IN THE COURT OF SH. MOHD. FARRUKH
ADDITIONAL SESSIONS JUDGE-05 (CENTRAL)
TIS HAZARI COURTS, DELHI

C.A. No. 27/2019

Delhi Council for Child Welfare
Qudsia Bagh, Yamuna Marg, Civil Lines,
Delhi -110054 (through it's A.R.) …..... Appellant

VERSUS

Mrs. Navneet Kumari d/o Sh. Amar Nath Sharma,
w/o Devender Bhagat,
H. No.103, DDA Flats, Mahendra Park,
G.T. Karnal Road, New Delhi. ….....Respondent

Date of Institution	**:**	**17.01.2019**
Arguments heard on	**:**	**27.05.2019**
Order pronounced on	**:**	**03.07.2019**

JUDGEMENT

1. The appellant has assailed the judgment dated 20.08.2018 vide which the appellant has been held guilty and convicted for the commission of offence U/s 21 of the Maternity Benefit Act, 1961 (hereinafter referred to as 'Act'); and has also challenged the order on sentence dated 19.12.2018 vide which the appellant upon conviction has been let off after admonition but was directed to pay compensation u/s 357 Code of Criminal Procedure (hereinafter referred to as Cr.P.C) for amount of

Rs.2.5 lacs to the respondent/complainant.

2. The facts of the case have been reproduced in the impugned judgement dated. 20.08.2018 and therefore, the same are not being reproduced herein in details however, suffice it to say that the respondent Ms. Navneet Kumari, working as Office Assistant/Typist with the appellant i.e. Delhi Council for Child Welfare since 12.10.1987, applied for maternity leave w.e.f. 30.12.2008 to 28.02.2009 at the first instance and subsequently for one month till 30.03.2009. The appellant terminated her services vide office order dated 01.04.2009 which was received by the complainant on 13.04.2009. The respondent sent a legal notice on 23.04.2009 to the appellant through her counsel, however, the appellant sent a letter dated 29.05.2019 to the respondent along with a cheque dated 02.05.2019 for an amount of Rs.98271/- in favour of respondent as full and final settlement of her claim against the appellant.

3. The respondent filed the complaint before the Ld. Trial court against the appellant i.e. Delhi Council for Child Welfare and its President

Mrs. Neena Macedo and examined herself u/s 200 Cr.P.C. reiterating the allegations against the appellant and its president to the effect that her termination of services is in complete violation of Section 12 read with section 5 (iii) of the Act. The respondent has also examined Dr. Naima Chaudhary who produced on record the medical certificate issued by the hospital showing the admission of the respondent in the hospital during the aforesaid period. The statement of the appellant was recorded u/s 313 Cr.P.C. wherein all the incriminating evidence on record were put to him which was denied generally by the appellant. The appellant, however has not examined any witness on its behalf and its counsel got recorded his statement on 02.07.2018 before the Ld. Trial court to the effect that the appellant did not want to examine any witness. However, the then president of the appellant namely Ms. Neena Mcedeo has tendered herself for examination on her behalf. She deposed that the respondent had applied for maternity leave and same was sanctioned for two months and one month without pay and the respondent was to join her duty on 01.04.2009 but she did not resume her duty and therefore, the appellant decided that the respondent should be relieved from her duties.

4. Arguments were heard by the Ld. Trial court and vide judgment dated 20.08.2018 convicted the appellant holding inter alia that the relieving/dismissal of the respondent from her job vide termination letter dated 01.04.2009 Ex.CW1/1 is in contravention of section 12 of the Act as no Show Cause Notice was given to the complainant prior to termination of her services and therefore, the appellant was convicted for the offence charged u/s 21 of the Act and thereafter vide order dated 19.12.2018 let off after admonition however, fastened liability of Rs.2.5 lacs u/s 357 Cr.P.C.

5. The aforesaid judgment and sentence has been assailed by the appellant on the ground inter alia that the respondent was entitled to maximum of 12 weeks leaves (84 days leaves) under the Act and therefore, the extension after 84 days could not be granted to her and thus there is no violation of any provision of the said act; the provision of section 357 Cr.P.C. for awarding compensation was wrongly invoked by the ld. Trial court as the appellant was let off with admonition and the other accused No.2 has been released on probation for one year and the findings of the ld. Trial court holding the termination of the respondent are illegal beyond

jurisdiction of the court as the only Labour Court could decide the illegality or irregularity of her termination. On the basis of aforesaid submissions, the appellant would pray for setting aside of the impugned judgment and sentence.

6. Notice of the appeal has been issued and sentence has been suspended subject to deposit of 50 % amount by way of FDR which was deposited. On the notice having been served upon the respondent, she entered her appearance and filed written submissions. It has been argued by the counsel for the respondent that order of the ld. Trial court is perfectly valid and there is no infirmity in the same.

7. I have heard the arguments and perused the appeal record as well as trial court record and had given my due consideration to the submissions of the counsels of respective parties.

8. The renowned Hollywood actor Merly Spreep has said **"Motherhood has a very humanising effect. Everything gets reduced**

to essential." Oprah Winfrey, talk show host and philanthropist once said, **"the choice to become a mother is the choice to become one of the greatest spiritual teachers there is".** Catherine Jones, the actor, has also said **"Whether your pregnancy was meticulously planned, medically coaxed, or happened by surprise, one thing is certain- your life will never be same."** Our Hon'ble Supreme Court has also in its judgment titled **Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) and another: 2000 (3) SCC 224** held as under :-

"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 phenomena in the life of a woman. Whatever is needed to facilitate the birth of 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 work place 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. "

(emphasis supplied)

9. Grant of maternity benefit is not a matter of charity; it is a positive mandate of law as has been held by the Hon'ble Supreme Court in its aforesaid judgment of Municipal Corporation of Delhi (supra). The Preamble of the Maternity Benefit Act itself states that **"it is an Act to regulate the employment of women in certain establishments for certain periods before and after childbirth and to provide for maternity benefit and certain other benefits."**

10. Provisions of the Act are applicable to the appellant being a State agency which is also bound by the Directive Principles of State Policy as also Articles 14 and 15 of the Constitution of India. In the instant case, it is not disputed by the appellant that the Act is not applicable to the establishment/appellant and the respondent was not entitled to the Maternity Benefits in accordance with the Act. As per Section 5 of the Act, the respondent was entitled to the maternity leave of maximum period of 12 weeks (84 days). Section 6 provides that the woman employed may give notice in writing to her employer to provide her maternity benefits and she will not work till the said period. Section 6(4) mandates the employer to permit the employee to absent herself during the period of her receiving the maternity benefit irrespective of the failure of the employee to give notice U/s 6 of the Act. Section 10 of the Act provides that a woman suffering from illness arising out of pregnancy, delivery, pre-mature birth of child etc. on production of such proof would be entitled to the wages at the rate of maternity benefit for a maximum period of one month in addition to the period of absence allowed to her U/s 6 of the Act. Section 12 under scores the independent and inflexible nature of the

liability of the employer mandating that no one can be dismissed on account of pregnancy. The said Section 12 provides that when a woman absents herself from work in accordance with the provision of the Act, it will be unlawful for her employer to discharge or dismiss her during employment on account of such absence. Proviso to Section 12 gives the liberty to the employer to dismiss the woman employee for any prescribed gross misconduct and deprive her the medical benefit or to the medical bonus or both. Contravention of the provisions of the Act has been made an offence U/s 21 of the Act which provides for punishment to the employer who fails to pay any amount of maternity benefit to a woman entitled under the Act or discharges or dismisses such woman during or on account of her absence from work.

11. Now, coming back to the facts of the present case, the respondent, as noted above, applied for maternity leave from 30.12.2018 to 28.02.2019 vide her application dated 15.01.2009. Admittedly, no communication was made by the appellant establishment to the respondent regarding sanctioning/allowing her to proceed on maternity leave.

Subsequently, on 26.02.2009, the respondent admittedly sent another application for extension of one month maternity leave stating that she was not medically fit to join her duty. The appellant did not deign it to respond to this application of the respondent either. However, when the respondent visited the office of the appellant for joining her duties on 01.04.2009, the Director of the appellant told the respondent that her services have been terminated and subsequently she received a letter dated 01.04.2009 on 13.04.2009 from the appellant refusing to give her three months maternity leave and her services were stated to have been terminated w.e.f. 01.04.2009. Subsequently, in response to the legal notice served by the respondent on 23.04.2009, the appellant sent a cheque of Rs. 98,271/- (Ninety Eight Thousand Two Hundred Seventy One) to the respondent vide letter dated 29.05.2009 for full & final settlement. In view of the aforesaid facts where the appellant has not allowed the respondent to proceed on maternity leave by communicating her in writing, the contention of the counsel for the appellant to the effect that there is no contravention of any provision of the Act as she was sanctioned maternity leave in accordance with the provisions of the Act for 84 days which

expired on 23.03.2009, is without any merit. In fact, the period provided U/s 5 of the Act for maternity leave is 12 weeks (84 days) which expired on 23.03.2009. However, the respondent sent her application on 26.02.2009 seeking extension for one another month of maternity leave on the ground of her being not medically fit to join her duty, her case is covered U/s 10 of the Act which provides the maternity benefit for a maximum period of one month in addition to the 12 weeks (84 days) maternity leave. The counsel for the appellant though contended that the respondent was not entitled to seek extension of maternity leave beyond the statutory entitlement of 84 days, yet he failed to show any material/document to the effect that the appellant has sanctioned the maternity leave of the respondent for 84 days. In fact, the respondent has applied for extension of maternity leave vide her application dated 26.02.2009 prior to the expiry of 84 days, however, the extension sought by the respondent vide the aforesaid application was beyond 84 days. In the said eventuality, it was incumbent upon the appellant to process the case of extension of maternity leave of the respondent in accordance with Sec. 10 of the Act. However, the appellant neither processed the case of

the respondent for extension of her maternity leave U/s 10 of the Act, nor communicated her that the extension of the maternity leave could not be granted and rather terminated her services. Section 12 of the Act prohibits dismissal of a woman employee during or on account of her absence on maternity leave. It ensures that the conditions of her service would not be varied to her disadvantage during her absence for the period of her maternity leave. The Hon'ble Delhi High Court recently in **Dr. Ankita Baidya vs Union Of India & Ors in W.P.(C) 8748/2018** decided on 01st February, 2019 has observed as under:-

"69. The ability of woman to create, nurture, and sustain, life, is celestially unique, and, even in the most conservative and puritanical of cultures, commands reverence and respect. The protection and preservation of this ability is central to the most basic human rights which govern existence, and any dispensation, customary or in statute, which derogates therefrom, is constitutional anathema. **Adverse consequences can never be allowed to visit any woman, solely by virtue of the fact that she availed maternity leave, perhaps in excess of the maximum leave admissible - provided, of course, the maternity leave was**

necessary and required for health of mother and child."

(emphasis supplied)

12. Another contention raised by the counsel for the appellant is that the Ld. Trial Court has no jurisdiction to declare the termination of the services of the respondent as illegal as the same is within the jurisdiction of the industrial court. The said contention of the counsel for the appellant is liable to be rejected in view of Sec. 12 of the Act which specifically provides that when a woman absents herself from work in accordance with the provision of the Act, it shall be unlawful for the employer to discharge or dismiss her during or on account of such absence and thus, the findings of the Ld. Trial Court that the services of the respondent have been terminated by the appellant in contravention to the Act are proper in accordance with Sec. 12 of the Act, as per which the appellant has been refrained to vary the service condition of the respondent to her disadvantage.

13. The further contention of the counsel for the applicant that the

Ld. Trial Court committed error in awarding a compensation of Rs. 2.5 Lakhs U/s 357 Cr.P.C to the complainant while letting off the appellant after admonition is not tenable in view of Sec. 5 of the Prohibition of the Offenders' Act, 1958 which provides that the court directing the release of an offender U/s 3 (after admonition) or Sec. 4 (on probation), may, if it thinks fit, further direct the convict to pay such compensation as court thinks reasonable for loss or injury caused to any person by the commission of the offence including cost of the proceedings. In the present case the Ld. Trial Court has categorically taken into consideration the plight of the respondent and financial loss suffered by her while granting compensation of Rs. 2.5 Lakhs to the respondent.

14. In view of the aforesaid discussion, there is no infirmity in the judgment dated 20.08.2018 and the order on sentence dated 19.12.2018 and thus the same is upheld. Copy of this order be sent to Ld. Trial Court. Revision file be consigned to Record Room.

MOHD FARRUKH
Digitally signed by MOHD FARRUKH
Date: 2019.07.04 16:27:02 +0530

Announced in the Open Court on 03.07.2019

(Mohd. Farrukh)
ASJ-05 (Central)
Tis Hazari Courts, Delhi (kg)