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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No.8744 OF 2015

1. Airports Authority of India Workers Union,

2. Kanakavali Raja Armugam Alias

...Petitioners

Versus

1. The Under Secretary,
Ministry of Labour, Govt. of India,

2. The Senior Manager (HR),
Airport Authority of India,

...Respondents

Ms. Pavitra Mahesh i/b. Mr. Meelan Topkar for the Petitioners.

Mr. Ahmed Padela i/b. The Law Point for Respondent No.2.

CORAM : A. S. CHANDURKAR,
JITENDRA JAIN, J.J.

Date on which the Arguments were Heard : 29th April 2024.
Date on which the Judgment is Pronounced : 10th May 2024.

JUDGMENT :- (Per Jitendra Jain, J.)

1. **Rule**. Rule made returnable forthwith. By consent of the parties the petition is heard finally.

2. By this petition under Article 226 of the Constitution of India, the Petitioners seek to challenge communications dated 28th January 2014 and 31st March 2014 issued by Respondent No.2, whereby Petitioner No.2's application for maternity leave benefit is rejected on the ground that Petitioner No.2 is having more than two surviving children and hence is not eligible for the grant of maternity leave as per AAI Leave Regulations 2003.

Brief facts:-

3. The Petitioner No.2 married Mr. K. Raja Armugam and on 18th July 1997 gave birth to one child from the said wedlock. However, on 6th December 2000, Mr. K. Raja Armugam passed away and in his place, pursuant to an application by Petitioner No.2 for compassionate appointment, she was appointed by Respondent No.2 on compassionate ground as Junior Attendant on 24th February 2004.

4. On 1st July 2008, Petitioner No.2 remarried one Mr. Shyam Sandal. Out of the second wedlock, she gave birth to two children. On 27th June 2009, Petitioner No.2 had her first child and thereafter the second child was born on 3rd September 2012.

5. On delivering her second child from wedlock with Mr. Shyam Sandal, the Petitioner No.2 applied to Respondent No.2 for Maternity Leave Benefit by applications dated 3rd September 2012 and 19th December 2013.

6. The aforesaid application came to be rejected by Respondent No.2 vide communications dated 28th January 2014 and 31st March 2014 on the ground that Petitioner No.2 was having more than two surviving children and, therefore, was not eligible for grant of maternity leave as per AAI Leave Regulations, 2003 (hereinafter referred as "2003 Regulation"). It is on this backdrop that the Petitioner No.2 through Petitioner No.1 is before us challenging the said communications.

Submissions of the Petitioners:-

7. It is the contention of the Petitioners that the 2003 Regulation would not be applicable to Petitioner No.2, since after being appointed, she gave birth to only two children. The first child born from the wedlock with K. Raja Armugam was prior to her being appointed with Respondent No.2. The Petitioners submitted that looking at the objective of grant of maternity leave and the fact that she did not avail the maternity leave while giving birth to the first child on 27th June 2009 born from wedlock with Mr. Shyam Sandal and subsequent to her being appointed by Respondent No.2, the Respondents are not justified

in rejecting the maternity leave benefit application. The Petitioners relied upon the decision of Madras High Court in the case of ***Khatija Umama Vs. The District Educational Officer, Erode District & Anr.***[1]

Submissions of the Respondents:-

8. Per contra, the Respondents submitted that on a plain reading of Maternity Leave Regulations, it is clear that since Petitioner No.2 was having two surviving children at the time of giving birth to third child, therefore, she is not eligible for the said maternity leave. The Respondents submitted that for the purpose of the 2003 Regulations, it is the number of children born to the Petitioner No.2 which is to be seen. The Petitioner No.2 being biological mother of two surviving children at the time of giving birth to third child, she is not eligible for the said maternity leave benefit. The Respondent No.2 relied upon the decision of Madras High Court in the case of ***P. Yasota Vs. The Government of Tamilnadu & Ors.***[2]***.***

9. We have heard the learned counsel for the Petitioners and the Respondents and with their assistance have perused the documents annexed to the petition.

Analysis and Conclusion:-

10. The Petitioner No.2 is an employee of Respondent No.2-AAI.

1 Writ Petition No.28293 of 2022 dtd. 06.12.2022
2 WP/23983/2022 & W.M.P./22964/2022 dtd. 14.08.2023

On 13th June 2003, Respondent No.1 approved Airport Authority of India (Leave) Regulations 2003 (hereinafter referred as "2003 Regulation"). The said regulations were framed under Section 42 of the Airports Authority of India Act, 1994. The relevant Regulation which is required to be examined for the purpose of present adjudication is annexed to the petition which reads thus:-

> *"MATERNITY LEAVE:*
>
> *(a) FOR PREGNANCY*
>
> *A female employee with less than two surviving children may be granted Maternity Leave to 135 (One hundred thirty live) days* ***twice in service period*** *including for Medical Termination of Pregnancy or Abortion. In order to avail this leave, the employee should complete* ***one-year regular service*** *in Airports Authority of India. The leave will be granted on submission or production of Medical Certificate from Authorized Medical Officer or Hospital or Nursing Home.*
>
> *A female employee (including probationer) with less than two surviving children may be granted Maternity Leave of 180 (One hundred eighty) days twice in service period including for medical termination of pregnancy or abortion. The leave will be granted on submission or production of medical certificate from authorized medical officer or hospital or nursing home.*
>
> *(Refer CHRMC No. 12/2011 dated 09.03.2011)"*

11. Rule 3(e) defines "employee" to mean a person in whole time service of Respondent No.2. Rule 11(6) deals with maternity leave and CHRMC No.12/2011 dated 9th March 2011 relied upon by the Petitioners is reproduced above.

12. Article 42 of the Constitution of India provides that the State shall make provision for securing just and human conditions of work

and for maternity relief. Since Article 42 specifically speaks of "just and humane conditions of work" and "maternity relief", the validity of an executive or administrative action in denying maternity benefit has to be examined on the anvil of Article 42 which, though not enforceable as law, is nevertheless available for determining the legal efficacy of the action complained of. Under Article 15(3) of the Constitution, the State is empowered to enact beneficial provisions for advancing the interests of women. The right to reproduction and child rearing has been recognized as an important facet of a person's right to privacy, dignity and bodily integrity under Article 21. Article 42 enjoins the State to make provisions for securing just and humane conditions of work and for maternity relief. The objective of maternity leave is expounded by the Supreme Court in the case of ***B. Shah Vs. Presiding Officer, Labour Court, Coimbatore***[3]. The Supreme Court observed that maternity leave legislation is intended to achieve the object of doing social justice to women workers. The said piece of regulation/rule would enable the women workers not only to subsist, but also to make up for her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output.

13. Maternity Leave Regulation, 2003 of Respondent No.2 provides that a female employee with less than two surviving children

3 AIR 1978, SC 12

may be granted maternity leave of 135 days/180 days twice during her service period. It further provides that to avail the said leave, the employee should have completed at least one-year regular service in AAI. The objective of the said Regulation is to enable the employee to nurse her child and to make up for her dissipated energy and preserve her energy as a worker to regain the level of her efficiency as it was prior to her pregnancy. The leave is granted for a period of 135/180 days. The phrase "twice in service period" read with the phrase "less than two surviving children" and further read with "one-year regular service" would mean that a female employee in the normal circumstances would get the benefit of maternity leave only two times in service period and, therefore, the condition of "two surviving children" is subjected. In our view, since the objective is to give the maternity leave benefit only two times during the service period, the condition of "two surviving children" if read in that context would mean that the female employee should have given birth to the two surviving children only during the service period. The objective of this Regulation is to give maternity leave benefit and not to curb the population. The condition of two surviving children is subjected so that the maximum times a female employee can benefit is only twice. This is to ensure that the organization is not without the services of the employee for more than two times. It is, therefore, to maintain the balance between the

absence of the employee and the benefit of maternity leave that there is a cap of availing the said benefit only twice during the service period.

14. In the instant case before us, the first child from the first marriage of the Petitioner was born before the Petitioner joined Respondent No.2. After the Petitioner joined the Respondent No.2, she remarried and gave birth to two children, one on 27th June 2009 and second on 3rd September 2012. She did not take the benefit of maternity leave at the time of giving birth on 27th June 2009. She applied for the said benefit for the first time by applications dated 3rd September 2012 and 19th December 2013, pursuant to her giving birth to second child after joining Respondent No.2. Therefore, in our view, since the Petitioner has given birth to two children during the service period and having not taken the benefit of maternity leave at the time of giving birth to the first child after joining Respondent No.2, she would be entitled to the maternity leave benefit when she applied on 3rd September 2012, at the time of giving birth to her second child since said leave was sought to be availed only once after joining service.

15. It is also important to note that the benefit of maternity leave and the condition imposed therein has been drafted keeping in mind the normal circumstances, where a female employee marries only once and gives birth thereafter. In a situation before us, the Petitioner

remarried after joining Respondent No.2 because her husband had passed away and from the said wedlock, she had a child. At that point of time, she was not in the employment of Respondent No.2. In our view, the fact situation before us would be an exceptional circumstance, which the Regulations for grant of maternity leave have not contemplated. Therefore, in our view, keeping in mind the laudable objective of the maternity leave provision, the Respondents were not justified in denying the benefit of the maternity leave to the Petitioner No.2 only on the ground that if the child born from her first wedlock which is before the date of her joining Respondent No.2 is considered, then she is not entitled for the benefit on account of breaching the condition of having more than two surviving children.

16. The role of the Court is to understand the purpose of law in society and to help the law achieve its purpose. When social reality changes, the law must change too. The Regulation with which we are concerned being beneficial Regulation, same should be interpreted liberally keeping in mind the objective and purpose for which same is engrafted. The respect and protection of woman and of maternity should be raised to the position of an inalienable social duty and should become one of the principles of human morality.

17. Women who constitute almost half of the segment of our

society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work, they must be provided with all the facilities to which they are entitled. To become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in the womb or while rearing up the child after birth.

18. The Petitioner has relied upon the decision in the case of ***Khatija Umama (supra)*** which is not applicable to the facts before us since in that case, the Court had only directed the employer to consider the representation of an employee. Therefore, this decision does not assist the case of the Petitioner.

19. The Respondents have relied upon the decision of the Madras High Court in the case of ***P. Yasotha (supra)*** in support of its submission to justify the denial of benefit. In our view, the said decision would not be applicable since the Regulation of maternity leave with which we are concerned and which we have reproduced above, were not the subject matter of consideration before the said Court. Furthermore, the

provisions of the maternity leave benefit before the Madras High Court were not identical to the provisions of the maternity benefit Regulations before us and, therefore, the said decision would not be of any assistance of the Respondents.

20. The contention of the Respondents that since the Petitioner is a biological mother of more than two children and, therefore, she is not eligible for maternity benefit is not correct. The object of the Maternity Benefit Regulation which is posed for our consideration is not to curb the population but to give such benefit only on two occasions during the service period and, therefore, it is in that context that the condition of two surviving children is imposed. We have already opined above as to how this condition is not applicable to the fact situation before us.

21. We may observe that the Supreme Court in the case of ***Deepika Singh Vs. Central Administrative Tribunal***, 2022 SCC OnLine SC 1088 has in paragraphs 20 to 22 enunciated the right of a female employee to pregnancy and maternity leave and same reads thus:-

> *20. The Act of 1961 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 Municipal Corporation of Delhi Vs. Female Workers (Muster Roll), 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 and Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women to extend benefits under the Act of 1961 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.

21. Under Article 15(3) of the Constitution, the State is empowered to enact beneficial provisions for advancing the interests of women. The right to reproduction and child rearing has been recognized as an important facet of a person"s right to privacy, dignity and bodily integrity under Article 21. Article 42 enjoins the State to make provisions for securing just and humane conditions of work and for maternity relief.

22. In this context, regard may also be had to several international conventions of the United Nations that India has ratified. Article 25(2) of the UDHR provides that 2000 (3) SCC 224 "UDHR" "CEDAW" Justice K.S. Puttaswamy (Retd.) Vs. Union of India, (2017) 10 SCC 1; Suchita Srivastava v. Chandigarh Administration (2009) 9 SCC 1 motherhood and childhood are entitled to special care and assistance. Article 11(2) (b) of CEDAW requires states "to introduce maternity leave with pay or comparable social benefits." The relevant provision of Article 11 of CEDAW states that:

"Article 11:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

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

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

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

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

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

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

> *2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:*
>
> *(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;*
>
> *(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;*
>
> *(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;*
>
> *(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.*
>
> *3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary."*
>
> ***(emphasis supplied)***

22. It is important to note that the objective of the Maternity Leave Benefits Regulation is to offer protection to a woman and its importance has to be seen from the health point of a woman employee. If examined in that context, then in our view and more particularly on the basis of the wordings engrafted in the Regulation with which we are concerned, the claim of the Petitioner is justified inasmuch as after joining the service of Respondent No.2, she has given birth to only two children and applied for the maternity leave benefit at the time of giving birth to the second child only. In our view, the fact that the Petitioner having given birth to the first child from her first marriage

and that too before joining the Respondent No.2 would not be relevant for considering her claim for maternity leave post her joining the Respondent No.2-organisation for the purpose of the Regulation concerning said benefit.

23. In view of above, the writ petition is allowed. The communication dated 28th January 2014 and 31st March 2014 issued by Respondent No.2 is quashed and set aside and the Respondents are directed to grant maternity benefits to the Petitioner in respect of the delivery of her child on 3rd September 2012 within a period of eight weeks from today.

24. The writ petition is allowed in the aforesaid terms. Rule is made absolute with no order as to costs.

[JITENDRA JAIN, J.] [A. S. CHANDURKAR, J.]