

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 21st OF MARCH, 2024

WRIT PETITION No. 28164 of 2023

BETWEEN:-

NAMRATA GOLHANI SAHU W/O GAGAN



.....PETITIONER

(BY SHRI KARPE PRAKHAR MOHAN, ADVOCATE)

AND

**1. LABOUR COMMISSIONER OFFICE OF
LABOUR COMMISSIONER MOTI
BUNGLOW MG ROAD INODRE (MADHYA
PRADESH)**

**2. DEPUTY LABOUR COMMISSIONER
OFFICE OF LABOUR COMMISSIONER
MOTI BUNGLOW MG ROAD INODRE
(MADHYA PRADESH)**

**3. YUTIKA NATURAL PRIVATE LIMITED
THROUGH ITS DIRECTOR 1ST FLOOR
ABOVE KOTAK MAHINDRA BANK AB
ROAD RAU INDORE (MADHYA PRADESH)**

.....RESPONDENTS

***(SHRI AMAY BAJAJ, P.L. FOR THE STATE AND SHRI DINESH RAWAT,
ADVOCATE FOR RESPONDENT NO.3)***

*This petition coming on for admission this day, the court passed the
following:*

ORDER

1] This petition under Article 226 of the Constitution of India has been filed by the petitioner against the order dated 15/09/2023, passed by the respondent No.2 Deputy Labour Commissioner, Indore whereby the petitioner's complaint filed under Section 17 of the Maternity Benefit Act, 1961 (hereinafter referred to as 'the Act of 1961') has been referred for adjudication under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act of 1947') to the Labour Court.

2] In brief, the facts of the case are that the petitioner was working with respondent No.3 Yutika Natural Pvt. Ltd., as Assistant Manager (HR) and she applied for maternity benefit as provided under the Act of 1961, however, as no order was passed, she applied before the Labour Commissioner under Section 14 of the Act of 1961, however, the Labour Commissioner, instead of referring the matter to the Inspector as provided under Section 14, has referred the matter under Section 10 of the Act of 1947 treating the complaint filed by the complainant as an industrial dispute.

3] Counsel for the petitioner has drawn the attention of this Court to Section 17 of the Act of 1961 which clearly prescribes that the matter has to be decided by the Inspector only and the Inspector shall be appointed as per Section 14 of the Act of 1961.

4] Counsel for respondent No.3, on the other hand has opposed the prayer and it is submitted that the petitioner has not come before this Hon'ble Court with clean hands and various material

suppressions have been made in the petition itself, however, it is not denied that the matter is to be decided by the Inspector.

5] Having considered the rival submissions and on perusal of the documents filed on record as also Section 17 of the Act of 1961 which reads as under:-

“17. Power of Inspector to direct payments to be made. —

(1) Any woman claiming that—

(a) maternity benefit or any other amount to which she is entitled under this Act and any person claiming that payment due under section 7 has been improperly withheld;

(b) her employer has discharged or dismissed her during or on account of her absence from work in accordance with the provisions of this Act, may make a complaint to the Inspector.

(2) The Inspector may, of his own motion or on receipt of a complaint referred to in sub-section (1), make an inquiry or cause an inquiry to be made and if satisfied that—

(a) payment has been wrongfully withheld, may direct the payment to be made in accordance with his orders;

(b) she has been discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Act, may pass such orders as are just and proper according to the circumstances of the case.

(3) Any person aggrieved by the decision of the Inspector under sub-section (2) may, within thirty days from the date on which such decision is communicated to such person, appeal to the prescribed authority.

(4) The decision of the prescribed authority where an appeal has been preferred to it under sub-section (3) or of the Inspector where no such appeal has been preferred, shall be final.

(5) Any amount payable under this section shall be recoverable by the Collector on a certificate issued for that amount by the Inspector as an arrear of land revenue.”

(emphasis supplied)

6] It is apparent that the complaint has to be filed before the Inspector only and who is appointed as provided under Section 14 of the Act, which is to be notified by the State Government. In such circumstances, even if the application for maternity benefits was erroneously submitted by the petitioner before the Labour Commissioner, it was the duty of the Commissioner to refer the same to the Inspector as provided under Section 17 of the Act of 1961.

7] In view of the same, the impugned order dated 15/09/2023 referring the matter under Section 10 of the Act of 1947 as an industrial dispute cannot be countenanced in the eyes of law and is liable to be and is hereby set aside.

8] Resultantly, the matter is remanded back to the Labour Commissioner for reference of the matter to the Inspector as provided under Section 17 of the Act of 1961. It is made clear that this Court has not reflected upon the merits of the matter and the Inspector shall decide the same on its own merits, after giving opportunity to the parties concerned, within a period of three months from the date of receipt of certified copy of this order, and the respondent No.3 shall also be at liberty to raise all the objections before the Inspector.

The writ petition is accordingly *allowed* and *disposed of*.

Sd/-

(SUBODH ABHYANKAR)
JUDGE

krjoshi