lead Lawyer, JJB-1 by the In-Charge of DSLSA vide letter dated August 1, 2018 to assign cases to the respondent.

27. According to her, the Learned Single Judge was very correct in determining that there existed an employer-employee relationship between the Authority and the respondent herein. It is her submission that, it is not necessary that a woman need to be an employee to attract the provisions of the Act of 1961. She has also relied upon Section 3(o) and 3(n) of the Amendment of 2017. She also stated that the counsel for Authority cannot escape the liability to pay maternity benefits to the respondent since, Section 27 of the Act of 1961 clearly states that any law or agreement to the contrary/inconsistent with the Act unless the terms are more favorable to the woman. The relevant Section is reproduced as under:-

> *"27. Effect of laws and agreements inconsistent with this Act. 27. Effect of laws and agreements inconsistent with this Act .- (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act: Provided that where under any such award, agreement , contract of service or otherwise, a woman is than six weeks shall precede the more entitled to benefits in respect of any matter which are more favourable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that she is entitled to receive benefits in respect of other matters under this Act. (2) Nothing*

*contained in this Act shall be construed to preclude a woman from entering into an agreement with her employer for granting her rights or privileges in respect of any matter which are more favourable to her than those to which she would be entitled under this Act."*

28. It is the also the submission of Dr. Khanna that, on August 28, 2023, the respondent herein had personally visited the Central Office of the Authority at Rouse Avenue and submitted a letter seeking the payment of maternity benefits with calculation addressed to the Member Secretary, DSLSA, as per the impugned judgment dated July 26, 2023, but the same has not been paid till date.

29. In support of her submissions she has relied upon the following judgments:-

a. ***Ram Singh & Ors. Vs. Union Territory Chandigarh & Ors. (2004) 1 SCC 126.***

b. ***Municipal Corporation of Delhi v. Female Workers (Muster Roll) & Anr. (2000)3 SCC 224.***

c. ***Dr. Kavita Yadav v. The Secretary, Ministry of Health and Family Welfare Department & Ors. (2023) Supreme Court of India.***

d. ***Yogita Chauhan v. Office Deputy Directorate of Education NCT of Delhi.***

e. ***Renuka v. University Grants Commission (UGC) & Anr. Delhi High Court, Date of Decision 23.05.2023.***

f. ***Dr. Baba Saheb Ambedkar Hospital Govt. of NCT of Delhi & Anr. Vs. Dr. Krati Mehrotra, Delhi High Court Date of Decision: 11.03.2022***

g. ***Inspector (Mahila) Ravina v. UOI & Ors. MANU/DE/3946/2015.***

h. ***The Secretary, Managing Committee of Loreto Convent Tara Hall School v. Sharu Gupta & Ors. (2023) Himachal Pradesh High court.***

i. ***Anuradha Arya v. The Principal, Govt. Girl Sr. School & Ors. Central Administrative Tribunal (Principal Bench) Date of Order: 12.10.2017.***

j. ***Navtej Singh Johar & Ors. v. UOI (2018) 10 SCC 1.***

30. She seeks a dismissal of the present appeal.

**ANALYSIS**

31. Having heard the counsel for the parties and perused the record, at the outset, we may state that there cannot be any dispute on the proposition of law and also held by the learned Single Judge that the right to bear a child is a fundamental right as enshrined under Article 21 of the Constitution of India.

32. But the issue which arises for consideration is, *"whether the claim of maternity benefits under the Act of 1961, being a statutory right, is available to the respondent, which has been granted in her favor by the learned Single Judge?"* . To answer the aforesaid question, it is necessary to analyse certain provisions of the Act of 1987, regulations made there under, the Act of 1961 and the Bar Council of India Rules.

33. The Act of 1987, has been enacted by the Parliament to constitute legal services authorities to provide free legal services to the

weaker sections of the Society so as to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organise Lok Adalats to secure the operation of the legal system, to promote justice on the basis of equal opportunity.

Section 12 of the Act of 1987, stipulates criteria for giving legal services which includes every person who has to file or defend a case shall be entitled to legal services under the Act, if a person falls within the ambit of Section 12 (a) to (h). Section 13 of the Act of 1987, contemplates that the person who satisfies the requirement of Section 12, shall be entitled to receive legal services provided, the concerned authorities satisfy that such person has *prima facie* case to prosecute or to defend.

Section 29 of the Act is the power of the Central Authority to make Regulations. In exercise of power under Section 29 of the Act of 1987, the Central Authority has framed and published in the Gazette of India, the National Legal Services Authority (free and competent legal services) Regulations, 2010('Regulations of 2010', for short). The Regulations make available free and competent legal services to the persons entitled to free legal aid under Section 12 of the Act.

34. The Section 2(e) defines, *"Legal Services Institutions"* to mean Supreme Court Legal Services Committee, State Legal Services Authorities, High Court Legal Services Committees, District Legal Services Authorities or the Taluk Legal Services Committees as the case may be. In the case in hand, the appellant is the Delhi State Legal Services Authority.

35. Section 2(1)(eb) of the Regulations of 2010 define "*Panel*

*Lawyer*" to mean a legal practitioner empanelled as a Panel lawyer under regulation 8 of the Regulations of 2010. Regulation 8 of the Regulations of 2010, contemplates every Legal Services Institution shall invite applications from legal practitioners for their empanelment as panel lawyers and such applications shall be accompanied with proof of the professional experience with special reference to the type of cases which such lawyers/legal practitioners may prefer to be entrusted with.

36. Sub-regulations 9 to 13 of Regulation 8, Regulation 9, 10 and 14 of Regulations of 2010, stipulates the following:-

> *xxxx xxxx xxxx*
>
> *"(9) The Chairman of the Legal Services Institution may, in consultation with the Executive Chairman of the State Legal Services Authority or National Legal Services Authority, as the case may be, prepare a list of legal practitioners from among the panel lawyers to be designated as Retainers.*
>
> *(10) The Retainer lawyers shall be selected for a period fixed by the Executive Chairman on rotation basis or by any other method specified by the Executive Chairman.*
>
> *(11) The number of Retainer lawyers in the panel of each Legal Services Institution, should not exceed the minimal requirement as determined by the Executive Chairman or the Chairman, as the case may be.*
>
> *(12) The honorarium payable to Retainer lawyer shall not be less than, -*
>
> *(a) rupees forty thousand per month in the case of Supreme Court Legal Services Committee;*
>
> *(b) rupees twenty five thousand per month in the case of State Legal Services Authority or High Court Legal Services Committee;*
>
> *(c) rupees fifteen thousand per month in the case of District Legal Services Authority;*

*(d) rupees ten thousand per month in the case of the Taluk Legal Services Committee:*

*Provided that the honorarium specified in this sub-regulation is in addition to the honorarium or fee payable by the Legal Services Institution for each case entrusted to the Retainer lawyer.*

*Provided further that the State Legal Services Authority may decide to make the payment of honorarium to the Retainer Lawyers on the basis of number of days they man the Front Office. In such cases the honorarium so payable shall not be less than Rs. 1500 per day of sitting at the district and taluka court level and Rs. 2500 at the High Court level.*

*(13) The panel prepared under sub-regulation (2) for the period of three years shall also be reviewed and updated periodically by the Executive Chairman or the Chairman, as the case may be, keeping in view the performance of the panel lawyers."*

*xxxx xxxx xxxx*

*"**9. Legal services by way of legal advice, consultation, drafting and conveyancing**. - (1) The Executive Chairman or Chairman of the Legal Services Institution may maintain a separate panel of senior lawyers, law firms, retired judicial officers, mediators, conciliators and law professors in the law universities or law colleges for providing legal advice and other legal services like drafting and conveyancing.*

*(2) The Executive Chairman or Chairman of the Legal Services Institution, as the case may be, may maintain a separate panel of retired senior bureaucrats, senior executives, retired police officials, doctors, engineers, psychiatrists, marriage counsellors, chartered accountants, educationists and other experts of the specialised field for legal services and honorarium payable to them shall be decided by the Executive Chairman of State Legal Services Authority or the Chairman of the Supreme Court Legal Committee, as the case may be.*

*(3) The Member-Secretary may send a request to Senior Advocates to volunteer their pro bono professional services for rendering advice as and when required.".*

***10. Monitoring and Mentoring Committee**. - (1) Every Legal Services Institution shall set up a Monitoring and Mentoring Committee for close monitoring of the court based legal services rendered and the progress of the cases in the legal aided matters and to guide and advise the panel lawyers.*
*(2) The Monitoring and Mentoring Committee at the level of the Supreme Court shall consist of, -*
*(i) a Senior Advocate or an Advocate of at least 15 years of standing as nominated by the Chairman, Supreme Court Legal Services Committee;*
*(ii) Secretary, Supreme Court Legal Services Committee;*
*(iii) a renowned Academician or an Advocate-on-Record having ten years of practice to be nominated by the Chairman of the Supreme Court Legal Services Committee;*
*(iv) The Legal Service Counsel-cum-Consultant, Supreme Court Legal Services Committee.*
*(3) The Monitoring and Mentoring Committee at the level of the High Court shall consist of, -*
*(i) a Senior Advocate or an Advocate of at least 15 years of standing as nominated by the Chairman, High Court Legal Services Committee;*
*(ii) Secretary, High Court Legal Services Committee.*
*(4) The Monitoring and Mentoring Committee at the State or District Legal Services Authority shall consist of, -*
*(i) Member-Secretary or Secretary of the Legal Services Institution, as the case may be;*
*(ii) one serving judicial officer from the State Higher Judicial Service;*
*(iii) one retired judicial officer or one Advocate of fifteen years' standing or more.*
*(5) The Monitoring and Mentoring Committee at the Taluk Legal Services Committee shall consist of, –*
*(i) Chairman of the Taluk Legal Services Committee;*

*(ii) one retired judicial officer or;*
*(iii) one advocate of 10 years standing or more.*
*(6) The members of the Monitoring and Mentoring Committee shall render their services on the days as may be required and fixed by the Executive Chairman or Chairman of the Legal Services Institution and the members except serving Judicial Officers shall be paid the honorarium as fixed by the Executive Chairman.*

*xxxx xxxx xxxx*

*"**14. Payment of fee to the panel lawyers**.- (1) Panel lawyers shall be paid fee in accordance with the Schedule of fee, as approved under the State regulations.*
*(2) The State Legal Services Authority and other Legal Services Institution shall effect periodic revision of the honorarium to be paid to panel lawyers for the different types of services rendered by them in legal aid cases.*
*(3) As soon as the report of completion of the proceedings is received from the panel lawyer, the Legal Services Institution shall, without any delay, pay the"*

37. The Central Authority, has in exercise of its power under Section 29 and Section 4 of the Act of 1987, has also framed regulations which are called the National Legal Services Authority (Legal Services Clinics) Regulations, 2011 ('Regulations, 2011', for short). Section 2(1)(c) thereof defines '*Legal Services Clinic*' to mean the following:-

> *(c) "legal services clinic" means the facility established by the District Legal Services Authority to provide basic legal services to the people with the assistance of para-legal volunteers or lawyers, as the point of first contact for help and advice and includes legal services clinics set up under regulation 3 and regulation 24;]"*

Section 2(1)(d) of the Regulations, 2011 defines the Legal

Services Institution to mean State Legal Services Authority, District Legal Services Authority or the Taluk Legal Services Committee, as the case may be.

38. The Regulations of 2010 as well as of Regulations, 2011 contemplate empanelment/selection of panel lawyers under Regulation 8 of the Regulations, 2010/2011.

39. It is necessary to reproduce the regulation 2(1)d, 2(1)(e), 2(1)(g), regulations 3, 6, 7, 8, 17 and 20 of Regulations of 2011 as under:-

> *(d) "legal services institution" means a State Legal Services Authority, District Legal Services Authority or the Taluk Legal Services Committee, as the case may be:*
> *(e) "panel lawyer" means the panel lawyer selected under regulation 8 of the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010,*
> *xxx xxx xxx*
> *(g) "retainer lawyer" means a retainer lawyer selected under regulation 8 of the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010;*
> *xxx xxx xxx*
> ***3. Establishment of legal services clinic**.-subject to the financial resources available, the District Legal Services Authority shall establish legal services clinics in,-*
> *(a) all villages, or for a cluster of villages, depending on the size of such villages, which shall be called the Village Legal Care and Support Centre; and*
> *(b) jails, educational institutions, community centres, protection homes, Courts, juvenile justice boards and other areas, especially where the people face geographical, social and other barriers for access to the legal services institutions.]"*
> *xxx xxx xxx*
> ***6. Deputing lawyers to the [legal services clinic]**.-(1) The*

*nearest legal services institution having territorial jurisdiction may depute its panel lawyers or retainer lawyers to the legal services clinic].*

*(2) If the matter handled by any such lawyer requires follow-up and continuous attention for a long duration, the same lawyer who had handled the matter may be entrusted to continue the legal services.*

***7. Frequency of visit by lawyers in the [legal services clinic]****-Subject to the local requirements and availability of firancial resources, the legal services institution having territorial jurisdiction may decide the frequency of the lawyers' visit in the [legal services clinics] and if the situation demands for providing continuous legal services, such legal services institution may consider arranging frequent visits of lawyers in the [legal services clinic].*

***8. Selection of lawyers for manning the [legal services clinics]****.-(1) The Panel lawyers or retainer lawyers with skills for amicable settlement of disputes, shall alone be considered for being deputed to the [legal services clinic]: Provided that preference shall be given to women lawyers having practice of at least three years.*

*xxx xxx xxx*

***17. Honorarium for the lawyers and para-legal volunteers rendering services in the [legal services clinics]****--(1) Subject to the financial resources available, the State Legal Services Authority in consultation with the National Legal Services Authority may fix the honorarium of lawyers and para-legal volunteers engaged in the [legal services clinics]:*

*Provided that such honorarium shall not be less than Rs. 500 per day for lawyers and Rs. 250 per day for the para-legal volunteers.*

*(2) Special consideration may be given in cases where the [legal services clinic] is situated in difficult terrains and in distant places where transport facilities are inadequate.*

*xxx xxx xxx*

***20. Maintenance of records and registers*** *(1) Lawyers*

*and para-legal volunteers rendering service in the '[legal services clinic) shall record their attendance in the register maintained in the [legal services clinic].*
*(2) There shall be a register in every [legal services clinic] for recording the names and addresses of the persons seeking legal services, name of the lawyer or para-legal volunteer who renders services in the [legal services clinic], nature of the service rendered, remarks of the lawyer or para-legal volunteer and signature of persons seeking legal services.*
*(3) The records of the [legal services clinics] shall be under the control of the Chairman or the Secretary of the legal services institution having territorial jurisdiction over it.*
*(4) The District Legal Services Authority may require the '[legal services clinic] to maintain other registers also, as may be required.*
*(5) It shall be the duty of the para-legal volunteers and the lawyers in the [legal services clinic) to hand over the registers to the legal services institution having territorial jurisdiction as and when called for."*

40. Similarly, the following provisions of the Act of 1961, are also relevant.

*"3. (d) "employer" means –*
*(i) in relation to an establishment which is under the control of the Government, a person or authority appointed by the Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;*
*(ii) in relation to an establishment which is under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;*
*(iii) in any other case, the person who are the*

*authority which has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, or by any other name, such person;*

*(e) "establishment" means –*

*(i) a factory;*

*(ii) a mine;*

*(iii) a plantation;*

*(iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatics and other performances; or*

*(v) an establishment to which the provisions of this Act have been declared under sub-section (4) of section 2 to be applicable;]*

*xxx xxx xxx*

*(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) overtime 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;*

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

*NOTES. – Sec 3 (f). – A factory does not include a mine subject to the operation of the Mines Act, 152, or a railway running-shed.*

*Sec. 3 (j) – The definition of miscarriage is similar to the definition as given in Sec. 2 (14-B) of the Employees' State Insurance Act, 1948."*

41. Having noted the above provisions, it is clear that under the Regulations of 2010, the State Legal Services Authority shall appoint panel lawyers for carrying out the free and competent legal services. As per Regulation 8, the panel lawyers are appointed by inviting applications from legal practitioners, accompanied with proof of professional experience with special reference to the type of cases which such-legal practitioners may prefer to be entrusted with.

42. The panel lawyers shall be paid honorarium as prescribed under the Regulations of 2011 for a period of three years. Regulation 3 of the Regulations of 2011 contemplates establishment of Legal Services Clinic in the Juvenile Justice Boards. Regulation 8 of Regulation 2011 contemplates, selection of lawyers for managing the Legal Services Clinic including services before the Juvenile Justice Board. Similarly, Regulation 17 contemplates honorarium for lawyers. Regulation 18 which we have reproduced above contemplates maintenance of records and registers.

43. The issue is whether the appointment of the respondent, as a

*Panel Lawyer* by the Delhi State Legal Services Authority/ the Authority herein, can be held as an "*employment for wages"*, for the respondent to claim benefits under the Act of 1961.

44. In this regard, it may be stated that the Act of 1961, firstly, Section 3(d) defines the word *'Employer'* and the Section 3(n) defines The word *'Wages'*. In fact, Section 3(d)(i) contemplates that an *'employer'* means in relation to an establishment which is under the control of the Government or a person or an authority appointed by the Government for the supervision and control of employees or where no person or authority so appointed, the Head of the Department.

45. Similarly, 3(d)(ii) contemplates '*employer'* to mean in relation to an establishment under local authority, the person appointed by such authority for the supervision and control of employees or where no such person is so appointed the Chief Executive Officer of the Local Authority. If these Sections are read conjointly with Section 3(n) which defines wages, the position that emerges is, that an employee as defined under 3(d)(i) and 3(d)(ii) must be employed for Wages paid or payable in cash in terms of contract of employment express or implied. So, the question would be whether the respondent herein was under the control of the Authority as an employer and was being paid wages in cash in terms of the contract of employment express or implied.

46. At the outset, we may state here that the *'Terms and Conditions For Empanelment'* of the Notice inviting applications issued by the Authority, were as under:-

> *"B. TERMS AND CONDITIONS FOR EMPANELMENT-*
>
> *1. The panel shall be for a period of THREE YEARS*

*commencing from the date of appointment, subject to review of performance/work done by each lawyer appointed by the DSLSA on month to month basis.*

*2. The advocate empanelled for the JJB shall work on full time basis from 10:00 a.m. to 5:00p.m on working days and shall perform all such duties that may be assigned to them by the DSLSA such periodical visits to the Jails, Observation Home, Child Care Facility or Shelter Homes from time to time.*

*3. Not only attendance, but work shall be done professionally and efficiently under the following conditions:-*

➢ *Lunch hour shall be strictly maintained;*
➢ *Attendance at the Board even if there is no matter;*
➢ *Attendance in the Legal Aid Room;*
➢ *Miscellaneous work / applications / helping and advising people;*
➢ *File work including file maintenance and maintaining certified copies of papers;*

*4. The JB panel lawyers shall be paid Rs.1750/- per day for providing free and competent legal services at Juvenile Justice Boards. Separate fee shall be payable for visits to the Observation Home, Child Care Facility or Shelter Homes and the honorarium shall be paid as per the Fee- Schedule 2015 of the DSLSA.*

*5. Upon empanelment, the Legal Services Advocate shall interact with families of Juvenile in conflict with Law for necessary rehabilitation of child and family. Legal Services Advocate will have to spend some time with their family at each date to explain what is happening in Board and Committee as well as to ascertain problems they are facing.*

*6. The honorarium of empanelled Legal Services Advocates may be revised or increased in future on approval by Hon'ble the Executive Chairman, DSLSA.*

*7. It will be mandatory for all empanelled Advocates to attend the training programmes and refresher courses organized by Delhi State Legal Services Authority and District Legal Services Authorities from time to time Including the orientation programme to enable empanelled LSAs to handle legal aid work, as well as training to upgrade skills in various aspects of trial practice, such as the art of cross examination. Absence from such training programmes and courses, without prior permission would be a ground for depanelment.*

*8. In order to ensure that there is effective check on the legal services being rendered, the lawyers on the panel must submit case wise progress every three months in the manner prescribed by the DSLSA. Non submission of the same would entail depanelment from the panel.*

*9. The Authority reserves the right to avail the services of empanelled advocates to perform duties in Legal Services Clinics, Gender Resource Centres, Observation Homes, Legal Literacy Clubs etc. and for any other activities/awareness programmes including presence in the functions to be organised by the Authority.*

*10. Removal from Panel: If performance of the panel Advocate is found unsatisfactory or the Advocate is found to be guilty of charging or collecting or demanding any remuneration from an aided person In any form or he/she contravenes the Scheme of the Act, Rules and the Regulations he/she can be removed from the panel and shall also be liable for action for professional misconduct as per Regulation 7 of the Delhi State Legal Services Authority Regulations, 2002.*

*11. The Authority reserves its rights to enlarge the scope of the duty of the Legal Services Advocates in order to achieve the aim and object of The Legal Services Authorities Act, 1987 and its Rules, Regulations and other schemes formed there under."*

47. Similarly, the Office Order appointing the LSA issued by the Authority dated May 09, 2016 to the respondent also stated, as under:-

*"**OFFICE ORDER***

*This order is in Continuance of earlier Officer order bearing no.047/DSLSA/LAW/Emp.JJB-III/2016/2742-2753 dated 11.03.2016 the following transfers and postings shall come in force w.e.f. 16.05.2016:-*

| *Sl. No.* | *Name of the legal Services Advocate* | *Place of posting* |
|---|---|---|
| *1* | *Ms. Annwesha Deb* | *JJB-I, Kingsway Camp, New Delhi* |
| *2* | *Sh. Ashraf Yusuf Khan* | *Do* |
| *3.* | *Sh. Devesh Vikram Shukla* | *JJB-III, Kingsway Camp, New Delhi* |
| *4* | *Sh. Abinav Jain* | *Do* |

*Note: 1. Candidates at Sr. No. 1, 2 & 4 are freshly appointed LSAs who were earlier kept in waiting list.*

*2. The appointment order dated 11.03.2016 qua Ms. Nikita Bansiwal, LSA are hereby cancelled.*

*3. Sh. Devesh Vikram Shukla, LSA shall be Lead-Lawyer for LSAs posted in JJB-III.*

*4. All the freshly appointed LSAs namely Sh. Bhaskar Pandey, Ms. Sayema Mubin, Sh. Harsh Chauhan, Ms. Annwesha Deb, Sh. Ashraf Yusuf Khan, Sh. Abhinav Jain posted in JJB-I & JJB-III shall visit the respective Observation Homes after the court working hours (As per terms specified in order dated 20.07.2015 of this Authority).*

***Terms and Conditions of appointment:***

1. *They shall deal with the cases assigned by the Juvenile Justice Boards.*
2. *They shall strictly follow the time schedule of Juvenile Justice Boards.*
3. *They shall file appropriate applications, bail bonds and do all the acts necessary to safeguard the interest of the juvenile.*
4. *They shall maintain a Register showing day to day working along with the details of the action taken thereon.*
5. *The appointment of fresh LSAs is for a period of three years w.e.f. 16.05.2016 and they shall be paid fee as per prescribed Fee Schedule of this Authority.*
6. *They shall submit the monthly bills alongwith the attendance certificate and work done report duly verified by the Principal Magistrate of Juvenile Justice Board.*

*(Dharmesh Sharma)*
*Member Secretary /*
*Additional District & Sessions Judge"*

48. The advertisement and the terms of the appointment contemplates eligible candidates are appointed/empanelled with the Delhi State Legal Services Authority as LSAs for providing Legal Services before the Juvenile Justice Boards for a period of three years. So, in that sense, the appointment is as a LSA and not as an employee. Moreover, the LSA is paid honorarium as contemplated under the Regulations of 2010 and 2011 as per the Fee Schedule issued by the Authority herein in 2015 and later in 2017. The Fee Schedule of 2015 stipulated a fixed amount of ₹1,750/- per day to be paid for attending cases before Juvenile Justice Boards. The honorarium is also paid to a LSA for carrying out inspection of observation homes and children

homes within 5 Kms or beyond 5 Kms, etc.

49. The Act of 1961 has been framed to regulate the '*Employment*' of women in certain establishments, for certain period before and after child birth and to provide for maternity benefits and certain other benefits. So reading in perspective, it is clear that the benefit of Act of 1961 is available to a woman appointed in an *'Establishment*' being under the control of the employer who is paying wages to such woman.

50. In the case in hand, the requirement of payment of wages by an employer is not in existence and thus missing. The supervision is only in the manner provided in the terms of appointment, only to see that the LSA is carrying out the task for which he/she is appointed.

51. At this stage, we may state that the learned Single Judge has held, the relationship of the respondent with Authority as that of an *employer and employee* more particularly, in paragraphs 27 and 28, which we reproduce as under:-

> *"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."*

*(emphasis supplied)*

52. With respect, the aforesaid conclusion of the learned Single Judge is not only at variance with the provisions of Regulations of 2010 and 2011, which we have reproduced above, but is also not in conformity with the provisions of 3(d) (i), (ii) and 3(n) of the Act of 1961.

53. That apart, the above conclusion drawn by the learned Single Judge that the appointment letter of the respondent also show that the respondent was working for a number of fixed hours as per the time schedule of Juvenile Justice Boards and she was required to report to the observation homes after working hours of the Court, to hold that the relationship of the Authority and the respondent is of employer-employee, is clearly misplaced. This we say so as the Regulations of 2011, clearly contemplates maintenance of records and registers and inspections of observation homes, children homes, etc from time to time. It is an obligation on the LSA to carry out the mandate under the Regulations prescribing the duties of a LSA. The same cannot and indeed shall not make the nature of appointment, as 'employer-employee'.

54. In fact, the obligation to submit a report is also in view of the judgment of the Supreme Court in ***Sampurna Behura v. Union of India, W.P(C) 473/2005***, pursuant to which, following guidelines were

laid down by National Legal Services Authority (NALSA) for Legal Services in Juvenile Justice Institutions:-

> *"1. When a child is produced before Board by Police, Board should call the legal aid lawyer in front of it, should introduce juvenile / parents to the lawyer, juvenile and his/her family/parents should be made to understand that it is their right to have legal aid lawyer and that they need not pay any fees to anyone for this.*
> *2. JJB should give time to legal aid lawyer to interact with juvenile and his/her parents before conducting hearing.*
> *3. Juvenile Justice Board should mention in its order that legal aid lawyer has been assigned and name and presence of legal aid lawyers should be mentioned in the order.*
> *4. Board should make sure that a child and his parents are given sufficient time to be familiar with legal aid counsel and get time to discuss about the case before hearing is done.*
> *5. Juvenile Justice Board should make sure that not a single juvenile's case goes without having a legal aid counsel.*
> *6. Juvenile Justice Board should issue a certificate of attendance to legal aid lawyers at the end of month and should also verify their work done reports.*
> *7. In case of any lapse or misdeed on the part of legal aid lawyers, Board should intimate the State Legal Services Authority and should take corrective step.*
> *8. Juvenile Justice Board and the legal Aid lawyers should work in a spirit of understanding, solidarity and coordination. It can bring a sea-change.*
> *9. Legal Aid Lawyer should develop good understanding of Juvenile Justice Law and of juvenile delinquency by reading and participating in workshops/ trainings on Juvenile Justice.*
> *10.Legal Aid Lawyer should maintain a diary at center in which dates of cases are regularly entered.*
> *11.If a legal aid lawyer goes on leave or is not able to*

*attend Board on any given day, he/she should ensure that cases are attended by fellow legal aid lawyer in his/her absence and that case is not neglected.*
*12.Legal Aid lawyer should not take legal aid work as a matter of charity and should deliver the best.*
*13.Legal Aid Lawyer should raise issues/ concerns/ problems in monthly meeting with District Legal Services Authority.*
*14.Legal Aid Lawyer should maintain file of each case and should make daily entry of proceeding.*
*15.Legal Aid lawyer should not wait for JJB to call him/her for taking up a case. There should be effort to take up cases on his/her own by way of approaching families who come to JJB.*
*16.Legal Aid Lawyer should inspire faith and confidence in children/ their families who cases they take up and should make all possible efforts to get them all possible help.*
*17.Legal Aid lawyer should abide by the terms and conditions of empanelment on legal Aid Panel.*
*18.Legal Aid lawyer should tender his/her monthly work done report to JJB within one week of each month for verification and should submit it to concerned authority with attendance certificate for processing payments.*
*19.Legal Aid Lawyer must inform the client about the next date of hearing and should give his/her phone number to the client so that they could make call at the time of any need."*

*(emphasis supplied)*

55. It is a conceded case of Dr. Khanna that, it is not necessary that the respondent is required to attend the cases every day. According to her, if the Advocate does not attend the Court on a given day, he/she is not paid the fees on that day. It follows that the engagement of the respondent, as any other LSA, is not regular having any fixed terms. It is thus that the leaves as available to an employee are not available to a

LSA. As a necessary corollary, the engagement of LSA on day to day basis is as a professional.

56. There is/can be no dispute that the respondent is bound by the Terms and Conditions expressly laid out in the Notice inviting applications issued by the Authority as also the subsequent office order dated May 09, 2016, also issued by the very same Authority. Therefore, once having willingly chosen to accept them, she is bound to be governed by them. Once having done so without any coercion or force whatsoever, the respondent is estopped from asking for maternity benefits under the Act of 1961, more specifically, as they were not available to her at any point of time before.

57. At this stage, we may state, that the Supreme Court has brought out a clear distinction between "*Honorarium*" and "*Wages*". In the case of ***Karbhari Bhimaji Rohamare v. Shanker Rao Genuji Kolhe, (1975) 1 SCC 252***, the Supreme Court has in paragraph 6, interpreted '*honorarium'* to mean other than Salary. It also held that the matter must be considered as a matter of substance rather than of form, of the essence of the payment rather than its nomenclature. In the facts, it is clear in the case in hand, the honorarium paid, cannot be construed as '*Wages'* paid to the respondent as compensation for regular work. The said paragraph is reproduced as under:

> *"6. The whole controversy centres around the honorarium payable to the members of the Wage Board. It is contended on behalf of the appellant that Item 11 specifically lays down that the compensatory allowance shall mean the travelling allowance, the daily allowance or such other allowance which is paid to the holder of the office for the purpose of meeting the personal expenditure*

*in attending the meeting of the committee or body or in performing any other function as the holder of the said office, and honorarium which is not mentioned there cannot be brought within the meaning of the words "such other allowance" found in that item as it is not an allowance. Reference is made to the dictionary meaning of the word "honorarium" and it is said that while the daily allowance is expected to meet the expenses of the member concerned while attending the meeting of the Board, the honorarium is in the form of a fee for performing his duties on those days. The Shorter Oxford Dictionary gives the meaning of the word "honorarium" as an honorary reward, a fee for professional service rendered, while one of the meanings of the word "salary" is, fixed payment made periodically to a person as compensation for regular work, remuneration for services rendered, fee, honorarium. Thus, in one aspect honorarium and fee are used almost as though they are interchangeable terms Even so, what was paid to the first respondent cannot be said to be a salary. It was not a fixed payment made periodically as compensation for regular work. We are of opinion that the matter must be considered as a matter of substance rather than of form, of the essence of payment rather than its nomenclature."*

*(Emphasis supplied)*

58. Having said that, it is not the case of the respondent that, on her appointment with the Authority, she has sought exemption from the Bar Council with which she has been registered under Rule 49 of the Bar Council Rules. Nor it is her case that because of her appointment with the Authority, she was precluded by the senior officers in writing, from undertaking cases for other private parties / third parties. An averment that senior officials of the Authority had given oral instructions that the respondent cannot have independent practice except the panel assignments and in that sense the appointment is exclusively as an

employee, cannot be accepted, as such an important instruction necessarily has to be in writing and also she has not named the officers who had given such instructions. The respondent was, always / throughout, free to engage herself in any other kind of (non) litigation works.

59. The issue of status of an Advocate and that of a permanent/regular employee is prescribed in Part IV- Rules Governing Advocates, Chapter II-Standards of Professional Conduct and Etiquette, Section VII,- Section on other employment (Rule 49) of The Bar Council of India Rules, as under:

> *"49. An Advocate shall not be full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise and shall, on taking up any such employment, intimate the fact to the Bar Council and shall thereupon cease to practise as an advocate so long as he continues in such employment. Nothing in this rule shall apply to Law Officer of the Central Government or the Government of a State or of any Public Corporation or body constituted by statute who is entitled to be enrolled under the rules of the Bar Council made under Section 28(2)(d) read with Section 24(1)(c) of the Advocates Act, 1961 despite his being a full-time salaried employee.*
>
> ***Law Officer for the purpose of these Rules means a person who is so designated by the terms of his appointment and who, by the said terms, is required to act and/or plead in Courts on behalf of his employer.*
>
> *** The above second and third paras deleted in June, 2001 meeting vide Resolution No.65/2001.*
>
> *Resolution No. 156/2001*
>
> *"RESOLVED and further clarified that as Supreme Court has struck down the appearance by Law Officers in Court*

*even on behalf of their employers the Judgement will operate in the case of all law officers. Even if they were allowed to appear on behalf of their employers all such Law Officers who are till now appearing on behalf of their employers shall not be allowed to appear as advocates. The State Bar Council should also ensure that those Law Officers who have been allowed to practise on behalf of their employers will cease to practise. It is made clear that those Law Officers who after joining services obtained enrolment by reason of the enabling provision cannot practise even on behalf their employers."*

*Resolution No. 113/2002*

*"RESOLVED that the Bar Council of India is of the view that if the said officer is a whole time employee drawing regular salary, he will not be entitled to be enrolled as an advocate. If the terms of employment show that he is not in full time employment he can be enrolled."*

*(emphasis supplied)*

60. Insofar as the judgment relied upon by Dr. Khanna, in the case of ***Dr. Baba Saheb Ambedkaar Hospital Govt. of NCT of Delhi and Anr. (supra)*** is concerned, the said judgment is clearly distinguishable on facts, inasmuch as the issue in the said case was whether a Senior Resident in the Department of Dermatology in the petitioner – Hospital is entitled to the benefits of the Act of 1961 which relief was granted by the Central Administrative Tribunal in favour of the respondents therein. Suffice to state, that was a case where there was an employer-employee relationship between the parties, which is not in the case in hand. The respondent's appointment in the case in hand being professional in nature though having a public law element but not covered under the Act of 1961, she is not entitled to the benefits under

the provisions of the Act of 1961.

61. Similarly, in the judgment in the case of ***Municipal Corpn. of Delhi (supra)***, the Supreme Court has in clear terms held that the benefit of the Act of 1961 shall be available to Muster Roll / Daily Wages and Casual basis employees as well. It is not such a case here, and hence, the judgment is distinguishable.

62. Similarly, in the case of ***Ram Singh & Ors. (supra)***, the Supreme Court was considering the appeal filed against the judgment of the Central Administrative Tribunal. The appellants therein were contractual employees claiming regularisation of their services. It was in that context, the Supreme Court has in paragraphs 15 and 20 held as under:

> *"15. In determining the relationship of employer and employee, no doubt, "control" is one of the important tests but is not to be taken as the sole test. In determining the relationship of employer and employee, all other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. It is necessary to take a multiple pragmatic approach weighing up all the factors for and against an employment instead of going by the sole "test of control". An integrated approach is needed. "Integration" test is one of the relevant tests. It is applied by examining whether the person was fully integrated into the employer's concern or remained apart from and independent of it. The other factors which may be relevant are — who has the power to select and dismiss, to pay remuneration, deduct insurance contributions, organise the work, supply tools and materials and what are the "mutual obligations" between them. (See Industrial Law, 3rd Edn., by I.T. Smith and J.C. Wood, at pp. 8 to 10.)*

*xxx xxx xxx*

*20. In view of the clear and binding pronouncement of law by the Constitution Bench of this Court in the case of Steel Authority of India [(2001) 7 SCC 1 : 2001 SCC (L&S) 1121] , in the present appeals which arise from writ petitions preferred against the adverse judgment of the Central Administrative Tribunal (CAT), none of the reliefs, as prayed for, can be granted to the employees. Without ascertaining through the industrial forum, factual aspects of inter se relationship between the Chandigarh Administration, the contractor and the contract employees, no relief can be granted."*

*(emphasis supplied)*

63. Insofar as the judgment of ***Dr. Kavita Yadav (supra)*** is concerned, suffice to state the Supreme Court granted the benefit of the Act of 1961 in respect of the appellant, who was working as Senior Resident (Pathology) in Janakpuri Super Speciality Hospital therein, an autonomous institute under the Government of NCT of Delhi. Given the nature of appointment, the Supreme Court has granted the benefit of the Act of 1961 to the appellant therein, hence, on facts the judgment is distinguishable.

64. Insofar as the judgment in the case of ***Yogita Chauhan (supra)***, is concerned, the issue before this Court was with regard to appointment of a Guest Teacher in Delhi Government School. The petitioner therein got selected on October 16, 2017, however she delivered a child on July 28, 2018. The respondents did not engage the petitioner thinking that the petitioner having just delivered a baby, would not be able to work, if any requirement comes from the School. The said judgment is distinguishable on facts inasmuch as the issue was

not in respect of entitlement of maternity benefits but, having delivered a child the petitioner could be denied an appointment, on the ground, she would not be able to work.

65. In the case of ***Renuka (supra),*** the petitioner was pursing two years M.Ed. She filed an application for maternity leave before the concerned Authority. The said application was rejected by the concerned Authority. The issue before this Court was, whether in absence of any specific provision for maternity leave, the same can be denied. This Court in the facts of that case had directed the respondent to consider the petitioner's application for the grant of 59 days maternity leave, afresh as the petitioner would fulfill the minimum 80% attendance criteria in theory classes after counting the 59 days leave. It was directed, the authorities shall take appropriate steps to allow the petitioner to appear in the examination. The said judgment is clearly distinguishable in the facts of the case moreso, this Court in view of NCTE Act, 1993 and NCTE Regulations 2014 had not felt the need to venture into the applicability of the Act of 1961.

66. Similarly, in the cases of ***Inspector (Mahila) Ravina (supra)***, the issue was whether the respondents can deny the petitioner a chance to participate in the pre-promotional course on the ground of her pregnancy whereas her colleagues and her batchmates who did not attend course Nos.83 & 84 and attended & qualified the Course No.85, were given due seniority whereas the case of the petitioner was not considered. The issue before this Court was, whether the petitioner's pregnancy would amount to unwillingness or signify her inability to attend the required promotional course and also she is entitled to

relaxation of Rules to claim seniority at par with her batchmates. This Court held that the petitioner therein is entitled to such relaxation. The said judgment is clearly distinguishable on facts.

67. Similarly, in the case of ***The Secretary, Managing Committee of Loreto Convent Tara Hall School (supra)*** is concerned, the respondent therein was appointed as Assistant Teacher on contract basis. Subsequently, she was appointed on probation w.e.f. July 1, 2018 till June 30, 2019. The respondent remained on medical / earned / without pay, leave on two occasions. The petitioner terminated the services of the respondent vide letter dated December 20, 2018. The respondent preferred a complaint under Section 17 of the Act of 1961. It is to be noted that in the said judgment, the High Court of Himachal Pradesh has held that there is an employer-employee relationship between the parties therein therefore, in view of the Act of 1961, has dismissed the petition which was filed challenging the order of the Labour Commissioner-cum-Chief Commissioner Factories-cum-Appellate Authority granting maternity benefits. The said case is clearly distinguishable on facts and as such has no applicability.

68. Insofar as in the case of ***Navtej Singh Johar & Ors. (supra)*** is concerned, the issue in the said case is nowhere related to the issue which arises for consideration in this appeal. As such the said judgment is clearly distinguishable on facts.

69. We agree with the reliance placed by Dr. George on the judgment of the High Court of Bombay in the case of ***Ranjit Satardekar (supra)***, to contend that an Advocate is neither a servant nor an employee of any one. In this regard, we may reproduce the

relevant paragraph of the said judgment as under:

> *"16. The workmen or employees are bound by the terms of their employment and by the service conditions, statutory or otherwise. Any breach of any term of the service conditions would attract disciplinary proceedings against them. A lawyer is neither a servant nor an employee of anyone. He has his own conscience which he has to follow."*
>
> *(emphasis supplied)*

70. Similarly, he has also relied upon the judgment of the Supreme Court in the case of ***State of U.P. State Law Officers Association and others. (supra)***. In the said case, the Supreme Court has highlighted the fact that the Government and the public bodies engage the services of the lawyers purely on a contractual basis either for a specified case or for a specified or an unspecified period. Although the contract, in some cases prohibit the lawyers from accepting private briefs, the nature of the contract, is not altered from one of professional engagement to that of employment. The Court held that the lawyer of the Government or a public body is not its employee but a professional practitioner engaged to do the specified work.

71. In this regard we may reproduce relevant paragraph No. 14 as under;-

> *"14. Legal profession is essentially a service-oriented profession. The ancestor of today's lawyer was no more than a spokesman who rendered his services to the needy members of the society by articulating their case before the authorities that be. The services were rendered without regard to the remuneration received or to be received. With the growth of litigation, lawyering became a full-time occupation and most of the lawyers came to*

> *depend upon it as the sole source of livelihood. The nature of the service rendered by the lawyers was private till the Government and the public bodies started engaging them to conduct cases on their behalf.* ***The Government and the public bodies engaged the services of the lawyers purely on a contractual basis either for a specified case or for a specified or an unspecified period. Although the contract in some cases prohibited the lawyers from accepting private briefs, the nature of the contract did not alter from one of professional engagement to that of employment. The lawyer of the Government or a public body was not its employee but was a professional practitioner engaged to do the specified work.*** *This is so even today, though the lawyers on the full-time rolls of the Government and the public bodies are described as their law officers. It is precisely for this reason that in the case of such law officers, the saving clause of Rule 49 of the Bar Council of India Rules waives the prohibition imposed by the said rule against the acceptance by a lawyer of a full-time employment."*
>
> *(emphasis supplied)*

72. It is relevant to note that the Supreme Court in the case of ***Deepak Aggarwal v. Keshav Kaushik, (2013) 5 SCC 277***, has in paragraphs 97 to 99, defined '*Employment'* vide The Bar Council of India Rules and held as under:

> *"97. However, much emphasis was placed on behalf of the contesting respondents on Rule 49 of the BCI Rules which provides that an advocate shall not be a full-time salaried employee of any person, Government, firm, corporation or concern so long as he continues to practise, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to practise as an advocate so long as he continues in such employment. It was submitted that earlier in Rule 49 an exception was*

*carved out that a "law officer" of the Central Government or of a State or of a body corporate who is entitled to be enrolled under the rules of the State Bar Council shall not be affected by the main provision of Rule 49 despite his being a full-time salaried employee but by the Resolution dated 22-6-2001 which was published in the Gazette on 13-10-2001, the Bar Council of India has deleted the said provision and hence on and from that date a full-time salaried employee, be he a Public Prosecutor or a Government Pleader, cannot be an advocate under the 1961 Act.*

*98. Admittedly, by the above resolution of the Bar Council of India, the second and third paragraphs of Rule 49 have been deleted but we have to see the effect of such deletion. What Rule 49 of the BCI Rules provides is that an advocate shall not be a full-time salaried employee of any person, Government, firm, corporation or concern so long as he continues to practise.* ***The "employment" spoken of in Rule 49 does not cover the employment of an advocate who has been solely or, in any case, predominantly employed to act and/or plead on behalf of his client in courts of law. If a person has been engaged to act and/or plead in court of law as an advocate although by way of employment on terms of salary and other service conditions, such employment is not what is covered by Rule 49 as he continues to practise law but, on the other hand, if he is employed not mainly to act and/or plead in a court of law, but to do other kinds of legal work, the prohibition in Rule 49 immediately comes into play and then he becomes a mere employee and ceases to be an advocate. The bar contained in Rule 49 applies to an employment for work other than conduct of cases in courts as an advocate.*** *In this view of the matter, the deletion of the second and third paragraphs by the Resolution dated 22-6-2001 has not materially altered the position insofar as advocates who have been employed by the State Government or the Central Government to conduct civil and criminal cases on their behalf in the*

> *courts are concerned.*
>
> *99. What we have said above gets fortified by Rule 43 of the BCI Rules. Rule 43 provides that an advocate, who has taken a full-time service or part-time service inconsistent with his practising as an advocate, shall send a declaration to that effect to the respective State Bar Council within the time specified therein and any default in that regard may entail suspension of the right to practice. In other words, if full-time service or part-time service taken by an advocate is consistent with his practising as an advocate, no such declaration is necessary. The factum of employment is not material but the key aspect is whether such employment is consistent with his practising as an advocate or, in other words, whether pursuant to such employment, he continues to act and/or plead in the courts. If the answer is yes, then despite employment he continues to be an advocate. On the other hand, if the answer is in the negative, he ceases to be an advocate."*
>
> *(emphasis supplied)*

73. That apart, the interpretation of the words *'Employment'* and *'Wages'* in the Act of 1961, by the learned Single Judge, if allowed to stand, would mean that, an entity engaging professionals like an Advocate, shall be bound to give the maternity benefits to each of those who are engaged professionally. This interpretation by the Learned Single Judge is completely misplaced in law and would have serious repercussion.

74. We are not in agreement with the parity sought to be drawn by the Learned Single Judge between Authority and the respondent, for the reason that there cannot be a comparison between an Advocate who continues to act as such and an employee who is appointed as per the Recruitment Rules of the Authority.

75. In view of our aforesaid discussion, we hold that the learned Single Judge has erred in extending the benefits of the Act of 1961 to the respondent, more particularly, given the nature of her appointment. The appeal is allowed and the impugned judgment is liable to be set aside. It is ordered accordingly. No costs.

**CM APPLs. 63165/2023 & 64284/2023**

In view of our above findings, the applications have become infructuous and are dismissed as such accordingly.

**V. KAMESWAR RAO, J**

**SAURABH BANERJEE, J**

**APRIL 23, 2024***/aky*