
(2012) 01 MAD CK 0124

In the Madras High Court

Case No : Writ Petition No. 5715 of 2009 and M.P. No. 1 of 2009

The Management, Glem Brook Estate, 'C' Division, Puttipadi
Post, Yercaud, Salem District

APPELLANT

Vs

The Plantation Officer, Plantation Office, Yercaud, Salem
District and Uma Rani

RESPONDENT

Date of Decision : 30-01-2012

Acts Referred:

Constitution of India, 1950 — Article 42

Maternity Benefits Act, 1961 — Section 20

Citation : (2012) 4 LLJ 127

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : D. Shivakumaran, for the Appellant;

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner is the management of a Tea Estate at Yercaud. In this writ petition, they have come forward to challenge an

order passed by the first respondent Inspector of Plantations, Yercaud (wrongly described as Plantation Officer), dated 31.5.2007 in directing the

management to pay Rs. 2923/-towards payment of maternity benefits and medical bonus. The writ petition was admitted on 6.4.2009. Pending the

writ petition, while ordering notice in the stay application returnable by three weeks, an interim stay was granted till then. Subsequently, there is

nothing on record to show that the stay order has been extended. Even though the second respondent has been served, she has not chosen to

appear either in person or through counsel. The fact that the second respondent is employed in the estate was not denied. Further, the fact that she

had delivered a child on 22.7.2005 and subsequently claimed maternity benefit

supported by the Doctor's certificate is also not denied.

2. When the second respondent made a complaint about the non payment, the first respondent took up the complaint and issued a notice to the petitioner estate in Na.Ka. No. 735/2005. The petitioner estate filed a counter statement stating that the provisions of the Plantations Labour Act as well as the Maternity Benefits Act will not apply. They had never employed 10 or more workers. In view of the non application of the Plantations Labour Act, the provisions of the Maternity Benefits Act also will not apply. Initially, the first respondent by an order dated 30.5.2007 had dismissed the application stating that the provisions of the MB Act, 1961 will not apply. But, however subsequently he had issued a revised order on 31.5.2007 stating that the provisions of the MB Act will apply to the management. In view of the fact that originally the estate was divided as different divisions, i.e., "B" division and "C" division, etc., but when minimum wages was made in MW case No. 183 of 2004, the minimum wages authority u/s 20 had granted minimum wages against the management. The said claim was made by more than 10 workers and the amount has also been paid by the estate management. Therefore, it had refused to believe that they had only less than 10 workers and the provisions of the Act will not apply. Thus it had rejected the stand of the management and directed computation of the amount in favour of the second respondent.

3. The petitioner raised two contentions, i.e., that the authority was wrong in revising his own order. Secondly, the management were employing only 6 workers. Therefore, the provisions of the Act will not apply.

4. However, this court is not inclined to accept the stand of the management. Considering that the amount awarded was less than Rs. 3000/-and it was paid towards the maternity benefit of their own worker, this court is not inclined to interfere with the findings recorded by the authority. Even though the first respondent ought not to have revised its order on finding material defect without notice, yet if it is found on the basis of the available records that the petitioner estate is covered by the MB Act, the question of interfering with the same will not arise.

5. Special care and assistance for motherhood is one of the basic human rights contained in the Universal Declaration of Human Rights. Provisions

for maternity protection is one of the programmes which is being furthered by the ILO on a worldwide basis. In pursuance of this objection the

ILO has adopted two Conventions No. 3 and 103 and a recommendation No. 95 concerning Maternity Protection. Of these, Convention No. 3

was adopted in the very first of its constitutions. India subscribes to the principles contained in these instruments though it might not have ratified the

conventions. It is one of the directive principles of State policy contained in the Constitution of India that the State should make provision for

maternity relief.

6. Article 42 of the Constitution reads as follows:

42. Provision for just and humane conditions of work and maternity relief--The State shall make provision for securing just and humane conditions

of work and for maternity relief.

7. The Supreme Court vide its judgment in B. Shah Vs. Presiding Officer, Labour Court, Coimbatore and Others, dealt with the interpretation of

the maternity benefit available to the daily wage workers and set the tone for interpreting the provisions of the Maternity Benefit Act, 1961 [for

short, "M.B. Act"]. The following passage found in paragraph 18 of the said judgment may be usefully extracted below:

Para 18:.... It has also to be borne in mind in this connection that in interpreting provisions of beneficial pieces of legislation like the one in hand

which is intended to achieve the object of doing social justice to women workers employed in the plantations and which squarely fall within the

purview of Article 42 of the Constitution, the beneficent rule of construction which would enable the woman worker not only to subsist but also to

make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output has

to be adopted by the Court.

8. The Supreme Court in Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) and Another, dealt with the scope of the M.B. Act.

In paragraph 12 the Supreme Court had observed as follows:

12. Since Article 42 specifically speaks of "just and humane conditions of work" and "maternity relief", the validity of an executive or administrative

action in denying maternity benefit has to be examined on the anvil of Article 42 which, though not enforceable at law, is nevertheless available for

determining the legal efficacy of the action complained of.

Since on finding of fact, the authority had found that "B" and "C" divisions are one and the same plantation and covered by the provisions of the

Plantations Labour Act and that the workers have received minimum wages notified for the plantation labours, this court is not inclined to interfere

with the impugned order. Hence the writ petition will stand dismissed. No costs. Consequently connected miscellaneous petition stands closed.