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DELHI HIGH COURT ON MATERNITY BENEFIT TO AD HOC EMPLOYEE

A. Introduction

The Delhi High Court (**HC**), in the case of *Dr. Baba Saheb Ambedkar Hospital vs. Dr. Karti Mehrotra*¹ held that under the Maternity Benefit Act, 1961 (**MBA**), an *ad hoc* employee is entitled to maternity benefit beyond the tenure of the contract, given that her pregnancy occurs during the tenure of the employment.

B. Brief Facts:

1. Mehrotra was working as Senior Resident on *ad hoc* basis with the hospital from March 2016. Her last appointment was in March 2017, which in the ordinary course, would have ended in June 2017. However, in that month, Mehrotra applied for emergency maternity leave (**ML**) due to pregnancy complications.
2. Her ML request was not granted, and the hospital terminated her services retrospectively from April 2017. Aggrieved by this, she approached the Central Administrative Tribunal (**CAT**) seeking ML, pending salary and challenged the termination.
3. CAT adverted to Mehrotra's grievances and directed the hospital to look consider the matter sympathetically and release her unpaid salary. The hospital, following the CAT's order, provided ML, but only till June 2017 (when her tenure ended).
4. Mehrotra, aggrieved by the partial grant, again approached the CAT with a fresh action seeking revocation of the termination and for extended ML of 26 weeks.²
5. CAT partially allowed her application and directed the hospital to extend ML benefit as per Section 5(2) of the MBA and issue a certificate to the employee indicating the length of service rendered by her. The hospital, aggrieved by the CAT's decision, approached the HC.

C. Order and Reasoning:

The HC held as follows:

¹ *Dr. Baba Saheb Ambedkar Hospital Govt. of NCT of Delhi and Ors. vs. Krati Mehrotra* (11.03.2022 - DELHC) : MANU/DE/0811/2022.

² By the Maternity Benefit (Amendment) Act, 2017, w.e.f. 27th March 2017, maternity leave is enhanced to 26 weeks.

1. In light the preamble to the MBA and reading in parallel the text of Sections 3(h),³ 5⁴ and 27⁵ the Act seeks “to invest a woman with a statutory right to take maternity leave and seek payment for the period that she is absent from duty on account of her pregnancy, albeit in accordance with the provisions of the 1961 Act.”⁶
2. Section 5, which enumerates the right to payment of maternity benefits, does not differentiate between a permanent employee, contractual employee or a daily wage worker as iterated by the Supreme Court in the 2000’s *Muster Roll* case.⁷ The Act “does not tie in the grant of maternity benefit to the tenure of the woman employee.”⁸
3. The only limiting factors for the grant of maternity leave are:
 - a. The employee should have worked in the establishment of her employer for a minimum period of 80 days in 12 months immediately preceding the date of her expected delivery.
 - b. The maximum period of maternity leave cannot exceed 26 weeks, of which, not more than 8 weeks must precede the date of expected delivery.
4. A plain reading of the MBA connotes that, in case of a contract employee, maternity benefit which the employee is entitled to cannot be linked to the tenure of employment.
5. As per the non-obstante clause in Section 27, the “Act would apply notwithstanding the provisions contained, inter alia, in any other law, agreement or contract of service, to the extent it is inconsistent with the provisions of the said Act.”
6. Tying up the tenure of the contract with the period for which a woman employee can avail of maternity benefit is contrary to the mandate of the legislation. It held: “Thus, as long as conception occurs before the tenure of the contract executed between a woman-employee and her employer expires, she should be entitled to, in our opinion, maternity benefits as provided under the 1961 Act.”
7. The HC, therefore, dismissed the writ petition without interfering with the CAT’s order.

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³ Section 3(h) defines the term “maternity benefit”.

⁴ Section 5 (Right to payment of maternity benefit).

⁵ Section 27 (Effect of laws and agreements inconsistent with this Act).

⁶ Paragraph 12 of the Judgment.

⁷ *Municipal Corporation of Delhi (MCD) v. Female Workers (Muster Roll) & Anr.* (2000) 3 SCC 224.

⁸ Paragraph 13 of the Judgment.

⁹ Paragraph 13.4 of the Judgment.