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IN THE HIGH COURT OF DELHI AT NEW DELHI

RAJIV SHAKDHER; TALWANT SINGH, JJ.

W.P.(C) 1278/2020 & CM No.4405/2020; *11.03.2022*

DR. BABA SAHEB AMBEDKAR HOSPITAL GOVT. OF NCT OF DELHI & ANR.

versus

DR. KRATI MEHROTRA

Petitioners through : Ms Mini Pushkarna, Ms. Khushboo Nahar and Ms Latika Malhotra, Advs.

Respondent through : Ms Mansi Bajaj, Ms Nidhi Tyagi and Mr Saksham Mishra, Advs.

RAJIV SHAKDHER, J.:

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Preface:

1. This writ petition is directed against the order dated 03.05.2019, passed by the Central Administrative Tribunal (in short, the "Tribunal") in O.A.No.508/2018.

2. The narrow but important issue which arises for consideration in this writ petition is: whether an *ad hoc* employee is entitled to maternity benefit for a period that spills beyond the tenure of the contract?

Background:

3. This issue arises in the backdrop of the following broad facts :

3.1. In and about 22.03.2016, the respondent was offered an appointment, *albeit*, on an *ad hoc* basis as Senior Resident in the Department of Dermatology in the petitioner-hospital. The offer made to the respondent provided that the appointment would be for a period of 45/89 days or till a regular incumbent joins the post, whichever is earlier.

3.2. Based on the offer made, the respondent joined the petitioner-hospital on 05.04.2016. A formal office order to this effect was taken out by the petitioner-hospital on 24.05.2016. The first span of 89 days, thus, stretched between 05.04.2016 and 02.07.2016.

3.3. Thereafter the respondent's tenure was extended four times. Notably, each time the respondent's tenure lasted 89 days, and after a short break of one day, the contract was renewed for another 89 days.

3.4. The respondent's last tenure culminated on 27.06.2017. The record, however,

shows that on 17.04.2017, the respondent applied for emergency maternity leave as her pregnancy had become complicated. Via this communication, the petitioner averred that she was suffering from antepartum haemorrhage and was advised bed rest by her gynaecologist. The apprehension expressed in this letter was that the respondent may be required to undergo an emergent caesarean section procedure, to facilitate childbirth.

3.5. In response to this request, the petitioner-hospital passed an office order dated 23.05.2017, whereby the petitioner-hospital, instead of granting maternity leave, terminated the services of the petitioner, albeit retrospectively i.e., with effect from 24.04.2017.

4. Aggrieved by the order dated 23.05.2017 passed by the petitioner-hospital, the respondent filed an action in the Tribunal. This action was numbered as O.A.No.1956/2017 and was disposed of by the Tribunal on 31.05.2017. In this O.A., the respondent had raised several grievances including the fact that she had not been granted maternity leave and had not been paid salary for April 2017. Besides this, the respondent had also assailed the order dated 23.05.2017 whereby her services had been brought to an end w.e.f. 24.04.2017.

4.1. The Tribunal, after adverting, broadly, to the aforesaid grievances disposed of the aforementioned O.A. with a direction that the respondent will make a "comprehensive representation" to the petitioner-hospital; and upon such a representation being made, the petitioner-hospital would dispose of the same by passing a speaking order. Furthermore, the petitioner-hospital was prodded to look into the matter "sympathetically". Succour was given by the Tribunal- inasmuch as a specific direction was issued to the petitioner-hospital and Government of NCT of Delhi (GNCTD) i.e., petitioner no.2, to release the unpaid salary of the respondent. For this purpose, four weeks were granted to the petitioner-hospital.

4.2. It appears that, pursuant to the directions of the Tribunal, the respondent preferred a representation on 01.06.2017; an aspect which is not refuted by the petitioner-hospital.

4.3. The record shows that the respondent also sought the intervention of the National Commission for Women (NCW); besides, as noticed above, making a representation to the petitioner-hospital. It appears that, because the matter was escalated by respondent and hearing was held before the Member, NCW on 29.06.2017, the petitioner-hospital "revalidated" its earlier order i.e., order dated 03.04.2017 [whereby the respondent had been accorded a fresh tenure of 89 days to work as Senior Resident in the Department of Dermatology] which, in the normal course, was to end on 27.06.2017.

4.4. Given the turn of events, the petitioner-hospital decided to grant maternity leave to the respondent till 27.06.2017; although, earlier via office order dated 23.05.2017, the respondent's tenure was truncated and it was, abruptly, brought to an end on 24.04.2017, when she had applied for maternity leave on 17.04.2017.

4.5 This position emerges upon a perusal of the communication dated 29.06.2017, addressed by the Medical Superintendent of the petitioner-hospital to the Member, NCW.

4.6 The record also shows that in the interregnum, the respondent had filed a representation dated 24.07.2017, for being granted maternity leave for 26 weeks. This representation was rejected by the petitioner-hospital, *via* order dated 03.08.2017, apparently, on account of the fact that it had already taken a position to the contrary in its communication dated 29.06.2017, addressed to the Member, NCW. In sum, the reasons furnished by the petitioner-hospital as to why the maternity benefit was declined to the respondent for the entire period of 26 weeks are the following:

(i) The respondent's *ad-hoc* tenure i.e., the last extension expired on 27.06.2017, and, therefore, the maternity leave could not be granted beyond the said date.

(ii) Although the respondent had been shortlisted for recruitment for appointment to the (regular) post of Senior Resident, along with other candidates, she had not appeared in the interview, which was held on 01.06.2017.

(iia) In this context, it is relevant to note that in and about 30.04.2017, the petitioner-hospital had published an advertisement for recruiting Senior Resident Doctors in the Department of Dermatology against sanctioned posts. The petitioner-hospital claims that after interviews were conducted and the results were declared, offers of appointment to the selected candidates were made on 15.06.2017. The selected candidates, apparently, joined the Department of Dermatology on 21.06.2017.

(iib) We may also note, at this stage, that the expected date of delivery of the respondent was 02/06.06.2017.

4.7. Insofar as the respondent was concerned, she once again took up cudgels and approached the Tribunal with a fresh action. Via this O.A., which was numbered as O.A.No.508/2018, the respondent sought the following substantive reliefs:

"(a) Revoke the termination letter dated 23.05.2017 and thus reinstating the applicant at the post of Senior Resident.

(b) Extend the maternity benefits to the applicant for a period of 26 weeks from the date of her application 17.04.2017."

4.8. As noticed at the outset, the Tribunal, partially allowed the aforesaid O.A., and, consequently, issued the following directions *qua* the petitioner-hospital:

"*(a) the respondents shall extend the benefit of the maternity leave to the applicant in terms of Section 5(2) of the Maternity Benefit Act, 1961 within four weeks from today.*

(b) respondents shall also issue a certificate to the applicant indicating the length of service rendered by her in the hospital."

4.9. This time around, the petitioner-hospital was aggrieved, and, therefore, approached this Court by way of the instant writ petition.

5. The writ petition was listed before the Court for the first time on 04.02.2020. On that

date, the matter was directed to be re-listed on 12.02.2020. On 12.02.2020, notice was issued in the writ petition and, in the interregnum, the operation of the impugned order [i.e., the order dated 03.05.2019] passed by the Tribunal was stayed.

5.1. On the date which followed i.e., 29.06.2020, the Court disposed of an application i.e., CM No.13561/2020 filed by the respondent for issuance of an experience certificate. The Court directed the petitioner-hospital to issue an experience certificate to the respondent spanning between 05.04.2016 and 17.04.2017; perhaps bearing in mind the fact that she had discharged her duties as a doctor up until that date notwithstanding the relief sought in the application pegged the end date to 27.06.2017.

5.2. Thereafter, due to the intercession of Covid-19, the first substantive hearing was held on 28.07.2021. Since it was unclear as to whether or not the respondent had received the maternity benefits between 01.06.2017 and 27.06.2017, the petitioner-hospital was requested to obtain instructions at the hearing held on 05.08.2021. This position attained clarity at the hearing held on 08.09.2021. The respondent informed the court that she had received maternity benefits for the period spanning between 01.06.2017 and 27.06.2017. It was further clarified that the respondent, thus, claimed maternity benefit for the remaining period i.e., between 28.06.2017 and 16.10.2017.

5.3. We also notice that the terminal date which the respondent's counsel provided i.e., 16.10.2017 was relatable to Section 5 of the Maternity Benefit Act, 1961 (in short, the "1961 Act"), as the twenty-six [26] weeks' maternity benefit in the respondent's case would end on that date.

5.4. Ultimately, the matter was reserved for judgment on 11.10.2021.

6. It is in this backdrop that the arguments were advanced on behalf of the petitioner-hospital by Ms Mini Pushkarna, while on behalf of the respondent, submissions were made by Ms Mansi Bajaj.

Submissions on behalf of the petitioner-hospital:

7. Ms Pushkarna, broadly, made the following assertions:

(i) That the Tribunal had erred in directing the petitioner-hospital to grant maternity leave to the respondent for the entire 26 weeks, without having regard to the fact that her tenure had culminated on 27.06.2017.

(ii) The respondent's tenure had been brought to an end in terms of the contract, and upon a recruitment process being triggered, appointments on regular basis were made by the petitioner-hospital in and about June 2017.

(iii) If the respondent was granted maternity leave for the entire 26 weeks, it would, in effect, result in extending her tenure. This would place an immense financial burden upon the petitioner-hospital.

(iv) The office memorandum dated 14.03.2018 issued by the Health and Family Welfare Department of GNCTD, while providing for the grant of maternity leave to *ad hoc* employees, carefully confined the benefit to the period for which an *ad hoc*

employee has been appointed.

(v) In support of her submissions, Ms Pushkarna placed reliance upon the following judgments of this Court:

1. ***Dr Deepasha Garg v. Govind Bhallabh Pant Institute of Postgraduate Medical Education and Research and Others****, passed in W.P (C) 13231/2018 decided on 10.12.2018*

2. ***Dr Kavita Yadav v. The Secretary, Ministry of Health and Family Welfare Department & Ors.****., passed in W.P (C) 8884/2019, decided on 19.08.2019*

3. ***Dr Artiben R. Thakkar v. Delhi Pharmaceuticals Science & Research University****, 2019 SCC Online Del 10520, decided on 27.09.2019*

4. ***Govt. of NCT Delhi and Anr. v. Smt. Dr Priyanka Mittal,*** *passed in in W.P (C) 9092/2019, decided on 23.01.2020*

(vi) Besides the aforementioned judgements, reliance was also placed on the judgement of the Jharkhand High Court rendered in ***Priti Kumar Gope v. The Director, Punjab National Bank & Ors,*** *passed in W.P (C) 1345/2018, decided on 10.01.2019*

Submissions on behalf of the respondent:

8. Ms Bajaj, on the other hand, brought to fore the fact that when the respondent applied for leave on 17.04.2017, her tenure, which in the normal course would have ended on 27.06.2017, was abruptly brought to an end, *via* order dated 23.05.2017 and that too retrospectively i.e., with effect from 24.04.2017

8.1. It was contended that this step of the petitioner-hospital was contrary to the provisions of Section 12 of the 1961 Act, as amended in 2017. The submission was that the respondent was entitled to maternity benefit till 16.10.2017, in terms of Section 5 of the 1961 Act. In other words, if a woman employee worked for a minimum of eighty [80] days in the twelve [12] months preceding the date of her expected delivery, she should be granted maternity leave for the entire 26 weeks.

8.2. To buttress her submissions, Ms Bajaj also alluded to Articles 15 (3) and 42 of the Constitution. It was emphasised that the only reason the respondent was denied an extension of tenure was, on account of the fact that she had applied for maternity leave on 17.04.2017.

8.4. It was stressed that if the petitioner-hospital's stand is to be accepted, then no *ad hoc* employee would be able to avail maternity leave for the entire 26 weeks, as provided in Section 5 of the 1961 Act.

8.5. In support of her submissions, Ms Bajaj has relied upon the following judgments:

(i) ***Manisha Priyadarshini v. Aurobindo College-Evening & Ors****., passed in LPA No.595/2019, decided on 01.05.2020.*

(ii) ***Bharti Gupta v. Rail India Technical and Economical Services Ltd.****, 2005 (84) DRJ 53, decided on 09.08.2005.*

Analysis and reasons:

9. Having heard the learned counsel for the parties, we are of the view that the following facts have emerged qua which there is no dispute :

(i) The petitioner-hospital had employed the respondent as Senior Resident Doctor in the Department of Dermatology, *albeit,* on *an ad-hoc* basis.

(ii) Each time the respondent was appointed, she was accorded a tenure of 89 days. The first tenure spanned between 05.04.2016 and 02.07.2016, which was followed by a fresh appointment being made with a short break of one day. This methodology was followed on four occasions. For the sake of easy reference, the details of the period served by the respondent are set forth hereafter, albeit in a tabular form:

Tenure No.	***Served from***	***Served till***	***Break Date***
1st	*05.04.2016*	*02.07.2016*	*03.07.2016*
2nd	*04.07.2016*	*30.09.2016*	*01.10.2016*
3rd	*02.10.2016*	*29.12.2016*	*30.12.2016*
4th	*31.12.2016*	*29.03.2017*	*30.03.2017*
5th	*31.03.2017*	*27.06.2017*	

(iii) The last tenure appointment of the respondent was made on 31.03.2017 which, in the ordinary course, would have come to an end on 27.06.2017. It is between this period [i.e., between 31.03.2017 and 27.06.2017] that the respondent applied for maternity leave. The leave application, in that behalf, was preferred by the respondent on 17.04.2017.

(iv) The petitioner-hospital instead of granting the respondent maternity leave passed an order on 23.05.2017. The relevant part of the said order is extracted hereafter:

*"**OFFICE ORDER***

*The Medical Superintendent is pleased to grant leave of the kind due (08 CL) to Dr Krati Mehrotra Senior Resident (SKIN) on Adhoc Basis from dt. 17.04.2017 to 24.04.2017 in view of **[an] exceptional medical condition**.*

***Her tenure may be treated as complete on date 24.04.2017**. In view of [the] exceptional situation/condition the recovery of seven (07) days salary in view of notice period has also been waved[sic: waived] off by competent authority."* [Emphasis is ours]

(v) Although, the respondent approached the Tribunal for being accorded relief, the Tribunal vide order dated 31.05.2017 passed in O.A. No. 1956/2017 gave leeway to the respondent to make a "comprehensive representation" concerning her grievances. Furthermore, via the very same order, the Tribunal also directed the

petitioner-hospital to pass a speaking order on the respondent's representation. As noticed above, the respondent preferred a representation on 01.06.2017; an aspect which has not been refuted by the petitioner-hospital in the counter-affidavit filed before the Tribunal.

(vi) It appears that because the respondent was, in a sense, dissatisfied with the aforesaid order of the Tribunal that she approached the NCW. Apparently, with the intercession of the NCW, the petitioner-hospital decided to infuse fresh life into the order dated 03.04.2017 i.e., the order whereby the respondent was appointed for the last time for a period spanning between 31.03.2017 and 27.06.2017.

(vii) As noticed above, the order dated 03.04.2017 had lost its efficacy after the petitioner-hospital had passed the order dated 23.05.2017. Therefore, in sum, the petitioner-hospital in the first instance, practically, denied granting any maternity leave to the respondent. The only leave that was granted to the respondent was casual leave, and that too for eight [8] days. It is only when the NCW intervened that the petitioner-hospital decided to grant maternity leave to the respondent till the time her last tenure in the normal course was to expire i.e., 27.06.2017.

(viii) What has not been put in issue by the petitioner-hospital is that when the respondent had applied for maternity leave i.e., on 17.04.2017, she was pregnant.

(ix) What is also not in dispute is that the petitioner did make a representation on 17.04.2017 for being granted maternity leave benefit for the entire period of 26 weeks.

10. The stance taken by the petitioner-hospital that the maternity leave benefit cannot extend beyond the period when the contractual period of an *ad hoc* employee comes to an end is an aspect that is required to be examined by us. We may note that this stance is based on, firstly, the OM dated 14.03.2018, and the judgments referred to in paragraph 7(v) above.

11. Before we proceed further, it would be relevant to advert to the Preamble appended to the 1961 Act, and the Statement of Objects and Reasons, which reads as follows:

"*An Act to regulate the employment of women in certain establishments for certain periods before and after child-birth and to provide for maternity benefit and certain other benefits*."

***"Statement of Objects and Reasons**.- Maternity protection is at present provided under the different State Acts on the subject and three Central Acts, viz., the Mines Maternity Benefit Act, 1941 the Employees' State Insurance Act, 1948 and the Plantation Labour Act, 1951. There is considerable diversity in their provisions relating to qualifying conditions, period and rate of benefit, etc. The proposed legislation seeks to reduce as far as possible the existing disparities in this respect. It will apply to all establishments, including mines, factories and plantations, except those to which the Employees' State Insurance Act, 1948 applies and its provisions approximate as nearly as possible to those of the Act."*

11.1 As would be evident from the extract set forth above, the 1961 Act seeks to regulate the employment of women in certain establishments for given periods before and after child-birth, and, in particular, endeavours to provide for maternity benefit.

11.2. Furthermore, because there was a considerable diversity about how maternity benefits played out in various State Acts and Central Acts concerning qualifying conditions, period and rate of benefit, the 1961 act was enacted to remove such disparities.

11.3. The expression “maternity benefit” is defined in section 3(h) of the 1961 Act. The said provision simply states that maternity benefit means payment referred to in sub-section (1) of Section 5 of the 1961 Act.

11.4 Section 5(1), broadly, provides that every woman would be entitled to payment of maternity benefit at the rate provided therein, for a period when she is absent i.e., the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day. The employer's liability to grant maternity benefits is absolute. For purposes of this case, the explanation appended to Section 5(1) of the 1961 Act is not of any particular relevance, and, hence, one need not allude to it.

11.5 However, sub-section (2) of Section 5, simply put, requires a woman to work in the establishment of her employer for a minimum period of 80 days in the 12 months, immediately preceding the date of her expected delivery, to avail of maternity benefit.

11.6 Sub-section (3) of Section 5, pithily put, provides the maximum period for which maternity benefit can be accorded to the woman-employee. The period provided is 26 weeks, of which, not more than 8 weeks should precede the date of expected delivery.

11.7 Section 27 of the 1961 Act captures a non-obstante clause, which, *inter alia,* states that the provisions of the 1961 Act shall have effect notwithstanding anything inconsistent contained in any other law or any award, agreement or contract of service, whether made before or after the coming into force of said Act.

12. Clearly, the provisions of the 1961 Act seek 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.

12.1. As noticed above, the rate and the period for which maternity benefits have to be accorded to the respondent are embedded in the 1961 Act; in particular, Section 5 of the 1961 Act. For the sake of convenience, the relevant provisions of Section 5 are set forth below :

“5. Right to payment of maternity benefits. – (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.

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(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:

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Explanation. – For the purpose of calculating under this 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.

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be [twenty-six weeks of which not more than eight weeks] shall precede the date of her expected delivery

Provided that the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery."

12.2. The provisions of the 1961 Act do not differentiate between a permanent employee and a contractual employee, or even a daily wage (muster roll) worker. This position stands unambiguously articulated in the judgement of the Supreme Court rendered in ***Municipal Corporation of Delhi (MCD) v. Female Workers (Muster Roll) & Anr.*** (2000) 3 SCC 224.

13. Pertinently, the 1961 Act does not tie in the grant of maternity benefit to the tenure of the woman employee.

13.1 There are two limiting factors for the grant of maternity benefits.

(i) First, the woman-employee should have worked in an establishment of her employer for a minimum period of 80 days in 12 months immediately preceding the date of her expected delivery.

(ii) Second, the maximum period for which she can avail maternity leave benefit cannot exceed 26 weeks, of which, not more than 8 weeks shall precede the date of her expected delivery.

13.2. For a woman employee who has two or more surviving children, although the maximum period for which she can claim maternity benefit is 12 weeks, the period preceding the date of expected delivery cannot be more than 6 weeks.

13.3. Therefore, linking the tenure of employment, in this case, a contractual employee, with the period for which maternity benefits can be availed by a woman employee, is not an aspect that emerges on a plain reading of the provisions of the 1961 Act.

13.4. Section 27 of the 1961 Act, which embeds, a non-obstante clause, expounds that the provisions of the said 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.

13.5. The object and purpose of the 1961 Act being, to not only regulate employment but also maternity benefits which precede and follow childbirth, point in the direction that 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 i.e., the 1961 Act.

14. 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.

14.1. The ethos of the 1961 Act, in the backdrop of the international covenants framed by the United Nations and the provisions of the Indian Constitution, have been captured in the judgement of the Supreme Court rendered in the ***Female Workers (Muster Roll)*** case. The following observations being apposite, are set forth hereafter :

"27. The provisions of the Act which have been set out above would **indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other articles, specially Article 42. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery. We have scanned the different provisions of the Act, but we do not find anything contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on [a] casual basis or on muster roll [or] on daily-wage basis.**

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33. A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. 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 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 [a] 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. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for

forced absence during the pre-or post-natal period. This extract is taken from Municipal Corpn. of Delhi v. Female Workers (Muster Roll), (2000) 3 SCC 224 : 2000 SCC (L&S) 331 : 2000 SCC OnLine SC 530 at page 238

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37. Delhi is the capital of India. No other city or corporation would be more conscious than the city of Delhi that India is a signatory to various international covenants and treaties. The Universal Declaration of Human Rights, adopted by the United Nations on 10-12-1948, set in motion the universal thinking that human rights are supreme and ought to be preserved at all costs. This was followed by a series of conventions. On 18-12-1979, the United Nations adopted the "Convention on the Elimination of all Forms of Discrimination against Women". Article 11 of this Convention provides as under:

"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)

38. **These principles which are contained in Article 11, reproduced above, have to be read into the contract of service between the Municipal Corporation of Delhi and the women employees (muster roll); and so read these employees immediately become entitled to all the benefits conceived under the Maternity Benefit Act, 1961**…."

[Emphasis is ours.]

14.2 Hon'ble Mr Justice Ravindra Bhat (as he then was), in the case of ***Bharti Gupta*** has noticed these very aspects in the following paragraphs of his judgement :

"**7.** The pleadings in this case show that the petitioner, a qualified Architect had been engaged on [a] contractual basis by the respondent RITES. Apparently, the contract was for spells of six months. As is evident from an examination of the last contract/order dated 23.5.2000, RITES was issuing the contracts/appointment letters, for fresh periods after the expiry of the previous period(s). For instance, the order dated 23.5.2000 states that the term of employment is six months from 17.4.2000 to 16.10.2000. The petitioner has further averred that her employment was continued on a routine basis and a [sic] fresh contracts were being issued subsequently. This fact has not been disputed. On the other hand, the case of the respondent RITES is that the letter by which the petitioner claimed maternity leave was in fact furnished by her on 17.11.2000. If these facts are kept in mind, it is apparent that though the period of [the]contractual appointment came to an end on 16.10.2000, the petitioner continued to report for duties. The letter seeking leave does indicate that the petitioner would be on leave after 11.11.2000. The RITES does not dispute the existence of this letter; it only alleges that the letter in fact was given on 17.11.2000. It would thus be clear that as per the understanding of the parties and the past practice, the petitioner continued to be with the respondent's organisation after 16.10.2000.

8. In this view of the matter, and having regard to the fact that the petitioner is not pressing her claim for reinstatement the issue for decision is whether the respondent would have denied maternity benefits under the 1961 Act.

9. The nature of maternity benefits and the entitlement of employees have been clearly spelt out by provisions of the Act. The provisions of the enactment apply to

establishments, which have been defined in an expansive manner. Being a benevolent and social welfare legislation, the term "establishment" has to be construed liberally to include RITES.

10. Sections 4 & 5 of the Act oblige every employer of an establishment to extend maternity benefits under the Act, including leave/pay and maternity bonus. Section 12 underscores the independent and inflexible nature of the liability to mandate that no-one can be dismissed on account of pregnancy. It is a non-discriminatory provision. Section 27 mandates that provisions of the Act would have overriding effect.

11. In the Municipal Corporation of Delhi case (supra) the need for the Act, and its objective being in furtherance to Articles 15(3), 21, 38-39 and 42-43 of the Constitution of India was noticed. The Court also noticed that the Act was in tune with the United Nations' Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), 1979.

12. Articles 14 and 15 of the Constitution guarantee equality, Article 15(3) enables the State to make special provision for women. The Act makes provisions that are are in furtherance of two objectives-affirmative action (Sections 4, 5 and 27) and non-discrimination (Sections 12, 21 and 23). Their universality is undeniable.

13. RITES, in my considered opinion, is an establishment covered under the Act. Equally, it is an instrumentality of State (under Article 12 of the Constitution of India) and therefore bound by Part III of the Constitution. The record shows that the petitioner continued in employment till 11.11.2000, as per the RITES itself. The last order, extending the contract of appointment by 6 months, was issued on May, 2000,; the previous period had expired on 17.4.2000. Hence, the period commenced on 17.4.2000, and continued till 16.10.2000. In view of these admitted facts, and the circumstance that the petitioner went on leave with effect from 11.11.2000, after which she delivered a baby on 5.12.2000, the RITES cannot excape its obligation to pay benefits under the Maternity Benefits Act, 1961.

14. I accordingly, partly allow the petition. A direction is issued to the respondent RITES to calculate and release all amounts payable under the Maternity Benefits Act, 1961 (including full salary for the maximum periods of leave permissible under the Act and also the bonus amount admissible) within a period of six weeks from today. No costs."

15. As noticed above, Ms Pushkarna has cited various judgements of this Court, in support of her plea that maternity benefits cannot be granted to the respondent, beyond the tenure of the contract.

15.1 The principal judgement on which reliance is placed by Ms Pushkarna is rendered in ***Dr Kavita Yadav's*** case. Apart from anything else, this judgement is distinguishable for the reason that it dealt with a fixed-term contract that had ended on 11.06.2017. The woman employee, in that case, had applied for leave, after her contract which was for a maximum period of 3 years had come to an end. The court, therefore, concluded that the maternity benefit sought for by the petitioner could not

be granted to her beyond 11.06.2017. Importantly, the judgement in the case of ***Bharti Gupta*** was cited before the Court. The Court distinguished the said judgement i.e., ***Bharti Gupta***, on the ground that there was no outer-limit fixed *qua* the petitioner in that case. This is evident from the following observations made in the judgement, which are extracted below :

"13. Coming to the decision in Bharti Gupta (supra) we find that in this case though the appointment of the petitioner was contractual for six months, there was no outer limit to such contracts. The Court found, as a matter of fact, that the contract of the petitioner used to be extended after the expiry of the contract period, while the petitioner continued to serve……

xxx xxx xxx

15. From the above, it would, firstly, be seen that the learned Single Judge proceeded on the basis that the contractual term was open ended inasmuch, as, the contract was regularly being extended for a period of six months, after the expiry of the period of the contractual period itself, while the petitioner was permitted to continue to serve……."

15.1(a) The situation which obtains in the present case is quite similar. As noticed above in the course of narration of facts, the respondent's contract was extended on four occasions, with a break of one day in between. Each time the contract had a tenure of 89 days. The last such contract was executed on 31.03.2017, which in the normal course would have come to an end on 27.06.2017. The respondent had applied for the grant of maternity leave on 17.04.2017. Therefore, this judgement is clearly distinguishable, and the manner in which ***Bharti Gupta case*** was sought to be distinguished, would, in a sense, bolster the stand of the respondent in the instant case.

15.2. The other judgement on which reliance was placed by Ms Pushkarna was rendered in ***Dr* Deepasha Garg's case.** This was a case where the woman-employee had applied for leave on account of pregnancy on the date when her contract was to expire. The grievance articulated by the woman-employee in that case, essentially, concerned the denial by her employer of the experience certificate for the period which includes the maternity leave period that spilled beyond the last date of her contract.

15.2(a) In the instant case, as noticed above, the respondent has not sought the issuance of experience certificate beyond the date when her contract came to an end in the normal course i.e., 27.06.2017. The respondent has confined the relief only to the grant of maternity benefits in consonance with the provisions of the 1961 Act. This judgement, therefore, is also distinguishable as the emphasis is on an aspect with which one is not concerned in the present matter.

15.3. The third judgment that was relied upon by Ms Pushkarna is a decision rendered in the matter of **Dr Artiben R. Thakkar.** The facts delineated in the said judgement disclose that the terminal date of the contract of the woman-employee was 15.05.2017. Two months before the expiry of the contract, the woman-employee

made an application for being granted 12 weeks of maternity leave. This request of the woman-employee was accepted, and as a matter of fact, her contract was extended up till 30.06.2017. However, after 30.06.2017, neither was the contract renewed nor was a fresh contract executed between the women-employee and her employer. The woman employee's plea for extending the maternity benefit for the full period of 26 weeks appears to have been declined on the ground that she did not make an application for a grant of maternity leave for the entire period of 26 weeks before the contract came to an end. As noticed above, after the extension was granted by the employer, the contract expired by efflux of time on 30.06.2017. The Court found, as a matter of fact, that after that date i.e., 30.06.2017, women-employee did not remain on the rolls of the employer.

15.3(a) The judgement in **Dr Artiben R. Thakkar**'s case is distinguishable on facts. In the instant case, the respondent had sought maternity leave in the very first instance for the entire period of 26 weeks, and more importantly, when this application was made, her contract with the petitioner was alive.

15.4. The fourth judgement on which reliance is placed by Ms Pushkarna is the judgement rendered in the case of ***Dr Priyanka Mittal***. This judgement adopts the ratio of the decisions rendered in ***Dr Deepasha Garg's case*** and ***Dr Kavita Yadav's case.*** There is, in fact, no discussion in the said judgement concerning the provisions of the 1961 Act. In particular, Section 5 of the 1961 Act.

15.5. The last judgement on which reliance is placed by Ms Pushkarna is the judgement of a Single Judge of the Jharkhand High Court in the case of ***Priti Kumar Gope.*** A perusal of this judgement would show that the Court has found that this was also a case of a fixed-term contract and not an open-ended contract, where the contract between the employer and employee was extended from time to time.

16. Before we conclude, we may point out that there is a generic assertion made in the writ petition by the petitioner-hospital that Senior Resident doctors are appointed on a contractual basis, whenever a need arises for such appointments, albeit for a maximum period of 3 years. This contention of Ms Pushkarna has, however, very little relevance in the present case.

16.1 As noticed hereinabove, the petitioner-hospital executed short-duration contracts with the respondent. Each time the tenure of the contract was 89 days, and after a short break, a fresh contract was executed with the respondent. Neither in the offer of appointment dated 22.03.2016 issued to the respondent nor, in the joining order dated 24.05.2016, there is a mention of the fact that the maximum period for which the respondent could have been retained on a contractual basis. There is, however, a reference to the Residency Scheme of the Government of India [GOI]. Even if one were to take into account that the maximum period, for which contract could be executed from time to time between the petitioner-hospital and the respondent, could not go beyond 3 years, as per the Residency Scheme of GOI (although the same was not placed on record), the petitioner’s period had not expired. The three years in the respondent’s case, after she joined on 05.04.2016, would have ended in and around

04.04.2019. The period for which the respondent seeks payment of maternity benefit, as noticed above, spans between 28.06.2017 and 16.10.2017.

16.3. We may note that, by way of illustration, the respondent had filed before the Tribunal the copies of two office orders dated 12.08.2016 and 10.01.2017, concerning, inter alia, one Dr Banashree Nath, who was appointed as Senior Resident on an ad hoc basis in the Safdarjung Hospital, New Delhi. The office order dated 12.08.2016 shows that although the tenure of Dr Nath spanned between 31.07.2016 and 27.10.2016, she was granted maternity leave for 180 days starting from 25.07.2016 to 20.01.2017. These facts have not been refuted by the petitioner-hospital in the counter-affidavit filed before the Tribunal. Thus, this suggests that the GOI has granted maternity benefit, beyond the tenure of the contract. Therefore, the petitioner's hospital approach doesn't seem to be in line, either with the provisions of the 1961 Act or the GOI's approach adopted vis-à-vis hospital(s), which are under their sway.

17. This brings us to the circular dated 14.03.2018, on which reliance is placed by petitioner-hospital. The title of the circular, along with the relevant portion is set forth hereafter:-

"*Sub: Guidelines for grant of Maternity Leave/ Miscarriage Leave to Resident doctors (SRs/JRs/SR (Adhoc) & JR (Adhoc)).*

xxx xxx xxx

As per Section 5(2) of the Maternity Benefit Act, 1931, no woman shall be entitled to maternity benefits unless she has actually worked in an establishment of the employer from whom she claims maternity benefits for a period of not less than one hundred and sixty days in the twelve months immediately preceding the date of her expected delivery.

It has been decided that the Resident doctors (SRs/JRs/SR (Adhoc) & JR (Adhoc)) shall be entitled for maternity leaves of 26 weeks and miscarriage leave of 06 weeks as per Maternity Benefit Act, 1961 and Maternity Benefit (Amendment) Act, 2017, in accordance with section 5(2) of the Maternity Benefit Act, 1961 subject to the condition that no leave shall be granted after the completion/expiry of tenure of the doctor concerned……"

17.1. A close perusal of the aforesaid circular would reveal that it is in the nature of a guideline, *inter alia,* for grant of maternity benefit to the Senior Resident doctors who are employed on *an ad hoc* basis. The petitioner-hospital seeks to lay great emphasis on that part of the circular, which says that maternity leave would be accorded for 26 weeks in consonance with Section 5(2) of 1961 Act, "subject to the condition that no leave shall be granted after completion/expiry of [the] tenure of the doctor concerned".

17.2 To our minds, this circular would have no applicability for two reasons: *firstly*, it is a guideline; and *secondly*, the circular cannot go beyond the provisions of the 1961 Act; in particular, sub-section (2) of section 5 of the 1961 Act, and *lastly*, circulars much less guidelines cannot impede, preempt judicial interpretation that a Court may

place on the scope and ambit of a provision in the Act. [See ***Keshavji Ravji And Co. And Others v. Commissioner of Income Tax,*** (1990) 2 SCC 231.]

17.3. As adverted to hereinabove, there is nothing stated in sub-section (2) of section 5 of the 1961 Act which links the grant of maternity to the tenure of the contract.

18. We may also touch upon an argument that was sought to be raised by Ms Pushkarna for the petitioner-hospital, that a fresh contract was not executed with the respondent because recruitment of regular employees had taken place.

18.1. While we are on this aspect, it needs to be noticed, that much has been sought to be made by the petitioner-hospital that the respondent had been called for an interview when candidates were being selected against the sanctioned posts. What has emerged from the record is that the respondent was called for an interview on a date, which was perilously close to her expected date of delivery. The respondent was required to attend the interview on 01.06.2017, whereas the expected date of delivery was 02/06.06.2017. As adverted to above, the respondent's pregnancy had encountered unexpected complications.

18.2. Be that as it may, in our opinion, this aspect has no relevance as far as the grant of the maternity benefit is concerned. The respondent is not seeking a direction for the execution of a fresh contract. The only relief that the respondent seeks is the grant of maternity benefits under the 1961 Act. The benefit granted to the respondent under Section 5 of the 1961 Act should have a full play, in our view, once the prerequisites contained therein are fulfilled by the claimant i.e., the woman-employee. The 1961Act is a social legislation that should be worked in a manner that progresses not only the best interest of the women-employee but also of the child, both at the pre-natal and post-natal stage. [See Article 24(2)(d) of the United Nations Convention on the Rights of the Child (CRC)[1][2].] Without financial wherewithal, the interest of women-employee and her child is likely to be severely impacted.

[1] **Article 24** 1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (d) To ensure appropriate pre-natal and post-natal health care for mothers;

[2] Notably, India is a signatory to CRC.

Conclusion:

19. Thus, for the foregoing reasons, we are not inclined to interfere with the impugned order passed by the Tribunal.

20. The writ petition is, accordingly, dismissed. Consequently, pending application shall stand closed.

21. Parties will bear their own costs.