

**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

CWP No. 1400 of 2018

Reserved on : 10.7.2020

Decided on 15.7.2020

Dr. Mandeep Kaur

...Petitioner

Versus

Union of India and others

...Respondents

Coram

Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting? yes

**For the petitioner : Mr. B. Nandan Vashishta,
Advocate.**

**For the respondents :Mr. Lokender Pal Thakur, Senior
Panel counsel.**

Sureshwar Thakur, Judge

The writ petitioner, was, appointed as a Medical Officer, on a contract basis, under respondent No. 3, and was deployed, in, the apposite ECHS clinic. She claims, (a) quashing, of, Annexure P-5, and, (b) according of benefit, of, maternity leave, w.e.f. 11.2.2018, hence for 180 days, with all consequential benefits, including continuity in service, to her, becoming accorded to

her. The respondent(s) oppose the grant, of, the afore relief(s), to the writ petitioner. The espoused denial, as, made by the respondents, is, anchored upon, Annexure P-1, Annexure whereof, is, a contract, of, employment, executed, interse, the writ petitioner, and the respondents, (a) wherein, no covenant stands borne, vis-à-vis, the entitlement, of, the writ petitioner, for grant, of, maternity leave. Necessarily, on the afore anchor, the learned counsel for the respondents, makes a vigorous effort, before this Court, for sustaining Annexure P-5, and, also, for denying the espoused relief, to the writ petitioner.

2. For the reasons to be assigned hereinafter, (a) de hors execution, of, Annexure P-1, interse the writ petitioner, and, respondent(s) concerned, (b) and also, irrespective of the fact, that it contains no covenant, for hence facilitating the writ petitioner, to aptly canvass, for the espoused relief, becoming granted to her, this

Court, is, of the formidable opinion that the relief, as, canvassed, is, rather accordable to the writ petitioner. The statutorily defined “application”, of, the Maternity Benefit Act, 1961, as embodied, in Section 2 thereof, provisions whereof stands extracted hereinafter,

“ 2. Application of Act- 5*[(1) It applies, in the first instance—

(a) to every establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;

(b) to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a

State, in which ten or more persons are employed, or were employed, on any date of the preceding twelve months”

(i) especially, of, the statutory connotation(s), ascribed to “establishment”, and, as, borne in clause (b), of, sub-Section 2, of the Act (supra), in as much as, as engrafted vis-à-vis, “establishment in a state, and therein making, a, statutory necessity, vis-à-vis, ten or more persons are/were employed, on any date, of, the preceding 12 months, (ii) does with aplomb, foster an inference, qua, the apposite establishment, inasmuch, as the ECHS clinic established, by the respondent concerned, upon, becoming uncontrovertedly manned, by 10 or more persons, hence in the relevant preceding 12 months, (iii) thereupon(s) rendering the apposite ECHS Clinic, wherein the petitioner, is, employed as a Doctor, rather to fall within the ambit, of, the afore alluded statutory

connotation(s), ascribed, to, “establishment”. (iv) Significantly, when the falling, of, the hereat ECHS within domain thereof, is, not controverted by the respondents, hence, the apposite establishment/ECHS Clinic, becomes covered with the provisions, of, the Maternity Benefits Act, 1961.

3. Be that as it may, with the Hon’ble Apex Court, in judgment reported in 2000 (3) (SCC) 224, in case, titled as, “Municipal Corporation of Delhi versus Female Workers and another, casting an explicit mandate, vis-à-vis, the entitlement, of, maternity leave, to, women employees, who were engaged on daily wages, or on casual basis, does, also, enhance the vigor, of, the espousal, made before this Court, by the writ petitioner, for the granting of maternity leave to her. Even though, she was engaged on a contractual basis, yet, denial, of, benefit of maternity leave to her, would, tantamount, to infringement, being visited, vis-à-vis, the salutary purpose, behind Article 21, of, the

Constitution of India, Article whereof, encapsulates the right, to, life, (i) with a further signification, of, it vesting, a, fundamental right, upon, a female employee, against her exploitation, as may become sparked by hers' being coerced, to, render, or, perform duties, even during the phase, wherein, (ii) she, given hers' carrying a child in her womb, hence may not, be fully facilitated, to, carry out the calling(s), of, her avocation, (iii) and, besides also, any other insistence(s) upon her, to, during the period, of, her pregnancy, hence perform duties, or to absent from work, without pay, would, tantamount, to the foetus, as carried in her womb, being concomitantly, ill-affected by the toll, of, work, becoming exacted from its mother, and, from under nourishment arising from no wages being paid to its mother, (iv) whereupon, the health, of, the fetus, would suffer. Necessarily, the toll, and the telling effect, upon the health, of, the foetus, would again, spotlight, a grave infraction being

visited, qua the constitutionally guaranteed, right to life, both to the mother, and, in the foetus. In the afore scenario, for safeguarding the mandate, of, Article 21, of, the Constitution of India, the entitlement to maternity leave, cannot be denied to the writ petitioner, even though, she was engaged on a contractual basis.

4. The learned counsel appearing for the writ petitioner, has, placed on record a photo copy, of, a communication, wherein, unfoldment(s), are, borne, vis-à-vis, the applicability, of, the benefits, of maternity leave, to, the women employees', deployed, on a contractual basis, in, the, apposite ECHS Clinics. However, the afore communication, carries a rider, inasmuch as the apposite statutory benefit, being accordable, to a woman employee, only if she has completed 80 days, in the preceding 12 months. Since, the respondents, do not deny, qua the writ petitioner hence completing 80 days of service in the 12 relevant months, preceding the

eventuality, of, hers' expected date of delivery, (i) thereupon, she becomes squarely covered by the afore unfolding(s) occurring in the photo copy, of, a communication, placed on record, by the learned counsel, for, the writ petitioner.

5. Nowat, the period of or the quantum, of, maternity leave, being grantable to the writ petitioner, is also, a wrangle, hence emerging interse the contesting litigants, and it, obviously, also does, enjoin its becoming rested. In resting the afore, an allusion, to an amendment, as made to Section 5, of, Maternity Benefit Act, on March 28, 2017, is, necessarily, required to be made, relevant provisions whereof, are, extracted hereinafter;

“(5) In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period an on

such conditions as the employer and the woman may mutually agree.”

The amendment made, vis-à-vis, Section 5, increases the period, of, maternity leave, by, 26 weeks, from the hitherto 6 weeks, and, also, the, entitlement, of woman employees, to, preceding their expected date of delivery, hence avail maternity leave, hence has become increased to “eight weeks”, from, the hitherto six weeks. Consequently, when the writ petitioner, uncontrovertedly, proceeded, on maternity leave, subsequent, to, the afore amendment, being made, to Section 5, thereupon she is, entitled, to, (a) 26 weeks, of, maternity leave, (b) of which eight weeks, shall precede, the, date of the apposite expected delivery. However, in making the afore calculations, vis-à-vis, the grant, of, benefit, of maternity leave, to the writ petitioner, the respondents shall ensure that the mandate, of, the proviso, also added thereto hence through an amendment made thereto

also enjoins its' becoming revered, (c) inasmuch as, the afore increases, in availment(s), of, the period of medical leave, by a woman employee, being meteable to her, upon hers', at the relevant time, mothering less than 2 surviving children, (d) whereas upon hers' mothering, at the relevant time, hence two children rather would render her entitled to only 12 weeks, of, maternity leave, of which 6 weeks, shall precede, the, date of her expected delivery.

6. Be that as it may, if after making the afore computations, vis-à-vis, the benefit, of, maternity leave, to the writ petitioners, yet, hers' purportedly proceeding on leave, without any intimation, to the authorities concerned, thereupon may facilitate, the, respondents, to, initiate, qua therewith an appropriate action, in accordance with law, hence against, the writ petitioner.

7. In view of the afore directions, the writ petition, is, allowed, only to the afore extent. Also,

the pending application(s), if any, are also disposed
of. No costs.

(Sureshwar Thakur)
Judge

15th July, 2020

Kalpana

High Court of H.P.