

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

**WPA 29978 of 2013
With
CAN 4 of 2020 (Old CAN 982 of 2020)**

**Neeta Kumari
Versus
Union of India & Ors.**

For the petitioner : Ms. Malini Chakraborty
Ms. Shampa De

For the respondent no. 3 : Mr. Alok Kumar Banerjee
Mr. Arunabha Sarkar

Heard on : 06.12.2023, 12.12.2023 & 19.12.2023

Judgment on : **26th February, 2024**

Raja Basu Chowdhury, J:

1. Questioning the failure on the part of the respondent no. 2 to allow maternity leave with pay to the petitioner for 180 days, the present writ petition has been filed. The petitioner was appointed as an Executive Intern at the Reserve Bank of India (hereinafter referred to as the "Bank") on contractual basis for a period of 3 years on 16th August, 2011.
2. In course of her employment with the bank, the petitioner having conceived had applied for maternity leave vide letter dated 20th November, 2012, for 6 months, with effect from 3rd

December, 2012 as she was advised bed rest by the doctor, and her expected due date was sometimes in the first part of January, 2013. Although, there are no contemporaneous communication rejecting the petitioner's application for maternity leave, however, subsequently by a letter in writing dated 14th March, 2013, the petitioner was informed that she is not entitled to maternity leave as per the terms of the contract, however, her absence from duty may be treated as leave without compensation. Notwithstanding the aforesaid, she would be entitled to medical benefits as available to the junior most officers in the Bank.

3. By reasons of rejection of the petitioner's application for grant of maternity leave, the petitioner had demanded justice through her learned advocate's letter, which was responded to by the respondent bank by its communication dated 13th June, 2013 wherein it was, *inter alia*, contended that as per the contract of appointment the petitioner is not entitled to maternity leave. However, since, an Executive Intern is eligible for reimbursement of medical expenses as per schedule applicable to the junior most officers of the Bank, the petitioner would be eligible for reimbursement of medical expenses, on submission of relevant bills after reporting back to the Bank.
4. In the facts noted hereinabove and being aggrieved on the failure on the part of the respondent no.2 to extend maternity

benefits to the petitioner, the present writ petition has been filed.

5. Ms. Chakraborty, learned advocate representing the petitioner, submits that the contract for employment cannot have an overriding effect on Maternity Benefits Act, 1961 (hereinafter referred to as the “said Act”), which is a beneficial piece of legislation. By referring to Section 21 of the said Act, it is contended that the said Act is a Central Act and the same clearly has an overriding effect on other Acts, including the contract for employment. By referring to Section 2 of the said Act, it has been contended that the word “establishment” as appearing in Section 2 of the said Act has been interpreted by the Hon’ble Punjab and Haryana High Court and it has been held in CWP No. 13098 of 2021 that a bank is covered by the Punjab Shops and Commercial Establishments Act, 1958, which is *pari materia* with the West Bengal Shops and Establishments Act, 1963 and having regard to the same, the provisions of the said Act, squarely applies on the respondent no.2.
6. Similar view has been taken by the Hon’ble Kerala High Court in the case of W.P.(C) No.34821/2018. Reliance has also been placed in the case of ***Deepika Singh v. Central Administrative Tribunal & Ors.*** reported in **2022 SCC OnLine SC 1088**; and in the case of ***Dr. Kavita Yadav. v. The***

Secretary, Ministry of Health and Family Welfare Department & Ors., reported in **(2024) 1 SCC 421**. She has also placed reliance on a judgment delivered by the Allahabad High Court in the case of **Anshu Rani v. State of UP & Ors.**, reported in **(2019) SCC OnLine All 5170.**, and the master circular on leave as applicable to the employees of the Reserve Bank of India dated 1st July, 2011 which, *inter alia*, specifies in Clause 9.1.1 thereof that leave pay is permissible to its employees for a maximum period of 12 months during the entire period of her service. However, the limit for grant of such leave on any one occasion will be 6 months at the maximum, for confinement and pre-natal/post-prenatal treatment, and 6 weeks for miscarriage, abortion or medical termination of pregnancy. She has also drawn attention of this Court to Clause 9.3 of the aforesaid circular which provides that in case of a temporary employee, such leave is also afforded with certain conditions and variations. Denial of maternity leave amounts to discrimination. This Hon'ble Court in the facts of the case should direct the respondents to afford the petitioner with the maternity benefits which has since, been denied.

7. *Per contra*, Mr. Banerjee, learned advocate, by drawing attention of this Court to the contract for employment dated 13th June, 2011 as applicable in the case of the petitioner submits that the same is limited to grant of medical benefits only. There is no

provision for grant of maternity benefit. It is submitted that the petitioner had accepted the said terms by acknowledging on a copy thereof, she cannot be permitted to deviate therefrom at a later stage. It is still further submitted that the code of conduct and discipline applies to an employee on limited period contract. The said code of conduct also does not provide for any maternity leave, nor does the same make the provisions of the Master Circular dated 1st July, 2011 applicable to the contractual employees. As such the claim of the petitioner cannot be sustained.

8. Mr. Banerjee further submits that the petitioner in her petition has based her claim on the basis of the Master Circular of RBI as well as RBI (Staff) Regulations which are not applicable to her. Although, the said Act provides for alternative remedy in the form of an appeal under Section 12(2)(b) and Section 17 thereof, the petitioner without availing such alternatively efficacious remedy has approached this Court in exercise of its extraordinary writ jurisdiction. It is well settled that where alternative remedy is available, this Court ought not to exercise jurisdiction. In this context, he has placed reliance on the judgment delivered by the Hon'ble Supreme Court in the case of ***Assistant Commissioner (CT) LTu Kakinda & Ors. v. Glaxo Smith Kline Consumer Health Care Limited***, reported in **AIR 2020 SC 2819**. Independent of the aforesaid, it is submitted

that the said Act cannot be made applicable to the petitioner. By referring to the term “establishment” as appearing in Section 2 of the said Act, it is submitted that Section 3(e) of the said Act, defines ‘establishment’. In this case the provisions of the said Act have not been declared under Section 1 or Section 2 to be applicable on the Reserve Bank of India. There is no approval given or granted by the State Government or the Central Government by any notification, as such the provisions of the said Act, cannot be made applicable insofar as the respondent no.2 is concerned.

9. By referring to the provisions of the West Bengal Shops and Establishments Act, 1963 (hereinafter referred to as the “Act of 1963”), it is submitted that the same is not applicable to the Reserve Bank of India. The State Government has not issued any notification regarding applicability of the said Act of 1963, nor has the Reserve Bank of India adopted the same. The Reserve Bank of India is not an establishment within the meaning of an ‘*establishment*’ as defined in Section 2(5) of the said Act of 1963. The Reserve Bank of India has been constituted under a Central Act to regulate issue of bank notes and keeping of reserves with a view to securing monetary stability in India. By distinguishing the judgment relied on by the petitioner, he submits that the judgment delivered by the Hon’ble Supreme Court in the case of ***Municipal Corporation***

of Delhi (supra) is not applicable since, the said matter has been decided in relation to an industry where the issue of discrimination was involved. By referring to the judgment delivered in the case of **Deepika Singh (supra)**, it is submitted that the said judgment is also distinguishable as facts of the case is entirely different. Similarly, the case of **Punjab National Bank (supra)** concerns Central Civil Service Rules, 1972 and is also otherwise distinguishable. The same applies to Bank of Punjab. In the facts noted above, he submits that this Court should dismiss the writ petition and no relief can be afforded to the petitioner by invoking the provisions of the said Act as the same is not applicable to the female employees of the Reserve Bank of India.

10. Heard the learned advocates appearing for the respective parties and considered the materials on record.
11. The admitted facts are that the petitioner was employed on contractual basis as an Executive Intern with the respondent no.2 for a period of 3 years. The contract of employment of the petitioner has been disclosed in the affidavit-in-opposition affirmed by the respondent no.2. It would appear from the above that the said contract, *inter alia*, provides for grant of certain medical benefits including leave. To more fully appreciate the above, the relevant term of the contract is extracted hereinbelow:

“c) Medical Benefits: *You will be eligible for all medical benefits as available to the junior most officers in the Bank, i.e. medical benefits on declaration basis towards private treatment and settlement of the bills towards medical treatment/hospitalization of self and dependents as per schedules.*

ii. Leave: *You will be entitled to leave at the rate of 15 days per calendar year (leave to be calculated on pro rata basis for any fractional period). Any absence beyond the above period will be treated as leave without compensation.”*

12. The petitioner admittedly, had applied for maternity leave vide her application dated 20th November, 2012 with effect from 3rd December, 2012 as her expected due date was sometimes in the first part of January, 2013. There is no challenge on the factual aspects, regarding the factum of the petitioner conceiving. The respondent bank did not immediately respond to the petitioner’s application. It took them more than 5 and a half months to decide on the aforesaid application and ultimately, by a communication in writing dated 14th March, 2013 had rejected the claim of maternity leave on the grounds recorded therein.

13. The legal issue that has come up for consideration in the present case is whether the petitioner has a legal right to seek maternity leave, which is otherwise recognised through a beneficial piece of legislation in the form of the said Act. As it

would appear from the statement and objects of the said Act, the Central Government while recognising the need to reduce the disparities in making available the benefits of maternity protection to the employees which are otherwise made available by the respective State Acts, had promulgated the same. The intent to promulgate the said Act was to achieve the object of doing social justice to women workers. In this context, I must, however, note that a plain reading of the said Act would demonstrate that in the first instance it is applicable to every establishment being a factory, mine or plantation including such establishments belonging to Government or such establishments wherein persons are employed for the exhibition of equestrian, acrobatic and other performance and to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months. It may be noted that an establishment has been defined in Section 3(e) of the said Act. To morefully appreciate the same the provisions of Section 2 and Section 3(e) of the said Act are extracted hereinbelow:

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

(a) to every establishment being a factory, mine or plantation including any such establishment belonging

to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;

(b) to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months:]

Provided that the State Government may, with the approval of the Central Government, after giving not less than two months' notice of its intention of so doing, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply also to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

(2) [Save as otherwise provided in [sections 5A and 5B], nothing contained in this Act] shall apply to any factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), apply for the time being.

3(e) “establishment” means —

(i) a factory;

(ii) a mine;

(iii) a plantation;

*(iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances; 3 *** 4*

[(iva) a shop or establishment; or]

(v) an establishment to which the provisions of this Act have been declared under sub-section (1) of section 2 to be applicable;]”

14. It may be noted that the said Act of 1963 defines both ‘commercial establishment’ as also an ‘establishment’. To morefully appreciate the aforesaid definitions in the said Act of 1963, the same is extracted hereinbelow:

“2.(2) “commercial establishment” means an advertising, commission, forwarding or commercial agency, or a clerical department of a factory or any industrial or commercial undertaking, an insurance company, joint stock company, bank, broker’s office or exchange, and establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession, and includes an establishment or any legal practitioner, medical practitioner, architect, engineer, accountant, tax consultant or any other technical or professional consultant, a society registered under any enactment in force for the time being, charitable or other trust, whether registered or not, which carries on, whether for purposes of gain or not, any business, trade or profession or any work in connection with, or incidental or ancillary to any business, trade or profession and such other class or classes of concerns or undertakings as the State Government may, after taking into consideration the nature of their work, by notification, declare to be commercial establishments for the purposes of this Act, but does not include a shop or an establishment for public entertainment or amusement;

(5) “establishment” means a commercial establishment or an establishment for public entertainment or amusement;”

15. Although, Mr. Banerjee, learned advocate by placing reliance on the Reserve Bank of India Act, has submitted that the functions of the respondent no.2 are limited to regulate the issue of bank notes and keeping of reserves with a view to securing monetary stability in India, I, however, notice that under section 3 and 7 of the Reserve Bank of India Act, 1934, the respondent no 2 has been established/conferred with the power of carrying out business of banking and with powers of superintendence including discharge all such functions and exercise all such powers as exercised by the bank. To morefully appreciate the same, section 3 and 7 of the Reserve Bank of India Act, 1934 are extracted herein below:-

“3. Establishment and incorporation of Reserve Bank.

(1) A bank to be called the Reserve Bank of India shall be constituted for the purposes of taking over the management of the currency from the [Central Government] and of carrying on the business of banking in accordance with the provisions of this Act.

(2) The Bank shall be a body corporate by the name of the Reserve Bank of India, having perpetual succession and a common seal, and shall by the said name sue and be sued.

[7. Management.

(1) The Central Government may from time to time give such directions to the Bank as it may, after

consultation with the Governor of the Bank, consider necessary in the public interest.

(2) Subject to any such directions, the general superintendence and direction of the affairs and business of the Bank shall be entrusted to a Central Board of Directors which may exercise all powers and do all acts and things which may be exercised or done by the Bank.

[(3) Save as otherwise provided in regulations made by the Central Board, the Governor and in his absence the Deputy Governor nominated by him in this behalf, shall also have powers of general superintendence and direction of the affairs and the business of the Bank, and may exercise all powers and do all acts and things which may be exercised or done by the Bank.]”

16. I may further note that the said Act does not make any discrimination insofar as the State or Central Act, and on the contrary, Section 2(b) of the said Act provides that the said Act shall apply to any shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.

17. Having regard to the aforesaid, I find it is difficult to accept that the respondent no 2., does not come within the meaning of a commercial establishment as defined in the said Act of 1963, or is not an establishment within the meaning of section 2(5) of the

said Act of 1963. The respondent no.2 thus, cannot escape from the applicability of the provisions of the said Act.

18. The Hon'ble Supreme Court in the case of **Deepika Singh** (*supra*) by taking note of the objects of the said Act in paragraph 12 and 25 has been pleased to observe as follows:

“12. The contention of the respondents is that having taken the benefit of child care leave in respect of the two children born to the spouse of the appellant from his first marriage, the appellant was not entitled to maternity leave in respect of the birth of her own biological child. The appellant was, in the submission of the respondents, disentitled to maternity leave on the ground that she had two surviving children, in terms of Rule 43 of the Rules of 1972.

25. Unless a purposive interpretation were to be adopted in the present case, the object and intent of the grant of maternity leave would simply be defeated. The grant of maternity leave under Rules of 1972 is intended to facilitate the continuance of women in the workplace. It is a harsh reality that but for such provisions, many women would be compelled by social circumstances to give up work on the birth of a child, if they are not granted leave and other facilitative measures. No employer can perceive child birth as detracting from the purpose of employment. Child birth has to be construed in the context of employment as a natural incident of life and hence, the provisions for maternity leave must be construed in that perspective.”

19. Similarly, in the case of **Dr. Kavita Yadav** (*supra*) what fell for consideration was whether Maternity Benefit Act would be applicable to a lady employee appointed on contract for the period for which she claims such benefits when such period overshoots her contract period. The Hon'ble Supreme Court while discussing several issues including the case of **Municipal Corporation of Delhi** (*supra*) had categorically concluded while interpreting the legislative intent that the entitlement to maternity benefit which accrues on the conditions specified in Section 5(2) of the said Act can travel beyond the term of employment and is not co-terminus with the employment tenure.
20. In the case of **Bank of India** (*supra*), Punjab and Haryana High Court while considering an identical situation and while taking note of Article 14, 15 and 39 of the Constitution of India had observed that the object of the said Act is to ensure that the woman employee at the time of advanced pregnancy is not compelled to work, as it would be detrimental to her health and also to the health of the foetus.
21. Having regard to the aforesaid and also taking note of the observation made in the case of **Deepika Singh** (*supra*) in paragraph 25 thereof, applying purposive interpretation, I have no doubt in my mind that the contractual terms do not limit the right of the petitioner to be entitled to the benefits of the said

Act. There is nothing in the terms of employment which interfered with the rights of the petitioner to be entitled to the benefits of the provisions of the said Act.

22. Independent of the above it may also be noted that the respondent no.2 is ordinarily providing maternity benefits to its employees as per its Master Circular. Having regard to the aforesaid, non-extension of such benefits to the petitioner, in my view, constitutes discriminatory act as the same seeks to create a class within a class which is not permissible and the same is violative of Article 14 of the Constitution of India. On the question of a woman's right to child birth and maternity leave no differentiation is permissible between regular and contractual employees of the respondent no.2. Denial of grant of maternity leave to the petitioner constitutes a discriminatory act and is an offence within the meaning of the said Act. As per 5(1) of the said Act, every woman would be entitled to, and her employer shall be liable for, the payment of maternity benefits. If the respondent no. 2 is permitted to deny the petitioner the basic right of the maternity benefit and only leave is extended without compensation, the same would tantamount to compel an employee to work during her advanced pregnancy, notwithstanding the same may ultimately endanger both her and her foetus. If the same is permitted, the object of social justice would stand deviated. Further, the same would be

detrimental to the future of our country, a healthy mother and a healthy new born child not only ensures to the growth and development of the child but to the nation as well, as the child of today would be the force behind tomorrow's development. Depriving such benefits to the mother and the foetus/child would tantamount to depriving the nation of its future.

23. The only other point raised by the respondent bank is founded on the remedy available under Section 17 of the said Act. In this case the respondent bank has itself objected to the applicability of the said Act, as such the aforesaid argument appears to be made in desperation. In my view, the aforesaid cannot stand in the way of the entitlement of the petitioner to seek enforcement of her legal right. I may further note that that the writ petition has been filed, *inter alia*, alleging discrimination. This apart, alternative remedy is not an absolute bar for grant of relief by exercising powers of extraordinary writ jurisdiction.

24. In view of the above, since, the respondent no.2 had acted illegally in denying maternity benefits to the petitioner, the respondent nos.2 and 3 should be and are accordingly directed to afford compensation in form of leave with pay to the petitioner, for the period for which the same was denied. The writ petition to the aforesaid extent succeeds.

25. The connected application being CAN 4 of 2020 (Old CAN 982 of 2020), which is an application for early hearing having become infructuous stands disposed of without any order.
26. There shall be no order as to costs.
27. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Raja Basu Chowdhury, J.)