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VERDICTUM.IN



W.P.No.27556 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2024

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.27556 of 2018

MRB Nurses Empowerment Association
Reg No.31/2018
Kanchipuram District
Chrompet, Chennai.
Rep. by its President,
Chennai-600 044.

.. Petitioner

vs.

- 1.The Principal Secretary,
Department of Health and Family Welfare,
Government of Tamilnadu,
Fort St. George, Chennai-600 009.
- 2.The Director,
Medical and Rural Health Services,
Chennai-600 006.
- 3.The Director,
Directorate of Public Health and Preventive Medicine,
Anna Salai, Teynampet,
Chennai-600 018.



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4. The Director,
Directorate of Medical Education,
Chetpet, Chennai-600 031.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the respondents to extend maternity benefits including that 270 days of paid maternity leave in accordance with the provisions of Maternity Benefit Act, 1961 to all staff nurses working under the National Rural Health Mission Scheme in the State of Tamilnadu with immediate effect.

For Petitioner : Ms.M.Padmavathy
for M/s.K.Vamanan

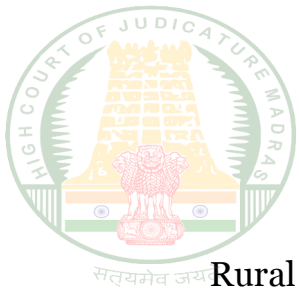
For Respondents : Mr.P.S.Raman
Advocate-General
assisted by
Mr.A.Edwin Prabakar
State Government Pleader
Mr.T.K.Saravanan
Government Advocate

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This writ petition was admitted on 22nd March, 2019.

2. It is petitioner's case that it is an association established with the sole purpose of upliftment of staff nurses working on various scheme sanctioned posts in the State of Tamil Nadu. One such scheme is National



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Rural Health Mission (NRHM) Scheme floated by the Government of India with a view to enhance the health care in rural areas.

3. Under the NRHM scheme, the Central Government provides funds to the State Government for the appointment of Doctors, Nurses, Pharmacists and other health care professionals. The State Government recruits the health care professionals in its rolls and uses these funds to pay them salary. The State of Tamil Nadu had recruited more than 11,000 staff nurses through competitive exams on a consolidated pay of Rs.7,000/- per month, which was later revised to Rs.14,000/- per month, pursuant to judicial order.

4. It is the case of petitioner that the nurses have been working for more than two years and, therefore, would be eligible for maternity leave of 270 days with pay as per the Maternity Benefits Act, 1961 (*“the 1961 Act”*). It is petitioner's case that maternity benefits have been denied by the State Government to NRHM nurses because they were contractual employees. Against this denial of maternity benefits, petition has been filed seeking writ of mandamus directing respondents to extend maternity benefits,



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including 270 days of paid maternity leave, in accordance with the provisions of the 1961 Act.

5. Respondents in the affidavit-in-reply, relying on the appointment and posting orders, one of which is dated 30th October, 2015 and a copy whereof forms part of the compilation filed, states that nurses are not eligible for any kind of leave as applicable to the regular Government servants except for the casual leave of one day for one month and day off. It is also stated that, in any other untoward exceptional circumstances, any individual is permitted to avail the leave other than the leave specified above that will be treated as leave on loss of pay.

6. The Apex Court, in a recent judgment in ***Dr. Kavita Yadav v. Secretary, Ministry of Health and Family Welfare Department and others***¹, has held that once lady employee fulfills entitlement criteria specified in Section 5(2), she would be eligible for full maternity benefits even if such benefits exceed duration of her contract. The Court has also held that maternity benefits are not coterminous with employment tenure.

1 (2024) 1 SCC 421



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In that case, the Apex Court was considering a similar matter, where a Pathology Doctor, who was appointed as Senior Resident (Pathology) in an institute under the Government of NCT of Delhi, was denied maternity benefits on the ground that she was a contractual employee. Her challenge before the Central Administrative Tribunal failed and the Delhi High Court upheld the view of the Central Administrative Tribunal. In fact, the Delhi High Court went on to hold that if petitioner's case was accepted and granted leave, it would clearly tantamount to unintended extension of the contractual employment. Therefore, the main question which fell for determination before the Apex Court was whether maternity benefits as contemplated under the 1961 Act would apply to a lady employee appointed on contract if the period for which she claims such benefits overshoots the contractual period. The Apex Court, following the earlier judgment of the Apex Court in the case of **Deepika Singh v. PGIMER, Chandigarh**², held that the 1961 Act was enacted to secure women's right to pregnancy and maternity leave and to afford women with as much flexibility as possible to live an autonomous life, both as a mother and as a worker, if they so desire. The Court held that once the employee fulfills

² (2023) 13 SCC 681



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entitlement criteria specified in Section 5(2) of 1961 Act, she would be eligible for full maternity benefits even if such benefits exceed the duration of the contract. Paragraphs 4, 6, 10, 11, 12, 14 to 16 read as under:

“4. It is this judgment which is assailed before us. For effective adjudication of this appeal, we reproduce below the following provisions of the 1961 Act:

“5. Right to payment of maternity benefit.—(1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

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

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than (eighty days) in the twelve months immediately preceding the date of her expected delivery:

Provided that the qualifying period of (eighty days) aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

Explanation.- For the purpose of calculating under the sub-section the days on which a woman has actually worked in the establishment (the days for which she has been laid-off or was on holidays declared under any law for the time being in force to be holidays with wages) during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

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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 entitled to benefits in respect of any matters 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.”.

...

6. The main question which falls for determination in this appeal is as to whether the maternity benefits, as contemplated in the 1961 Act, would apply to a lady employee appointed on contract if the period for which she claims such benefits overshoots the contractual period.

.....

10. Broadly, a similar view is reflected in a more recent judgment of this Court in Deepika Singh v. PGIMER, Chandigarh, (2023) 13 SCC 681. Though this decision dealt with the Central Civil Services (Leave) Rules, 1972, in relation to maternity leave and the 1961 Act was not directly applicable in that case, this Court analysed certain provisions of this Act to derive some guidance on a cognate legislation.

11. This Court observed in Deepika Singh, (2023) 13 SCC 681 (SCC paras 19-20)

“19. Sub-section (1) of Section 5 confers an entitlement on a woman to the payment of maternity benefits at a stipulated rate for the period of her actual absence beginning from the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day. Sub-section (3) specifies the maximum



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period for which any woman shall be entitled to maternity benefit. These provisions have been made by Parliament to ensure that the absence of a woman away from the place of work occasioned by the delivery of a child does not hinder her entitlement to receive wages for that period or for that matter for the period during which she should be granted leave in order to look after her child after the birth takes place.

20. The 1961 Act was enacted to secure women's right to pregnancy and maternity leave and to afford women with as much flexibility as possible to live an autonomous life, both as a mother and as a worker, if they so desire. In *MCD v. Female Workers (Muster Roll)* [*MCD v. Female Workers (Muster Roll)*, (2000) 3 SCC 224 : 2000 SCC (L&S) 331], a two-Judge Bench of this Court placed reliance on the obligations under Articles 14, 15, 39, 42 and 43 of the Constitution, and India's international obligations under the Universal Declaration of Human Rights, 1948 ("UDHR") and Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") to extend benefits under the 1961 Act to workers engaged on a casual basis or on muster roll on daily wages by the Municipal Corporation of Delhi. The Central Civil Services (Leave) Rules, 1972, it is well to bear in mind, are also formulated to entrench and enhance the objects of Article 15 of the Constitution and other relevant constitutional rights and protections."

12. In the light of the ratio laid down in the aforesaid two authorities and having regard to Section 27 of the 1961 Act, which gives overriding effect to the statute on any award, agreement or contract of service, in our opinion, the High Court erred in law in holding that the appellant was not entitled to maternity benefits beyond 11-6-2017.

...

14. Our independent analysis of the provisions of the 1961 Act does not lead to an interpretation that the maternity benefits cannot survive or go beyond the duration of employment of the applicant thereof. The expression employed in the legislation is "maternity benefits" [in Section 3(h)] and not "leave". Section 5(2) of the statute, which we have quoted above, stipulates the conditions on the fulfilment of which such benefits would accrue. Section 5(3) lays down the maximum period for which such benefits could be granted. The last proviso to Section 5(3) makes the benefits applicable even in a case where the applicant woman dies after delivery of the child, for the entire period she would have been otherwise entitled to. Further, there is an embargo on the employer



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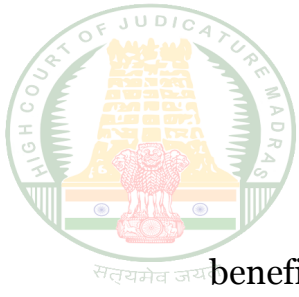


from dismissing or discharging a woman who absents herself from work in accordance with the provisions of the Act during her absence. This embargo has been imposed under Section 12(2)(a) of the Act. The expression “discharge” is of wide import, and it would include “discharge on conclusion of the contractual period”. Further, by virtue of operation of Section 27, the Act overrides any agreement or contract of service found inconsistent with the 1961 Act.

15. In our opinion, a combined reading of these provisions in the factual context of this case would lead to the conclusion that once the appellant fulfilled the entitlement criteria specified in Section 5(2) of the Act, she would be eligible for full maternity benefits even if such benefits exceed the duration of her contract. Any attempt to enforce the contract duration term within such period by the employer would constitute “discharge” and attract the embargo specified in Section 12(2)(a) of the 1961 Act. The law creates a fiction in such a case by treating her to be in employment for the sole purpose of availing maternity benefits under the 1961 Act.

16. We, accordingly, set aside the judgment and order of the High Court [Kavita Yadav v. State (NCT of Delhi), 2019 SCC OnLine Del 9776] and as a consequence thereof, the Tribunal's decision Kavita Yadav v. State (NCT of Delhi), OA No. 1978 of 2018, order dated 12-4-2019 (CAT)] shall also stand invalidated. We allow this appeal and direct the employer to extend maternity benefits as would have been available to the appellant in terms of Sections 5 and 8 of the 1961 Act, after deducting therefrom any sum that may already have been paid to the appellant under the same head or for such purpose. Such benefits, as may be quantified in monetary units, shall be extended to her within a period of three months from the date of communication of this judgment. The orders of the employer rejecting the appellant's claim on this count shall stand quashed.”
(emphasis supplied)

7. Therefore, by virtue of Section 27, the provisions of the 1961 Act will prevail over contractual conditions denying or offering less favourable maternity benefits. Consequently, the reliance by the respondents on condition 6 of the Appointment and Posting Order to deny maternity



benefits is untenable.
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All pending and fresh applications for maternity benefits from NRHM nurses employed on contractual basis shall be considered and disposed of in terms of section 5 of the 1961 Act within 3 months from the date of receipt of a copy of this order (as regards pending applications) or 3 months from the date of receipt of fresh applications, as the case may be, after making adjustments, if any, towards payments made earlier.

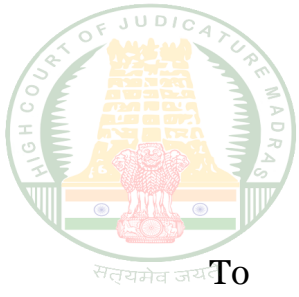
8. The writ petition is allowed on these terms without any order as to costs.

(K.R.SHRIRAM, CJ)

(SENTHILKUMAR RAMAMOORTHY, J.)

18.10.2024

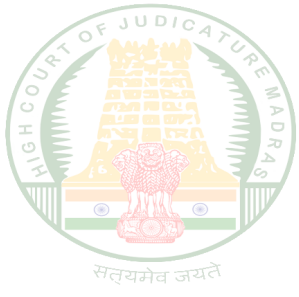
Index : Yes/No
NC : Yes/No
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To

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- 1.The Principal Secretary,
Department of Health and Family Welfare,
Government of Tamilnadu,
Fort St. George, Chennai-600 009.
- 2.The Director,
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Chennai-600 006.
- 3.The Director,
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- 4.The Director,
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