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This edition of the JSA Employment Monthly Newsletter discuss essential aspects of the Maternity Benefit Act, 1961 (as amended by the Maternity Benefit (Amendment) Act, 2017) (**MB Act**) and also discusses some of the recent interesting judicial precedents spread across several employment legislations.

The Maternity Benefit Act, 1961

A primer on the MB Act

- **The MB Act:** Legislation to regulate the employment of women for a certain period before and after child-birth and includes payment of medical bonuses and additional leaves.
- **Applies to:** Every establishment (including a factory, mine or plantation) and to every shop or establishment employing 10 or more persons in the preceding 12 months.
- **Entitlement:** Maximum period that a woman employee is entitled to maternity benefit is 26 weeks, of which not more than 8 weeks can precede the date of delivery.
- **Other aspects introduced through 2017 amendment:**
  - A woman who legally adopts a child below the age of 3 months, or a commission mother, both entitled to maternity benefit for 12 weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case maybe.
  - Every establishment having 50 or more employees to provide facility of creche within the prescribed distance, either separately or along with common facilities.
  - Every establishment to intimate in writing and electronically to every woman at the time of initial appointment regarding every benefit available under the MB Act.

Essential observations under the MB Act

- **What maternity benefits an establishment is liable to provide to a woman employee if she has not completed the minimum duration of 80 days service?**

  The MB Act provides a woman employee with the right to claim maternity benefits (including leaves, wages, option to work from home, etc.) from her employer, in whose establishment she has worked for a period of not less than 80 days in the 12 months immediately preceding the date of her expected delivery (**Eligibility Criteria**). In other words, satisfaction of the Eligibility Criteria is a pre-requisite to claim maternity benefits under the MB Act. This position has been upheld by several judicial precedents as well. Indian courts have deliberated that the Eligibility Criteria is essential to availing maternity benefits under the MB Act.

- **Can contractual workers claim maternity benefits under the MB Act?**

  In the case of *Dr. Mandeep Kaur v Union of India 2020 [C. W. P. no. 1400 of 2018, Himachal Pradesh HC]*, the petitioner, a medical officer employed on a contractual basis at an Ex-Servicemen Contributory Health Scheme clinic applied for maternity leave along with other consequential benefits including continuity in service, under the MB Act. This was

rejected by the respondent on grounds that her contract of employment did not contain any clause under which maternity benefits could be claimed.

The Himachal Pradesh High Court observed that maternity benefits would apply to every establishment in which 10 or more persons are employed. On the nature of benefits that could be availed, the Court, in addition to the 26 weeks of paid maternity leave, also directed the respondent to provide the petitioner with a "work from home" option exercisable after expiry of 26 weeks leave period, with mutual consultation with the employer.

The Court, relying on the Apex Court's holding in *Municipal Corporation of Delhi v/s Female Workers and Anr, [2000 (3) (SCC) 224]* wherein the Apex Court had explicitly mandated for maternity leave to be made available to women employees whether permanent, casual, or contractual, remarked that even if the petitioner was employed on a contractual basis, denial of benefit of maternity leave would tantamount to infringement *vis-a-vis* the salutary purpose behind Article 21 in the Constitution of India.

- **Should there be an interval between availing maternity leaves?**

  In the case of *Preeti Singh v State of UP 2021 [CSS NO/ 9907 of 2021, Allahabad HC]*, the petitioner's application for maternity leave had been rejected by placing reliance on Rule 153(1) of the UP Fundamental Rules which stipulated that there must be a minimum of two years gap between the application of one maternity leave and grant of the second maternity leave. The Allahabad High Court upheld the ruling in *Smt. Richa Shukla v State of U.P, 2019, [Writ Petition No. 32394 (SS) of 2019]* and noted that the MB Act does not place a time bar on when such leave can be sought, as long as the women had worked at the establishment for a period of 80 days within 12 months of making the application.

- **Can a woman employee claim maternity benefit, if child-birth occurred prior to joining service?**

  In the case of *Smt. Neeraj v. State of Rajasthan 2020 [CW-4384/2020, Rajasthan HC]* the petitioner had given birth a few days prior to joining service. The petitioner was sanctioned a total of 142 days' leave, out of which 90 days were considered as leave without payment. Despite completion of probation period of 2 years, the respondent had extended petitioner's probation period by 112 days. Accordingly, the petitioner contended that the respondent was not justified in deferring petitioner's confirmation for a period of 112 days.

  The Rajasthan High Court upon a combined reading of Rule 103 and 103A of the Rajasthan State Rules declared that a female government servant is entitled to avail maternity leave, if she joins within the period of confinement, i.e., 15 days prior to three months after the childbirth, regardless of the fact that the child was born prior to joining or before issuance of an appointment order. Further, it was held that the petitioner is entitled to salary for the period of such leave, in accordance with Rule 103 of the Rajasthan State Rules and her leave shall be deemed confirmed on the date of completion of two years' service from the date of her joining.

- **No distinction between a surrogate mother and a natural mother for maternity benefits.**

  In the case of *Sushma Devi v. State of Himachal Pradesh and Ors 2021 [CWP No.4509 of 2020, HP HC]*, the petitioner, appointed on a contractual basis at a government school, applied for maternity leave on surrogacy, but the same was denied due to an absence of clarification as to whether a mother can be entitled to maternity leave on surrogacy.

  The Himachal Pradesh High Court interpreted the purpose of Rule 43 of Central Civil Services (Leave) Rules, 1972 and noted that even in the case of adoption, bonding between mother and adopted child has been duly recognized by the Central Government. Additionally, the Court observed that Article 42 of the Constitution of India recognized the importance of maternity benefit and grant of child-care leave. Further, the Court opined that distinguishing between a mother who begets a child through surrogacy and a natural mother, who gives birth to a child would be an "insult to womanhood and the intention of a woman to bring up a child begotten through surrogacy". Therefore, it held that women who have begotten children through surrogacy are eligible for maternity benefits under the MB Act.

Case Law Ratios

Casual employees engaged for maintenance of guest houses covered under Employee State Insurance Act, 1948 ("ESI Act")

In the case of *Employees State Insurance Corporation by its Regional Director, Madras vs. Brakes India Limited, 2021 LLR 703 (Mad. HC)*, the Employee State Insurance Principal Court (""**ESI Court**") court held that the labour charges incurred for maintenance and repair of buildings situated outside the premises would not attract the coverage of ESI Act. The appellant appealed against the decision of the ESI Court and contended that the guest house maintained by the employer for the benefit of the officials are in the premises of the establishment. The appellant further submitted that the repair and maintenance work done in the guest house along with the casual salary of the last-graded employees at the Delhi office are to be included for purposes of assessment and fixing ESI contribution.

The Madras High Court remarked that Section 2(9) (iii) of the ESI Act defines an employee as one "*who is employed by or through an immediate employer, on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of factory or establishment*" – and opined that this section is to be construed in a wider scope with the inclusion of casual employees engaged by the principal employer for maintenance or for other works. The Madras High Court overruled the decision of the ESI Court and held that the guest house should also be considered a part of the establishment as it is utilized for the welfare of the officials and other guests attending the factory works. Therefore, guest house employees and casual laborers working in the Delhi office cannot be exempted as the same will fall within the purview of the definition of 'employee' under Section 2(9) of the ESI Act.

Accident compensation can be claimed even if workman was not working at the time

In the case of the Managing Director, Karnataka State Road Transport Corporation and another vs. Smt. Jayalakshmi and others, 2015 LLR 1068 (Karnataka High Court), the respondent's husband, a driver for a KSRTC bus, passed away on account of a heart attack, while sleeping in the bus. The respondent had previously filed a petition before the Commissioner for Workmen's Compensation claiming for compensation and had been awarded INR 3,32,580 with 12% p.a.

In the instant case, the question before the Karnataka High Court was whether dying from a heart attack while sleeping in the bus awaiting his next morning's duty could be construed as death by accident, so as to be able to claim relief. The appellants contended that there was no nexus between work and death. Factors such as stress and strain arising during the course of employment, nature of employment and injury aggravated due to stress and strain must be established. The Court observed that the case was the finest example of a direct connection between injury and employment and loss of life due to strain of ordinary work. Evidence indicated that the deceased was suffering from chest pain two weeks prior to death and heart failure, which was the cause of the death including stress and strain due to work which was caused during the course of employment. Further, the Court remarked that because the workman was forcibly engaged to work on a particular day, the same accelerated his death. As a result of this fact, the Court concluded that death occurred as a consequence of and in the course of employment.

Terminating service of a workman appointed on a temporary basis is not retrenchment

In the case of *Indian Council of Medical Research vs. Central Government Industrial Tribunal-cum-Labour Court, 2022 LLR 69 (MP HC)*, the petitioner challenged a decision of reinstatement by the Labour Court on the following grounds; that petitioner is a society registered under the Society Registration Act and is not an industry, respondent one is not a workman under provision of Industrial Disputes Act, 1947 ("**ID Act"**), the termination of respondent two does not come within the definition of retrenchment as defined under Section 2(oo) of the ID Act but governed under the exception clause, i.e., 2(oo)(bb) of the ID Act. It was also submitted that the Labour Court award directing reinstatement with full back wages was unfair as the tribunal had not properly appreciated the fact regarding gainful engagement of respondent.

In deciding on the question of retrenchment of the respondent, the Madhya Pradesh High Court noted that the tribunal-cum-court had erred in its decision. The Madhya Pradesh High Court interpreted that the order of termination does not come within the purview of retrenchment pursuant to Section 2(oo) of the ID Act but falls under the exception clause of Section 2(oo)(bb) of the ID Act especially with respect to an employee appointed purely on temporary basis. It further observed that if the nature of appointment was contractual/co-terminus, no departmental inquiry was required with respect to termination of service in terms of stipulation as long as several memos asking for explanation had been issued to the respondent.

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