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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A.NO.1074 OF 2023

An appeal arising out WPC(OAC) No.1680 of 2017 disposed of on 30.08.2022

State of Odisha & Another ..... Appellants

-Versus-

Smt. Anindita Mishra ..... Respondent

Advocate(s) appeared in this case:-

For Appellants : Shri Subha Bikash Panda,
Addl. Government Advocate

For Respondent : None

CORAM:

HON'BLE MR. JUSTICE DIXIT KRISHNA SHRIPAD

AND

HON'BLE MR. JUSTICE M.S. SAHOO

J U D G M E N T
24.06.2025

***PER* DIXIT KRISHNA SHRIPAD,J.**

Challenge in this intra-Court appeal is to a learned Single Judge's order dated 30.08.2022, whereby respondent-employee's WPC(OAC) No. 1680 of 2017 having been favoured a direction has been issued to extend the

benefit of maternity leave to her under the extant State Policy, as promulgated through Rules/Regulations/Orders.

2. Learned Addl. Government Advocate appearing for the appellant-State vehemently argues that the right to maternity benefit does not avail under State Policy, unless the claim falls strictly within the four-corners of such Policy. He submits that if the impugned decision was not a speaking order, the right course for the writ court was to set the same at naught and remand the matter for consideration afresh. He also submits that since the respondent-employee is governed by the terms of contract, she is not entitled to maternity benefit. According to him, all these aspects having not been properly adjudged by the learned Single Judge, the impugned order needs to be invalidated.

3. Having heard learned Addl. Government Advocate appearing for the appellant-State & its functionary and having perused the appeal papers, we decline indulgence in the matter broadly agreeing with the reasoning of the learned Single Judge. A short description of the concept of

maternity benefit needs to be stated: This concept is discussed in Article 10(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 11(2)(b) of the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Under the provisions of CEDAW, maternity leave with pay or comparable social benefits are to be assured by the party-States *inter alia* through their Policies & Programes. The Convention highlights the social significance of 'maternity' and the role of both parents in the family structure and in the upbringing of children. It is said that *God could not be everywhere and therefore he created mothers*. The idea of maternity leave is structured on "zero separation" between lactating mother and breast feeding baby. The Child Psychiatrists and Obstetricians are of the considered opinion that physical companionship of mother and the baby is mutually advantageous and it promotes bonding between the two, which is essential for their wellbeing. A lactating mother has a fundamental right to breastfeed her baby during its formative years. Similarly, baby has a

fundamental right to be breastfed and brought about in a reasonably good condition. These two important rights form an amalgam from which the State obligation to provide maternity benefits, such as paid leave to the employees within the permissible resources would arise. The Government Memorandum, relevant part of which we have reproduced *infra* is one of the State measures to secure this amalgam and therefore it being a socio-welfare instrument has to be construed liberally to advance its objectives/ purposes. This approach is lacking in the order that was challenged before the learned Single Judge, which he has rightly voided.

3.1. Ours is a constitutionally ordained Welfare State. The Government, be it Provincial or Federal, has to conduct itself as a model employer vide ***Bhupendra Nath Hazarika v. State of Assam***,[1]. It is not in dispute that the respondent is not a regular employee of the appellants-herein. However, she has been rendering service in the class of 'young professionals' after being chosen in a

[1] AIR 2013 SC 234

normative selection process. Her name having been sponsored by the G.A. Department, she came to be posted to the Health & Family Welfare Department with effect from 20.05.2014. This is on contract basis, which was initially for a period of one year and subsequently has been renewed time & again.

3.2. Respondent having delivered a female child, applied to the 2nd appellant herein on 17.08.2016 for the grant of maternity leave for the period between 17.08.2016 and 12.02.2017. She has produced medical certificate in support of the same. This could not have been rejected by the 2nd appellant vide endorsement dated 07.06.2017, that too without assigning any reason. It hardly needs to be stated that giving reasons for the decisions is imperative in *good governance*. Apex Court in ***Mohinder Singh Gill v. Chief Election Commissioner, New Delhi***,[2] has observed that a non-speaking order cannot be justified on the supply of reasons from outside. It should stand or fall on its intrinsic merits. An employee cannot be told that the

[2] AIR 1978 SC 851

reasons are stacked in the Godown of the Government and he/she can search for the same all in wilderness. Therefore, learned Single Judge is right in quashing the said endorsement.

3.3. The second contention that the learned Single Judge after quashing the subject endorsement ought to have remanded the matter to the 2nd respondent for consideration afresh, does not impress us. No rule or ruling is cited before us in support of said contention. We are mindful of cases which may warrant remand for fresh consideration regard being had to complexity of issues involved and the need for their resolution at the hands of some expert body. That is not the case here. The only question that arose before the learned Single Judge was, whether maternity benefit can be granted to a contract employee under the extant Policy of the State. That issue essentially partakes the character of a question of law and that can be answered by turning the pages of legal literature. It is not the case of the appellants herein that there is no policy governing the grant of maternity benefit.

Added, there is a Parliamentary enactment, i.e., the Maternity Benefit Act, 1961. It hardly needs to be stated that ordinarily the power of the writ court is co-extensive with the powers of authority whose proceedings are put in judicial review. Of course, there are exceptions to this rule and argued case of the appellants does not attract any of them.

3.4. The apex court in ***Dr. Kabita Yadav v. Secretary, Ministry of Health & Family Welfare Department***,[3] has observed that even a contractual employee is entitled to maternity benefit. This case arose under the 1961 Act is true. However, whether a Policy is enacted or just promulgated in the exercise of Executive Powers, is irrelevant in matters of the kind for classification of persons as regular employees & contract employees, so far as the claim for maternity benefit is concerned. Several High Courts in the country have taken this view. List is as under:

(i) Rajasthan High Court in *Geeta Sharma v. UOI,* 2001 SCC OnLine Raj 488.

[3] (2024) 1 SCC 421

(ii) Himachal Pradesh High Court in State of H.P. v. Sudesh Kumari, 2014 SCC OnLine HP 4844.

(iii) Calcutta High Court in Neeta Kumari v. UOI, 2024 SCC OnLine Cal 1881.

(iv) Madras High Court in Writ Appeal No.1692 of 2022, between Tamilnadu State Transport Corporation v. B. Rajeswari decided on 12.01.2023.

(v) Karnataka High Court in W.P. No.10677/2020 (S-Res) between Smt. B.S. Rajeswari and State of Karnataka, decided on 04.02.2021.

(vi) Delhi High Court in Dr. Babasaheb Ambedkar Hospital v. Dr. Krati Mehrotra, 2022 LiveLaw Delhi 201.

3.5. In the light of the decision in ***Kabita Yadav*** supra, the 2nd appellant should have humanely considered claim of the respondent for the grant of maternity benefit as would avail under the memorandum dated 31.03.2012 issued by the Finance Department of the Government. A relevant part of the said memorandum reads as under:

> *"After careful consideration Government have been pleased to decide that in respect of all female employees engaged in Government establishment on contract basis with consolidated remuneration the existing ceiling of 90days of absence from duty on maternity ground is enhanced to 180 days subject to condition that the tenure of maternity leave will be within the contractual period in maximum."*

The contention that the memorandum applies only to the civil servants cannot be countenanced, inasmuch as, women employees for the purpose of availing such benefit do constitute one homogenous class and their artificial bifurcation founded on status of appointment falls foul of Article 14 of the Constitution, as already discussed above.

3.6. In the good olden days in our social set up the place of women traditionally was her home. Now, we are living in different times. Because of various reasons, including poverty & illiteracy, women come out of their home and gain entry to the employment, public, private, contractual or otherwise, as a source of livelihood. State cannot provide public employment to everyone. It could have been ideal, if it could provide. Naturally, the employment in private sector looms large. Denying maternity benefit on the basis of nature of employment is abhorrent to the notions of humanity and womanhood. Our Smrutikaaraas chanted "*yatr naaryaastu pujyante ramante tatr devatah*", literally meaning that Gods rejoice where women are honoured. Such ideal things should animate the purposive

interpretation of State Policy concerning the welfare of women.

3.7. It was next contended by learned Additional Government Advocate that the conditions of service between the Government and the contract employees like the respondent herein are regulated by the terms of contract and therefore unless Government Policy is made a part of such contract, the maternity benefit cannot be claimed. Every employment, be it private or public, begins with contract and attains the status in due course. A Welfare State cannot be heard to say that a Policy of the kind has to be kept away regardless of its socio-welfare object to serve all classes of persons employed in the State, whatever be the nature of such engagement. When benefits of the Policy of this nature are extended, it is not that Court is rewriting the contract of employment. We are aware that we cannot. This does not mean that Court cannot read the State Policy into the terms of engagement, in the absence of a contra indication in the contract itself. Obviously, there is no such contra intent in the contract.

3.8. Lastly, there is one finer aspect which merits deliberation: India is a signatory to several International Conventions and one of them is CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women). The State Policy conferring the benefit of maternity facilities is one that broadly promulgates inter alia the objectives of this Convention. It hardly needs to be stated jurists like J.G. Starke an acclaimed author of Public International Law is of the opinion that Conventions of the kind are the customary source of Rules of International Law, which the party-States are expected to honour even in their domestic affairs, there being nothing contrary in the Domestic Law. This view gains support from the decisions in ***Kesavananda Bharati v. State of Kerala***,[4] and ***Jolly George Varghese v. The Bank of Cochin***,[5]. The subject Government memorandum has absolutely nothing that runs counter to the paragraphs of CEDAW. A justiciable right thus is created in the contract employees to knock at the doors of the writ court. Justice

[4] AIR 1973 SC 1461
[5] AIR 1980 SC 470

Oliver Wendell Holmes in ***DAVIS v. MILLS,***[6] has observed as under:

> *"Constitutions are intended to preserve practical and substantial rights, not to maintain theories..."*

Learned Single Judge has rightly granted relief to the poor employee and that viewed from any angle the same cannot be faltered.

In the above circumstances, this appeal being devoid of merits is liable to be and accordingly rejected in limine. The impugned order of the learned Single Judge to be implemented and report of compliance shall be filed with the Registrar Judicial of this Court within eight weeks.

Registry to send a copy of this judgment to the respondent by speed post.

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Dixit Krishna Shripad,
Judge

.....
M.S.Sahoo,
Judge

Orissa High Court, Cuttack,
The 24th June, 2025/C

[6] 194 US 451 (1904)