

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(S). 5010/2023**

**DR. KAVITA YADAV**

**...APPELLANT(S)**

**VERSUS**

**THE SECRETARY, MINISTRY OF  
HEALTH AND FAMILY WELFARE  
DEPARTMENT & ORS.**

**...RESPONDENT(S)**

**JUDGMENT**

The appellant, a pathology doctor, was appointed as Senior Resident (Pathology) in Janakpuri Super Speciality Hospital, an autonomous institute under the Government of N.C.T. of Delhi, on 6<sup>th</sup> June 2004. Her appointment letter specified that it was purely temporary and as per the residency scheme, such appointment was initially to be for a period of one year, extendable on yearly basis upto a maximum of three years. Her date of joining was 12<sup>th</sup> June 2014. Her services were extended twice, for one year period each, on 12<sup>th</sup> June 2015 and 12<sup>th</sup> June 2016. Her last extension was for the period of one year from 12<sup>th</sup> June 2016 to 11<sup>th</sup> June 2017. On 24<sup>th</sup> May 2017, she had

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applied for maternity benefits from 1<sup>st</sup> June 2017, in terms of Section 5 of the Maternity Benefit Act, 1961 ("the 1961 Act"). The employer, however, informed her that only 11 days of maternity benefits could be granted since, as per the residency scheme, her tenure came to an end on 11<sup>th</sup> June 2017 and no further extension was allowed/permissible under the applicable rules.

**2.** The appellant unsuccessfully challenged the said action before the Central Administrative Tribunal, Principal Bench, New Delhi, and subsequently failed in the High Court also, on the very same reasoning based on which the employer had rejected her claim of maternity benefits for a total of 26 weeks in terms of the 1961 Act. The reasoning of the High Court would appear from paragraphs 8 and 9 of the judgment delivered on 19<sup>th</sup> August 2019, and we quote below the said two paragraphs:-

*"8. Reliance placed on Section 5(2) of the said Act by the petitioner to claim that once the female employee has rendered service for 180 days continuously prior to the expected date of delivery, she would be entitled to maternity benefit is, in our view, irrelevant, since the respondents have not denied the maternity benefit to the petitioner. The only issue is whether she would be entitled to such benefit after 11.6.2017, when her contract of employment ended.*

*9. Sub section (1) of Section 5 of the said Act provides that subject to provisions of the Act, every women should be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of*

average daily wage "for the period of her actual absence .....". The use of the expression "actual absence" pre-supposes that but for the maternity leave, the women employee would be expected to remain "present". However, where the contractual employment is time bound with an outer limit, and the same comes to an end during the period of pregnancy, or even after child birth, but during the period when the women employee would be entitled to avail of maternity benefits under the Act, there would be no question of the women employee remaining actually "absent", since she would not be expected to remain present post the termination of her contractual employment. The purpose of the aforesaid Act is not to extend the period of the contract for which the woman employee is in service. If the submission of learned counsel for the petitioner is accepted that the petitioner should be granted leave for 180 days, despite her contract expiring within a few days from the start of maternity leave, it would clearly tantamount to unintended extension of the contractual employment."

**3.** It is this judgment which is assailed before us. For effective adjudication of this appeal, we reproduce below the following provisions of the 1961 Act:-

**"5. Right to payment of maternity benefit. -- (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.

**Explanation.** – For the purpose of this sub-section, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, [the

*minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 (11 of 1948) or ten rupees, whichever is the highest.]*

*(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:*

*Provided that the qualifying period of (eighty days) aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.*

*Explanation.- For the purpose of calculating under the 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 enforced 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:]*

*[Provided further that] where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:*

*[Provided also that] where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the*

*employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, than, for the days upto and including the date of death of the child.]*

*(4) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.*

*(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 and on such conditions as the employer and the woman may mutually agree.*

**8. Payment of medical bonus.**-(1) Every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of one thousand rupees, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

(2) The Central Government may before every three years, by notification in the Official Gazette, increase the amount of medical bonus subject to the maximum of twenty thousand rupees.]

**12. Dismissal during absence of pregnancy.** -- (1) Where a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.

(2) (a) The discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus referred to in section 8, shall not have the effect of depriving her of the maternity benefit or medical bonus:

*Provided that where the dismissal is for any prescribed gross misconduct the employer may, by order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus or both.*

*(b) Any woman deprived of maternity benefit or medical bonus or both, or discharged or dismissed during or on account of her absents from work in accordance with the provisions of this Act, may, within sixty days from the date on which the order of such deprivation or discharge or dismissal is communicated to her, appeal to such authority as may be prescribed, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefit or medical bonus, or both, or discharged or dismissed shall be final.*

*(c) Nothing contained in this sub-section shall affect the provisions contained in subsection (1).*

**27. Effect of laws and agreements inconsistent with this Act.** -- (1) *The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act:*

*Provided that where under any such award, agreement, contract of service or otherwise, a woman is entitled to benefits in respect of any matter which are more favourable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that she is entitled to receive benefits in respect of other matters under this Act.*

*(2) Nothing contained in this Act shall be construed to preclude a woman from entering into an agreement with her employer for granting her rights or privileges in respect of any matter, which are more favourable to her than those to which she would be entitled under this Act."*

**4.** On behalf of the appellant, Mr. Sourabh Gupta, learned counsel, argued that once the appellant fulfilled the prerequisite for availing maternity benefits, as contemplated in Section 5(2) of the 1961 Act, even as a contractual employee, she would be entitled to the full benefits as envisaged therein. The entitlement of a contractual employee to obtain such benefits is not in dispute in this case as the employer had extended such benefits to the appellant during her first pregnancy. The appellant also fulfilled the requirement of having worked for a period exceeding 80 days in the 12 months immediately preceding the date of her expected delivery, in terms of Section 5(2) of the 1961 Act.

**5.** The main question which falls for determination in this appeal is as to whether the maternity benefits, as contemplated in the 1961 Act, would apply to a lady employee appointed on contract if the period for which she claims such benefits overshoots the contractual period. Ms. Rachita Garg, learned counsel appearing for the respondent-employer, sought to defend the reasoning given in the judgment under appeal. Her main argument is that once the term or tenure of the contract ends, there cannot be a notional extension of the same by giving

the employee the benefits of the 1961 Act in full, as contemplated in Section 5(2) thereof. It is her submission that any benefits that the appellant would be entitled to ought to be within the contractual period.

**6.** We have reproduced earlier in this judgment the provisions of Section 12(2)(a) of the 1961 Act. The aforesaid provision contemplates entitlement to the benefits under the 1961 Act even for an employee who is dismissed or discharged at any time during her pregnancy if the woman, but for such discharge or dismissal, would have been entitled to maternity benefits or medical bonus. Thus, continuation of maternity benefits is in-built in the statute itself, where the benefits would survive and continue despite the cessation of employment. In our opinion, what this legislation envisages is entitlement to maternity benefits, which accrues on fulfillment of the conditions specified in Section 5(2) thereof, and such benefits can travel beyond the term of employment also. It is not co-terminus with the employment tenure. A two Judge Bench of this Court in the case of **Municipal Corporation of Delhi -vs- Female Workers (Muster Roll) & Anr.** [(2000) 3 SCC 224], while dealing with a similar claim by female muster roll workers who were employed

on daily wages, opined that the provisions relating to maternity benefits in the 1961 Act would be applicable in their cases as well. That dispute had reached this Court through the Industrial Tribunal and the High Court. Before both these fora, the Union espousing the cause of the female workers was successful. In that case, point of discrimination was highlighted as regular women employees were extended the benefits of the said Act but not those who were employed on casual basis or on muster roll on daily wage basis. This Court observed, in paragraph 27 of the said judgment:-

*“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 casual basis or on muster roll on daily-wage basis.”*

7. Broadly, a similar view is reflected in a more recent judgment of this Court in the case of **Deepika Singh -vs- Central Administrative Tribunal And Others** [(2022) 7 SCR

557]. Though this decision dealt with Central Civil Services (Leave) Rules, 1972, in relation to maternity leave and the 1961 Act was not directly applicable in that case, this Court analysed certain provisions of this Act to derive some guidance on a cognate legislation. This Court observed in the case of **Deepika Singh** (supra):-

**“19.** Sub-section (1) of Section 5 confers an entitlement on a woman to the payment of maternity benefits at a stipulated rate for the period of her actual absence beginning from the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day. Sub-section (3) specifies the maximum period for which any woman shall be entitled to maternity benefit. These provisions have been made by Parliament to ensure that the absence of a woman away from the place of work occasioned by the delivery of a child does not hinder her entitlement to receive wages for that period or for that matter for the period during which she should be granted leave in order to look after her child after the birth takes place.

**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 v. 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.”*

In the light of the ratio laid down in the aforesaid two authorities and having regard to Section 27 of the 1961 Act, which gives overriding effect to the statute on any award, agreement or contract of service, in our opinion, the High Court erred in law in holding that the appellant was not entitled to maternity benefits beyond 11<sup>th</sup> June 2017.

**8.** The respondents sought to distinguish the present dispute from the case of **Female Workers (Muster Roll)** (supra) on the ground that the said case arose from an award of the Industrial Tribunal and that there was a finding by the Tribunal that the muster roll lady workers were working for a long period of time. But the fact remains that in law, daily-wage workers cannot be said to have continuity of service for an unlimited period. The effect of that judgment was that their tenure also stood notionally extended so far as application of maternity benefits under the 1961 Act was concerned.

**9.** Our independent analysis of the provisions of the 1961 Act does not lead to an interpretation that the maternity benefits cannot survive or go beyond the duration of employment of the

applicant thereof. The expression employed in the legislation is maternity benefits [in Section 2(h)] and not leave. Section 5(2) of the statute, which we have quoted above, stipulates the conditions on the fulfilment of which such benefits would accrue. Section 5(3) lays down the maximum period for which such benefits could be granted. The last proviso to Section 5(3) makes the benefits applicable even in a case where the applicant woman dies after delivery of the child, for the entire period she would have been otherwise entitled to. Further, there is an embargo on the employer from dismissing or discharging a woman who absents herself from work in accordance with the provisions of the Act during her absence. This embargo has been imposed under Section 12(2)(a) of the Act. The expression “discharge” is of wide import, and it would include “discharge on conclusion of the contractual period”. Further, by virtue of operation of Section 27, the Act overrides any agreement or contract of service found inconsistent with the 1961 Act.

**10.** In our opinion, a combined reading of these provisions in the factual context of this case would lead to the conclusion that once the appellant fulfilled the entitlement criteria specified in

Section 5(2) of the Act, she would be eligible for full maternity benefits even if such benefits exceed the duration of her contract. Any attempt to enforce the contract duration term within such period by the employer would constitute “discharge” and attract the embargo specified in Section 12(2)(a) of the 1961 Act. The law creates a fiction in such a case by treating her to be in employment for the sole purpose of availing maternity benefits under the 1961 Act.

**11.** We, accordingly, set aside the judgment and order of the High Court and as a consequence thereof, the Tribunal’s decision shall also stand invalidated. We allow this appeal and direct the employer to extend maternity benefits as would have been available to the appellant in terms of Sections 5 and 8 of the 1961 Act, after deducting therefrom any sum that may already have been paid to the appellant under the same head or for such purpose. Such benefits, as may be quantified in monetary units, shall be extended to her within a period of three months from the date of communication of this judgment. The orders of the employer rejecting the appellant’s claim on this count shall stand quashed.

**12.** The present appeal is, accordingly, allowed in the above

terms.

**13.** Pending application(s), if any, shall stand disposed of.

**14.** There shall be no order as to costs.

.....J.  
**[ANIRUDDHA BOSE]**

.....J.  
**[SANJAY KUMAR]**

.....J.  
**[S.V.N.BHATTI]**

**New Delhi;**  
**August 17, 2023.**

ITEM NO.110

COURT NO.3

SECTION XIV-A

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

CIVIL APPEAL NO(S). 5010/2023

DR. KAVITA YADAV

APPELLANT(S)

VERSUS

THE SECRETARY, MINISTRY OF HEALTH AND  
 FAMILY WELFARE DEPARTMENT & ORS.

RESPONDENT(S)

Date : 17-08-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ANIRUDDHA BOSE  
 HON'BLE MR. JUSTICE SANJAY KUMAR  
 HON'BLE MR. JUSTICE S.V.N. BHATTI

For Appellant(s) Mr. Sourabh Gupta, Adv.  
 Mr. Prashant R. Dahat, Adv.  
 Mr. Puneet Yadav, Adv.  
 Mr. T. R. B. Sivakumar, AOR

For Respondent(s) Ms. Rachita Garg, Adv.  
 Mr. Rajnish Kumar Singh, Adv.  
 Ms. Neha Sharma, Adv.  
 Mr. Debopriyo Moulik, Adv.  
 Mr. Deekshakirti Verma, AOR

UPON hearing the counsel the Court made the following  
 O R D E R

The appeal is allowed in terms of the signed judgment,  
 which is placed on the file.

Pending application(s), if any, shall stand disposed of.

(NIRMALA NEGI)  
 COURT MASTER (SH)

(VIDYA NEGI)  
 ASSISTANT REGISTRAR