IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 04TH DAY OF FEBRUARY, 2021

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.10677/2020 (S –RES)

BETWEEN

SMT.B.S.RAJESHWARI
W/O SHIVAKUMAR N.S.,
AGED ABOUT 35 YEARS,
NO.3442, BUNT SANGHA SERVICE ROAD,
NEAR ATTIGUPPE METRO STATION,
RPC LAYOUT, BENGALURU – 560 040.

... PETITIONER

(BY SRI SUBRAMANI M.A., ADVOCATE (PHYSICAL HEARING))

AND

1. STATE OF KARNATAKA
   DEPARTMENT OF URBAN DEVELOPMENT,
   VIKASASOUDHA,
   BENGALURU – 560 001.
   REPRESENTED BY ITS
   PRINCIPAL SECREATARY.

2. DIRECTORATE OF MUNICIPAL
   ADMINISTRATION
   9TH FLOOR, VISHVESHWARAIAH TOWER,
   DR. AMBEDKAR VEEDHI,

BENGALURU – 560 001.
REPRESENTED BY ITS DIRECTOR.

... RESPONDENTS

(BY SMT.M.C.NAGASHREE, AGA (PHYSICAL HEARING))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 29.08.2019 ANNEXURE – A PASSED BY THE R-2; DIRECT THE RESPONDENTS TO REINSTATE THE PETITIONER TO SERVICES IN THE POST OF MIS EXPERT IN THE TECHNICAL DEPARTMENT UNDER THE NAGAROTHANA (MUNICIPALITY) - 3RD STAGE SCHEME ON CONTRACT BASIS AND ETC.,

THIS WRIT PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

"I chose motherhood ; the State chose to terminate me",

is the plea of the petitioner, lamenting that, the pendulum of her fate swung from the buoyance of hope to the fatigue of despair as she is terminated on the score that ***she opted to become a mother and had sought maternity leave****.*

2. Shorn of unnecessary details, facts material for consideration of the *lis* are as follows:

The second respondent issued a notification inviting applications for the post of Project Information Officer on contract basis. Petitioner finding herself eligible applied, selected and was appointed as Project Information Officer on contract basis for a consolidated pay of Rs.17,000/- along with the traveling allowance of Rs.2,000/- per month with effect from 27.11.2009. The contract was being renewed from time to time on an annual basis and the latest of the renewal of such contract was on 01.04.2019 to be in operation upto 31.03.2020. The petitioner is thus in service for 10 years now albeit on contract basis.

3. During the subsistence of the aforesaid period of contract, the petitioner by an application dated 11.06.2019, sought for maternity leave. On the application given by the petitioner, a notice was issued on 25.06.2019, by the second respondent directing her to report to duties forthwith, despite her application seeking maternity leave. When the petitioner did not report back to duties, despite the notice on 25.06.2019,

referring to the same, an order dated 29.08.2019 is passed terminating the service of the petitioner / canceling the contract entered into with the petitioner appointing her as a Project Information Officer / MIS Expert on the score that the petitioner remained absent. It is this order that is called in question by the petitioner.

4. Heard Sri Subramani M.A., learned counsel for petitioner, Smt. M.C.Nagashree, learned Additional Government Advocate for the respondents and perused the material on record.

5. Learned counsel appearing for the petitioner would submit that denial of maternity leave and terminating or cancellation of the employment of any employee on that ground which is the subject matter of the present writ petition is covered by the order of this Court in writ petition No.44563/2013 dated 05.09.2018, and the same is affirmed by the learned Division Bench in W.A.No.3259/2018. He would submit that the law being so clear, the second respondent could not have passed the

order of termination/cancellation of contract, contrary to law. He would vehemently contend that this Court by an order dated 21.10.2020, referring to the judgment / order of the Apex Court as well as this Court on the issue which concerns in the present writ petition, passed a detailed interim order staying the impugned notice dated 29.08.2019, till the next date of hearing and the stay order is in operation even as on date. Despite the same the second respondent has not taken the petitioner back to duties.

6. On the other hand, learned Additional Government Advocate would vehemently argue and contend in defense of the impugned notice that the petitioner was a contract employee and contract itself gave a right to the second respondent to terminate her services at any point in time and seek to justify the notice impugned.

7. I have given my anxious consideration to the submission made by the learned counsel for the parties and perused the material on record. The issue that falls for my

consideration is, ***whether the termination/cancellation of contract of the petitioner on the ground of the petitioner seeking maternity leave is justified?***

8. It is not in dispute that the petitioner has been working with the second respondent on contract basis, which is being renewed from time to time and the present contract in subsistence was in operation between 01.04.2019 and 30.03.2020. It is during the subsistence of this contract, the petitioner applied for leave on health grounds, though maternity was not the reason mentioned therein, it was ostensibly for the said reason, the said application reads as follows:

ದಿನಾಂಕ:03–06–2019

"ನಿವೇದನೆ

ನನಗೆ ಆರೋಗ್ಯ ಸರಿಯಿಲ್ಲದ ಕಾರಣ ದಿನಾಂಕ 29–05–2019 ರಿಂದ ಕಛೇರಿಗೆ ಹಾಜರಾಗಿರುವುದಿಲ್ಲ. ಈ ರಜೆಯ ಬಗ್ಗೆ ದೂರವಾಣಿ ಮುಖಾಂತರ ಮುಖ್ಯ ಅಭಿಯಂತರರು ರವರಿಂದ ಅನುಮತಿ ಪಡಿದಿರುತ್ತೇನೆ.

ವೈದ್ಯರು ದಿನಾಂಕ 29–05–2019 ರಿಂದ 10 ದಿನಗಳು ಬೆಡ್‌ರೆಸ್ಟ್ ಮಾಡಲು ಸೂಚಿಸಿರುತ್ತಾರೆ (ಪತ್ರ ಲಗತ್ತಿಸಿದೆ). ಆದ್ದರಿಂದ ದಯಮಾಡಿ ದಿನಾಂಕ 29–05–2019 ರಿಂದ 07–06–2019 ರವರೆಗೆ ರಜೆಯನ್ನು ಮಂಜೂರು ಮಾಡಲು ವಿನಂತಿಸುತ್ತೇನೆ.

(ರಾಜೇಶ್ವರಿ.ಬಿ.ಎಸ್)
ಎಂ.ಐ.ಎಸ್.ಎಕ್ಸ್‌ಪರ್ಟ್,
ತಾಂತ್ರಿಕ ಶಾಖೆ
ಅಧೀಕ್ಷಕ
ಅಭಿಯಂತರರು."

After which, when it became impossible for the petitioner to attend duties, again applied for maternity leave, the said application dated 11.06.2019, seeking maternity leave reads as follows:

ಗೆ,
ಮುಖ್ಯ ಅಭಿಯಂತರರು, *ದಿನಾಂಕ: 11–06–2019*
ಪೌರಾಡಳಿತ ನಿರ್ದೇಶನಾಲಯ,

ಬಿ.ಎಸ್.ರಾಜೇಶ್ವರಿ
ಬೆಂಗಳೂರು.

ಮಾನ್ಯರೆ,

ವಿಷಯ: ಹೆರಿಗೆ ರಜೆಯನ್ನು ಮಂಜೂರು ಮಾಡಿಕೊಡುವ ಬಗ್ಗೆ ಕೋರಿ ಮನವಿ.
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ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಶ್ರೀಮತಿ ಬಿ.ಎಸ್.ರಾಜೇಶ್ವರಿ ಆದ ನಾನು ತಮ್ಮ ಇಲಾಖೆಯಲ್ಲಿ ಗುತ್ತಿಗೆ ಆಧಾರದ ಮೇರೆಗೆ ನೇಮಕಗೊಂಡಿದ್ದು ಎಂ.ಐ.ಎಸ್. ಎಕ್ಸಪರ್ಟ್ ನಗರೋತ್ಥಾನ ಕೋಶದಲ್ಲಿ ಕಾರ್ಯನಿರ್ವಹಿಸಿದ್ದು, ***ಈಗ ನನಗೆ 8 ತಿಂಗಳು ನಡೆಯುತ್ತಿರುವುದರಿಂದ ವೈದ್ಯರ ಸಲಹೆ ಮೇರೆಗೆ ಪೂರ್ಣ ವಿಶ್ರಾಂತಿ ಪಡೆಯಲು ಸೂಚಿಸಿರುವುದರಿಂದ ನನಗೆ ಮುಂಗಡವಾಗಿ ಪ್ರಸೂತಿ (ಹೆರಿಗೆ) ರಜೆ ಬೇಕಾಗಿದೆ. ಆದ್ದರಿಂದ ದಯಮಾಡಿ ನನಗೆ ಹೆರಿಗೆ ರಜೆಯನ್ನು ಮಂಜೂರು ಮಾಡಿಕೊಡಬೇಕೆಂದು ಈ ಮೂಲಕ ತಮ್ಮಲ್ಲಿ ಪ್ರಾರ್ಥಿಸಿಕೊಳ್ಳುತ್ತೇನೆ.***

ವೈದ್ಯರ ಪತ್ರವನ್ನು ಈ ಮನವಿಯೊಂದಿಗೆ ಲಗತ್ತಿಸಿ ತಮ್ಮ ಅವಗಾಹನೆಗೆ ಕಳುಹಿಸುತ್ತಿದ್ದೇನೆ.

ವಂದನೆಗಳೊಂದಿಗೆ,

ತಮ್ಮ ವಿಧೇಯಳು,

(ಬಿ.ಎಸ್.ರಾಜೇಶ್ವರಿ)

(emphasis added)

The said application for leave was replied to by the second respondent on 25.06.2019, by issuing a notice which reads as follows:

"ಸಂಖ್ಯೆ:20256 DMA 31 TNAGT 2017-18 ದಿನಾಂಕ:25–06–2019

:ನೋಟೀಸ್:

ವಿಷಯ: ಕಛೇರಿ ಕರ್ತವ್ಯಕ್ಕೆ ಗೈರು ಹಾಜರಾಗಿರುವ ಬಗ್ಗೆ

ಉಲ್ಲೇಖ:ನಿಮ್ಮ ರಜೆ ಅರ್ಜಿ ದಿನಾಂಕ:03–06–2019 ಹಾಗೂ 11–06–2019.

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ಪೌರಾಡಳಿತ ನಿರ್ದೇಶನಾಲಯದ ತಾಂತ್ರಿಕ ಶಾಖೆಯಲ್ಲಿ ಗುತ್ತಿಗೆ ನೌಕರರಾಗಿ ಎಂಐಎಸ್ ಎಕ್ಸ್‌ಪರ್ಟ್ ಹುದ್ದೆಯಲ್ಲಿ ಗುತ್ತಿಗೆ ಕರಾರಿನ ಒಪ್ಪಂದದ ಷರತ್ತಿಗೊಳಪಟ್ಟು ಕರ್ತವ್ಯ ನಿರ್ವಹಿಸುತ್ತಿರುವ ಶ್ರೀಮತಿ ಬಿ.ಎಸ್.ರಾಜೇಶ್ವರಿ ರವರಾದ ***ನೀವು ಪೌರಾಡಳಿತ ನಿರ್ದೇಶನಾಲಯಕ್ಕೆ ಉಲ್ಲೇಖಿತ ಪತ್ರದಲ್ಲಿ 2 ತಿಂಗಳ ಮುಂಗಡ ಹೆರಿಗೆ ರಜೆಯನ್ನು ಕೋರಿ ಸಲ್ಲಿಸಿರುವ ಅರ್ಜಿಯನ್ನು ಪರಿಶೀಲಿಸಲಾಯಿತು. ಗುತ್ತಿಗೆ ನೌಕರರಾದ ನಿಮ್ಮೊಂದಿಗೆ ದಿನಾಂಕ:03–04–2019 ರಂದು ಮಾಡಿಕೊಂಡಿರುವ ಒಪ್ಪಂದದ ಪ್ರಕಾರ ತಿಂಗಳಿಗೆ ಒಂದು ದಿನದ ರಜೆ ಸೌಲಭ್ಯ ಪಡೆದುಕೊಳ್ಳಲು ಅವಕಾಶವಿರುತ್ತದೆ. ಉಳಿದಂತೆ ಇತರೆ ಯಾವುದೇ ರೀತಿಯ ರಜಾ ಸೌಲಭ್ಯವನ್ನು ಪಡಯಲು ಗುತ್ತಿಗೆ ಕರಾರಿನನ್ವಯ ಅವಕಾಶವಿರುವುದಲ್ಲ. ಅಲ್ಲದೇ ಪ್ರಸ್ತುತ ತಾಂತ್ರಿಕ ಶಾಖೆಯಲ್ಲಿ ಎಂಐಎಸ್ ಎಕ್ಸ್ಪರ್ಟ್ ಹುದ್ದೆಯಲ್ಲಿ ಬಹಳಷ್ಟು ಕೆಲಸಗಳನ್ನು ನಿರ್ವಹಿಸಬೇಕಾಗಿದ್ದು, ನಿಮ್ಮ ಗೈರು ಹಾಜರಾತಿಯಿಂದಾಗಿ ಕಛೇರಿ ಕೆಲಸಕ್ಕೆ ತೊಂದರೆ ಉಂಟಾಗಿದೆ. ಆದಕಾರಣ ಶ್ರೀಮತಿ ಬಿ.ಎಸ್.ರಾಜೇಶ್ವರಿರವರಾದ ನೀವು ದಿನಾಂಕ:03–04–2019 ರಂದು ಮಾಡಿಕೊಂಡಿರುವ ಕರಾರು ಒಪ್ಪಂದದಂತೆ ಎಂಐಎಸ್***

ಎಕ್ಸ್‌ಪರ್ಟ್ ಹುದ್ದೆಯಲ್ಲಿ ಮುಂದುವರೆಯಲು ಇಚ್ಛಿಸಿದಲ್ಲಿ ಈ ನೋಟೀಸ್ ಸ್ವೀಕರಿಸಿದ 3 ದಿನಗಳೊಳಗಾಗಿ ಕಛೇರಿ ಕೆಲಸಕ್ಕೆ ಹಾಜರಾಗತಕ್ಕದ್ದು. ನಿಗಧಿತ ಅವಧಿಯೊಳಗೆ ತಾವು ಹಾಜರಾಗದಿದ್ದಲ್ಲಿ ನಿಮಗೆ ಎಂಐಎಸ್ ಎಕ್ಸಪರ್ಟ್ ಹುದ್ದೆಯಲ್ಲಿ ಮುಂದುವರೆಯಲು ಇಚ್ಛೆಯಿರುವುದಿಲ್ಲವೆಂದು ಪರಿಗಣಿಸಿ ನಿಯಮಾನುಸಾರ ಮುಂದಿನ ಕ್ರಮ ಜರುಗಿಸಲಾಗುವುದು."

(emphasis added)

The reply of the second respondent is appalling and insensitive to the issue, the second respondent notwithstanding the condition of the petitioner intimidates the petitioner that if she does not report back to duties within three days, it would be construed that she is not willing to continue with the post and action would be taken.

To this, the petitioner submitted a reply on 10.07.2019, which reads as follows:

"ಗೆ, *ದಿನಾಂಕ:10–07–2019*

ನಿರ್ದೇಶಕರು,
ಪೌರಾಡಳಿತ ನಿರ್ದೇಶನಾಲಯ,
ಬೆಂಗಳೂರು.

ಮಾನ್ಯರೆ,

ವಿಷಯ: ದಿನಾಂಕ: 26–06–2019 ರಂದು ನೀಡಿರುವ ನೋಟೀಸ್‌ಗೆ ಸವಜಾಯಿಷಿ ಸಲ್ಲಿಸುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ: 1) ಈ ಕಛೇರಿ ಪತ್ರ ಸಂಖ್ಯೆ:20256 ಡಿ.ಎಂ.ಎ3ಟಿಎನೆಜಿಟಿ, ದಿ:28–6–2019.

2) ನನ್ನ ರಜೆ ಅರ್ಜಿಯ ದಿನಾಂಕ: 03–06–2019 ಹಾಗೂ 11–6–2019.

3) ವೈದ್ಯಕೀಯ ಪ್ರಮಾಣಪತ್ರ ದಿನಾಂಕ:11–6–2019.

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ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಬಿ.ಎಸ್.ಗಾಚೇಶ್ವರಿ ಆದ ನಾನು ಪೌರಾಡಳಿತ ನಿರ್ದೇಶನಾಲಯದಲ್ಲಿ ಗುತ್ತಿಗೆ ಆಧಾರದ ಮೇಲೆ ಎಂ.ಐ.ಎಸ್.ಎಕ್ಸ್‌ಪರ್ಟ್ (ನಗರೋತ್ಥಾನ ಕೋಶ) ಹುದ್ದೆಯಲ್ಲಿ ಕಾರ್ಯನಿರ್ವಹಿಸುತ್ತಿರುತ್ತೇನೆ. ದಿನಾಂಕ 03–04–2019 ರ ಒಪ್ಪಂದದ ಮೇರೆಗೆ ನನ್ನ ಸೇವೆಯನ್ನು ಒಂದು ವರ್ಷದ ಅವಧಿಗೆ ಮುಂದುವರೆಸಲಾಗಿರುತ್ತದೆ. ನಾನು ಕಛೇರಿಗೆ ಅನಿರೀಕ್ಷಿತವಾಗಿ ಬಂದಾಗ ದಿನಾಂಕ 06–07–2019ರಂದು ಖುದ್ದಾಗಿ ನೋಟೀಸ್ ಸ್ವೀಕರಿಸಿರುತ್ತೇನೆ.

ಈಗ ಪಾಲಿ ನಾನು 8 ತಿಂಗಳ ಗರ್ಭಿಣಿಯಾಗಿದ್ದು, ಉಲ್ಲೇಖ(3)ರ ವೈದ್ಯಕೀಯ ಪ್ರಮಾಣಪತ್ರದಲ್ಲಿ ವೈದ್ಯರು, ಹುಟ್ಟುವ ಮಗುವಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಯಾವುದೇ ಅಹಿತಕರ ಘಟನೆಗಳು ನಡೆಯದಂತೆ, ಪೂರ್ಣ ವಿಶ್ರಾಂತಿ ಪಡೆಯಲು ಸೂಚಿಸಿರುವುದರಿಂದ, ವೈದ್ಯರ ಸಲಹೆ ಮೇರೆಗೆ ರಜೆಯನ್ನು ಕೋರಿರುತ್ತೇನೆ. Elderly prime at 30-31 weeks POG with threatened pre term labour is advised complete bed rest till delivery. *ಈ ಪರಿಸ್ಥಿತಿಯಲ್ಲಿ ಕಛೇರಿಗೆ ಕರ್ತವ್ಯಕ್ಕೆ ಹಜರಾಗಲು ಸಾಧ್ಯವಾಗದೆ ಇರುವ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಉಲ್ಲೇಖ (2) ರ ಪತ್ರದಲ್ಲಿ ಮುಂಗಡ ರಜೆಯನ್ನು ನೀಡಲು ಕೋರಿ ಮನವಿ ಸಲ್ಲಿಸಿರುತ್ತೇನೆ. ಆದ್ದರಿಂದ ಮಾನವೀಯ ದೃಷ್ಟಿಯಿಂದ ನನಗೆ ರಜೆಯನ್ನು ಮಂಜೂರು ಮಾಡಲು ಮತ್ತೊಮ್ಮೆ ಕೋರುತ್ತೇನೆ.*

ಹೆರಿಗೆ ಆದ ನಂತರ ಹೆರಿಗೆ ರಜೆ ಮುಗಿಸಿಕೊಂಡು ಪುನ: ನಾನು ಕರ್ತವ್ಯಕ್ಕೆ ಹಾಜರಾಗುತ್ತೇನೆ ಎಂದು ಈ ಮೂಲಕ ವಿನಂತಿಸಿಕೊಳ್ಳುತ್ತೇನೆ.

ವಂದನೆಗಳೊಂದಿಗೆ,

ಇಂತಿ ವಿಧೇಯಳು,

(ರಾಜೇಶ್ವರಿ.ಬಿ.ಎಸ್)"

(emphasis added)

With the aforesaid reply, the petitioner also enclosed the medical certificates with regard to her problem.

9. After her delivery, the petitioner represented to the second respondent to permit her to rejoin duties, the relevant portion of the representation reads as follows:

"ರವರಿಗೆ, *ದಿನಾಂಕ:05–08–2020*

ನಿರ್ದೇಶಕರು,
ಪೌರಾಡಳಿತ ನಿರ್ದೇಶನಾಲಯ,
ಬೆಂಗಳೂರು.

ಯಿಂದ,
ಶ್ರೀಮತಿ ರಾಜೇಶ್ವರಿ ಬಿಎಸ್ w/o
ಶಿವಕುಮಾರ್ ಎನ್.ಎಸ್
#3442 ಬಂಟರ ಸಂಘ ಸರ್ವಿಸ್ ರೋಡ್,
ಅತ್ತಿಗುಪ್ಪೆ ಮೆಟ್ರೋ ಸ್ಟೇಷನ್ ಹತ್ತಿರ
ಆರ್.ಪಿ.ಸಿ ಲೇಔಟ್,
ಬೆಂಗಳೂರು – 40.

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಮಹಿಳಾ ನೌಕರರಿಗೆ (ಗುತ್ತಿಗೆ) ಸರ್ಕಾರದ ಕಾಯ್ದೆಯನ್ವಯ ಹಕ್ಕಿನಲ್ಲಿದ್ದ ಪ್ರಸೂತಿ ರಜೆಯನ್ನು ಹಾಗೂ ಗುತ್ತಿಗೆ ಆಧಾರಿತ ಎಮ್.ಐ.ಎಸ್ ಎಕ್ಸ್‌ಪರ್ಟ್ ಹುದ್ದೆಯಲ್ಲಿ ಮರು ನಿಯುಕ್ತಿಗೊಳಿಸಿ ಅವಕಾಶ ಮಾಡಿಕೊಡಲು ಕೋರುತ್ತಾ ಮನವಿ.

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ಶ್ರೀಮತಿ ರಾಜೇಶ್ವರಿ ಬಿ.ಎಸ್. w/o ಶಿವಕುಮಾರ್ ಎನ್.ಎಸ್ ವಯಸ್ಸು 34 ವರ್ಷ ಆದ ನಾನು 2009ರಿಂದ ಗುತ್ತಿಗೆ ಆಧಾರಿತ ಎಮ್.ಐ.ಎಸ್ ಎಕ್ಸ್‌ಪರ್ಟ್ ಪೌರಾಡಳಿತ ನಿರ್ದೇಶನಾಲಯದ ತಾಂತ್ರಿಕ ವಿಭಾಗದಲ್ಲಿ ಈ ಹಿಂದೆ ಪಹಿ ನಿರ್ವಹಿಸುತ್ತಿದ್ದು 29–05–2019, 03–06–2019 ಮತ್ತು 11–06–2019ರಲ್ಲಿ ಹೆರಿಗೆ ರಜೆಗಾಗಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿದ್ದು (2009 ರಿಂದ ಮಾರ್ಚ್ – 2014 ರವರೆಗೆ ಗುತ್ತಿಗೆ ಆಧಾರಿತ ಯೋಜನಾ ಮಾಹಿತಿ ಅಧಿಕಾರಿ ಮತ್ತು ಏಪ್ರಿಲ್ – 2014 ರಿಂದ 2019ರವರೆಗೆ ಗುತ್ತಿಗೆ ಅವಧಿಯಲ್ಲಿ ಗರ್ಭಿಣಿಯಾಗಿದ್ದು, 2019–20ನೇ ಸಾಲಿನ ದಿನಾಂಖ: 23–07–2019ರಂದು ಪ್ರಸವ ಆಗಿರುತ್ತದೆ), ದಿನಾಂಕ: 25–06–2019ರ ಪೌರಾಡಳಿತ ನಿರ್ದೇಶನಾಲಯದ ವತಿಯಿಂದ ಜಾರಿಗೊಳಿಸಿದ್ದ ನೋಟೀಸಿನಲ್ಲಿ ಗುತ್ತಿಗೆ ನೌಕರರಾದ ನನಗೆ ದಿ:03-04–2019ರಂದು ಮಾಡಿಕೊಂಡಿರುವ ಒಪ್ಪಂದದ ಕರಾರಿನಂತೆ ಒಂದು ದಿನದ ರಜೆ ಸೌಲಭ್ಯ ಹೊರತುಪಡಿಸಿ ಬೇರೆ ಯಾವುದೇ ರೀತಿಯ ರಜಾ ಸೌಲಭ್ಯವನ್ನು ಪಡೆಯಲು ಗುತ್ತಿಗೆ ಕರಾರಿನ ಅನ್ವಯ ಅವಕಾಶವಿಲ್ಲವೆಂದು ಹಾಗೂ ಕಚೇರಿಯ ಕೆಲಸಕ್ಕೆ ಹಾಜರಾಗಲು ಒಂದು ವೇಳೆ ಹಾಜರಾಗದಿದ್ದಲ್ಲಿ ನನಗೆ ಕೆಲಸ ಮುಂದುವರೆಸಲು ಇಷ್ಟ ಇರುವುದಿಲ್ಲವೆಂದು ಪರಿಗಣಿಸಲಾಗುವುದೆಂದು ಜಾರಿಗೊಳಿಸಲಾಗಿರುತ್ತದೆ. ದಿನಾಂಕ:10–07–19ರಲ್ಲಿ ತಾನು 8 ತಿಂಗಳ ಗರ್ಭಿಣಿ ಆಗಿದ್ದು ವೈದ್ಯಕೀಯ ಸಲಹೆ ಹಾಗೂ ಪ್ರಮಾಣ ಪತ್ರದಂತೆ ***Elderly prime at 30-31 weeks POG with threatened pre term labour is advised complete bed rest till delivery*** *ಆಗಿರುವುದರಿಂದ ಕರ್ತವ್ಯಕ್ಕೆ ಹಾಜರಾಗಲು ಸಾಧ್ಯವಿರುವುದಿಲ್ಲವೆಂದು ಮೇಲ್ಕಾಣಿಸಿದ ದಿನಾಂಕದ ಪತ್ರಗಳಲ್ಲಿ ಕೋರಿ ಮಂಡಿಸಿದ್ದಾಗಿಯೂ ದಿನಾಂಕ:29–08–2019ರಲ್ಲಿ ನನಗೆ ತಿಳುವಳಿಕೆ ಪತ್ರವನ್ನು ನೀಡಿ ಗುತ್ತಿಗೆ ಸೇವೆಯಿಂದ ಬಿಡುಗಡೆಗೊಳಿಸಲಗಿದೆ ಎಂದು ಜಾರಿಗೊಳಿಸಲ್ಪಟ್ಟಿರುತ್ತದೆ.*

ದಿನಾಂಕ:19–09–2019ರ ನನ್ನಪತ್ರದಲ್ಲಿ ನನಗೆ ದಿನಾಂಕ:23–07–2019ರಂದು ಭದ್ರಾವತಿಯಲ್ಲಿ ನಿಗಧಿತ 9 ತಿಂಗಳಿಗಿಂತ 1 ತಿಂಗಳ ಮುಂಚಿತವಾಗಿ ಅಂದರೆ 8ನೇ ತಿಂಗಳಿನಲ್ಲಿ ಪ್ರಸವ ಆಗಿರುತ್ತದೆ (ಇದು ನನ್ನ ಮೊದಲನೇಯ ಮಗು ಆಗಿರುತ್ತದೆ), ಎಂದು ಕೋರಿ ಭದ್ರಾವತಿಯಿಂದ ಪತ್ರದ ಮೂಖೇನ ವಸ್ತು ಸ್ಥಿತಿಯನ್ನು ತಿಳಿಸಿ ಮಾನವೀಯತೆ ದೃಷ್ಟಿಯಿಂದ ನನ್ನ ಹೆರಿಗೆ ರಜೆಯನ್ನು ಮಂಜೂರು ಮಾಡಿ ನನ್ನ ಮತ್ತು ನನ್ನ ಎಳೆ ಕೂಸಿನ ಆರೈಕೆ ಮಾಡಿಕೊಳ್ಳಲು ಅವಕಾಶ ಮಾಡಿಕೊದಬೇಕೆಂದು ಸಹ ಬೇಡಿಕೊಂಡಿರುತ್ತೇನೆ. 23–07–2019ರಿಂದ ಡಿಸೆಂಬರ್ –2019ರವರೆಗೂ 5 ತಿಂಗಳ ಹೆರಿಗೆ ಮತ್ತು ಮಗುವಿನ ಶುಶ್ರೂಷೆಗಾಗಿ ನನ್ನನ್ನು ತೊಡಗಿಸಿಕೊಂಡು ದಿನಾಂಕ:13–01–2020 ಮತ್ತು 23–01–2020ರಲ್ಲಿ ಪುನ: ಮನವಿಗಳನ್ನು ಸಲ್ಲಿಸಿ ಮಾನವೀಯತೆ ದೃಷ್ಟಿಯಿಂದಾಗಲೂ ನನ್ನನ್ನು ಎಮ್.ಐ.ಎಸ್ ಎಕ್ಸ್‌ಪರ್ಟ್ ಗುತ್ತಿಗೆ ಸೇವೆಯಲ್ಲಿ ಮುಂದುವರೆಸಲು ಪುನ: ಕೋರಿಕೊಂಡಿರುತ್ತೇನೆ.

ವಿಪರ್ಯಾಸವೆಂದರೆ ನನ್ನ ಹೆರಿಗೆ ರಜೆಯ ಸೌಲಭ್ಯಗಳನ್ನು ಕಾನೂನಿನಲ್ಲಿ ಈ ಕೆಳಕಾಣಿಸಿದಂತೆ ಅವಕಾಶವಿದ್ದರೂ ಸಹ ಮಾನವೀಯತೆ ಮತ್ತು ಮನುಷ್ಯತ್ವದ ಹಿತಾದೃಷ್ಟಿಯಿಂದ ಮಾಡಿಕೊಂಡಿರುವ ಕೋರಿಗೆಗಳನ್ನು ಪರಿಗಣಿಸದೇ ದಿನಾಂಕ:25–06–2019 ಮತ್ತು 29–08–2019ರ ನೋಟೀಸ್ ಮತ್ತು ತಿಳುವಳಿಕೆ ಪತ್ರದ ಮುಖೇನ ನಾನು ಗುತ್ತಿಗೆ ನೌಕರರಾಗಿದ್ದು ಒಂದು ದಿನದ ರಜೆ ಸೌಲಭ್ಯ ಹೊರತು ಪಡಿಸಿ ಇನ್ಯಾವುದೇ ಇತರ ಸೌಲಭ್ಯಗಳನ್ನು ಪರಿಗಣಿಸಲು ಬರುವುದಿಲ್ಲವೆಂದು ನನ್ನನ್ನು ಗುತ್ತಿಗೆ ಸೇವೆಯಿಂದ ಬಿಡುಗೊಡೆಗೊಳಿಸಲ್ಪಟ್ಟಿರುತ್ತದೆ.

ಸರ್ಕಾರದಲ್ಲಿ ರಚಿಸಲ್ಪಟ್ಟಿರುವ ***Maternity Benefit Act 1961*** *ಕಾಯಿದೆ 1961 ಮತ್ತು 2017ರ ಅಡಿಯಲ್ಲಿ ಸೆಕ್ಷನ್ 2ರ (****applicability of the act****) ಅಡಿಯಲ್ಲಿ ಮಹಿಳಾ ಸಿಬ್ಬಂದಿ /ನೌಕರರು/ಕೆಲಸಗಾರರಿಗೆ ಪ್ರಸೂತಿ ರಜೆ ಸೌಲಭ್ಯವೂ ಅವರು ಯಾವುದೇ ರೀತಿಯ ಕೆಲಸದಲ್ಲಿ ತೊಡಗಿಸಿಕೊಂಡಿದ್ದರಲಿ ನೇರವಾಗಿ ಅಥವಾ ಹೊರಗುತ್ತಿಗೆ ಮುಖೇನ ಅವರಿಗೆ ಪ್ರಸೂತಿ ರಜೆ ಸೌಲಭ್ಯವೂ ಸರ್ಕಾರದ ಕಾಯ್ದೆಯನ್ವಯ ಅವಕಾಶವಿರುತ್ತದೆ.*
Protection of women in case she is fired by the employer after learning her pregnancy, Under Section 12(Dismissal during absence or pregnancy) of the M.B act 1961 it is emphasized that any dismissal or discharge of a women during the pregnancy is unlawful and such employer can be punished under Section 21 (penalty for contravention of act by employers) of the Act.
ಸರ್ಕಾರದ ಕಾಯ್ದೆಯನ್ವಯ ಮಹಿಳೆಗೆ ವಿಶೇಷವಾಗಿ ಗರ್ಭಿಣಿ ಸ್ತ್ರೀಯರಿಗೆ ಮೇಲ್ಕಾಣಿಸಿದ ಕಾಯ್ದೆಯನ್ವಯ ಪ್ರಸೂತಿ ರಜೆಯ ಸೌಲಭ್ಯವಿದ್ದರೂ ಸಹ ದಿನಾಂಕ:25–06–2019ರ ನೋಟೀಸ್‌ನಲ್ಲಿ ನಾನು ಗುತ್ತಿಗೆ ಮಹಿಳಾ ನೌಕರಳಾಗಿದ್ದು ನನಗೆ ಯವುದೇ ರೀತಿಯ ರಜೆ ಸೌಲಭ್ಯಗಲು ಕರಾರು ರೀತಿಯಲ್ಲಿ ಇರುವುದಿಲ್ಲವೆಂದು ಹಿಂಬರಹ ನೀಡಿ ಕಾನೂನನ್ನು ಮರೆಮಾಚಿ ದಿನಾಂಕ:29–08–2019ರಲ್ಲಿ ತಿಳುವಳಿಕೆ ಪತ್ರ ಜಾರಿ ಮಾಡಿ ಗುತ್ತಿಗೆ ಸೇವೆಯಿಂದ ಬಿಡುಗಡೆಗೊಳಿಸಿರುವ ಬಗ್ಗೆ ತಿಳಿಯಪಡಿಸಿ ತದನಂತರ ನಾನು ಹಲವಾರು ಬಾರಿ ಮೇಲ್ಕಾಣಿಸಿದಂತೆ ಮಾನವೀಯತೆ ದೃಷ್ಟಿಯಿಂದಾಗಲು ನನಗೆ ಪ್ರಸೂತಿ ರಜೆಯನ್ನು ಕೋರಿದಾಗಲೂ ಪರಿಗಣಿಸದೇ ಹೀನಾಯವಾಗಿ ಗುತ್ತಿಗೆ ಕೆಲಸದಿಂದ ಹೊರ ಹಾಕಲ್ಪಟ್ಟಿರುತ್ತೇನೆ."

Notwithstanding all the aforestated correspondences and the representations of the petitioner seeking rejoining after her

delivery, the second respondent, not accepting any of these i.e., maternity leave applications or the representations for rejoining duties, passed an order on 29.08.2019, cancelling the contract that was subsistence between the parties for the last 10 years, on the ground that the leave applications of the petitioner which was on the ground of pregnancy could not be considered as she was a contract employee and in terms of the contract, her services were dispensed with. It is here the *cup of woe* of the petitioner came to the brim only for the reason she opted to become a mother and sought maternity leave.

11. Before I embark upon taking up the issue that has fallen for consideration on the facts narrated hereinabove, I feel it germane to take a walk in history to find emergence of the concept of maternity and child care. The United Nations recognized rights of both women and children. The foundation of those rights is contained in Article 1 of Universal declaration of Human Rights is 'all human beings are born free and have equal dignity and rights' these are inalienable. Article 42 of the

Constitution of India depicts that the State shall make provision for securing just human conditions for work and maternity relief. Therefore, the right of seeking maternity relief by way of leave springs from Article 42 of the Constitution of India. Article 45 of the Constitution of India directs that the State shall endeavour to provide early child care and education for all children until they complete six years. Though the aforesaid Articles form Part IV of the Constitution i.e., Directive Principles of State Policy, the Apex Court in the case of ***OLGA TELLIS VS. BOMBAY MUNICIPAL CORPORATION*** reported in ***(1985) 3 SCC 545*** and subsequently, in the case of ***MOHINI JAIN (MS.) VS. STATE OF KARNATAKA*** reported in ***(1992) 3 SCC 666*** has held that the directive principles are fundamentals in governance of the Country. In ***MOHINI JAIN (MS.)*** *(supra),* the Apex Court has held that *"The directive principles which are fundamentals in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in*

which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all." Therefore, the State and its instrumentalities cannot deny its obligation to perform its duty as enshrined in the aforesaid Articles.

12. The very issue as to whether a contract employee is entitled to maternity leave under the Maternity Benefit Act, 1961 came up for consideration before the Apex Court in the case of ***MUNICIPAL CORPORATION OF DELHI VS. FEMALE WORKERS (MUSTER ROLL) AND ANOTHER*** reported in ***(2000) 3 SCC 224***, wherein the Apex Court elaborately considering every facet of right of an employee notwithstanding the employee being on a nominal muster roll has held as follows;

> ***"6****. Not long ago, the place of a woman in rural areas had been traditionally her home; but the poor illiterate women forced by sheer poverty now come out to seek various jobs so as to overcome the economic hardship. They also take up jobs which involve hard physical labour. The female workers who are engaged by the Corporation on muster roll have to work at the site of construction and repairing of roads. Their*

services have also been utilised for digging of trenches. Since they are engaged on daily wages, they, in order to earn their daily bread, work even in an advanced stage of pregnancy and also soon after delivery, unmindful of detriment to their health or to the health of the new-born. It is in this background that we have to look to our Constitution which, in its Preamble, promises social and economic justice. We may first look at the fundamental rights contained in Part III of the Constitution. Article 14 provides that the State shall not deny to any person equality before law or the equal protection of the laws within the territory of India. Dealing with this article vis-à-vis the labour laws, this Court in Hindustan Antibiotics Ltd. v. Workmen [AIR 1967 SC 948 : (1967) 1 SCR 652 : (1967) 1 LLJ 114] has held that labour to whichever sector it may belong in a particular region and in a particular industry will be treated on equal basis. Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Clause (3) of this article provides as under:

> *"15. (3) Nothing in this article shall prevent the State from making any special provision for women and children."*

7. *In Yusuf Abdul Aziz v. State of Bombay [AIR 1954 SC 321 : 1954 SCR 930] it was held that Article 15(3) applies both to existing and future laws.*

8. *From Part III, we may shift to Part IV of the Constitution containing the Directive Principles of State Policy. Article 38 provides that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life. Sub-clause (2) of this article mandates that the State shall strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities.*

9. *Article 39 provides, inter alia, as under:*

"39. Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

*(b)-(c)****

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

*(f) ***"*

10. *Articles 42 and 43 provide as under:*

"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.

43. Living wage, etc., for workers.—The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage

industries on an individual or cooperative basis in rural areas."

11. *It is in the background of the provisions contained in Article 39, specially in Articles 42 and 43, that the claim of the respondents for maternity benefit and the action of the petitioner in denying that benefit to its women employees has to be scrutinised so as to determine whether the denial of maternity benefit by the petitioner is justified in law or not.*

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.*

13. *Parliament has already made the Maternity Benefit Act, 1961. It is not disputed that the benefits available under this Act have been made available to a class of employees of the petitioner Corporation. But the benefit is not being made available to the women employees engaged on muster roll, on the ground that*

they are not regular employees of the Corporation. As we shall presently see, there is no justification for denying the benefit of this Act to casual workers or workers employed on daily-wage basis.

14. *Section 2 of the Maternity Benefit Act, 1961 deals with the applicability of the Act. Section 3 contains definitions. The word "child" as defined in Section 3(b) includes a "stillborn" child. "Delivery" as defined in Section 3(c) means the birth of a child. "Maternity benefit" has been defined in Section 3(h), which means the payment referred to in sub-section (1) of Section 5. "Woman" has been defined in clause (o) of Section 3 which means "a woman employed, whether directly or through any agency, for wages in any establishment". "Wages" have been defined in clause (n) of Section 3 which provides, inter alia, as under:*

> *"3. (n) 'wages' means all remuneration paid or payable in cash to a woman...."*

15. *Section 5 provides, inter alia, as under:*

> *"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 rates of wages fixed or revised under the Minimum Wages Act, 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:

***

Explanation.—For the purpose of calculating under this 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 in force 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 twelve weeks of which not more than six weeks shall precede the date of her expected delivery:

****"*

16. *The Objects and Reasons as set out in Government of India Gazette, Part II, Section 2, dated 6-12-1960 (p. 817), provide as under:*

"This clause entitles a woman to receive maternity benefit at the rate of her average daily wage subject to a minimum of seventy-five naye paise per day for a maximum period of 12 weeks, including six weeks following the day of her delivery. The qualifying condition is

employment for 240 days in the 12 months immediately preceding the expected date of delivery, but there is no such restriction as to entitlement in the case of an immigrant woman who is pregnant when she first arrives in Assam."

17. *With regard to the period of 240 days, the Select Committee remarked as under:*

"The Committee are of the view that the qualifying condition of employment for a period of 240 days during the 12 months immediately preceding the expected date of delivery to entitle a worker to maternity benefit is too rigorous and the period should be reduced to 160 actual working days inclusive of the period of 'lay-off', if any."

18. *Section 5-A provides that if the Employees' State Insurance Act, 1948 is applied or becomes applicable to the establishment where a woman is employed, such woman shall continue to be entitled to receive the maternity benefits under this Act so long as she does not become qualified to claim maternity benefits under Section 50 of that Act.*

19. *It may be stated that Section 50 of the Employees' State Insurance Act, 1948 provides as under:*

> *"50. Maternity benefit.—The qualification of an insured woman to claim maternity benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government."*

20. *Section 5-B of the Maternity Act speaks of payment of maternity benefit in certain cases. Section 6 provides notice of claim for maternity benefit and payment thereof. Section 8 provides that every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of 250 rupees, if no pre-natal confinement or post-natal care is provided by the employer free of charge.*

21. *Section 9 contemplates leave for miscarriage or medical termination of pregnancy. Section 9-A contemplates leave for tubectomy operation whereas*

Section 10 provides for leave for illness arising out of pregnancy, delivery, premature birth of a child or miscarriage. Section 11 provides as under:

> *"11. Nursing breaks.—Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months."*

22. Section 12, which contains a very significant prohibition in regard to the service of a woman employee, provides as under:

> ***"12. Dismissal during absence or pregnancy.—(1) When 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 absence from work in accordance with the provisions of this Act, may, within sixty days from the date on which 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 sub-section (1).”

23. This section 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.

24. Contravention of the provisions of this Act has been made an offence under Section 21 of the Act which provides as under:

“21. Penalty for contravention of Act by employer.—(1) If any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of this Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees:

Provided that the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in lieu of imprisonment.

(2) If any employee contravenes the provisions of this Act or the rules made thereunder, he shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both:

Provided that where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall, in addition, recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto."

25. *Cognizance of offences has been provided for in Section 23, which is reproduced as under:*

"23. Cognizance of offences.—(1) Any aggrieved woman, an office-bearer of a trade

union registered under the Trade Unions Act, 1926 of which such woman is a member or a voluntary organisation registered under the Societies Registration Act, 1860 or an Inspector, may file a complaint regarding the commission of an offence under this Act in any court of competent jurisdiction and no such complaint shall be filed after the expiry of one year from the date on which the offence is alleged to have been committed.

(2) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act."

26. *Section 27 deals with the effect of laws and agreements inconsistent with this Act. Sub-section (1) provides that 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. Sub-section (2) of this section, however, provides that it will be open to a woman to enter 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 she would be entitled to under this Act.*

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.

(emphasis supplied)

The Apex Court was considering the Maternity Benefit Act, 1961, which has now undergone certain amendments, that which are germane for the case at hand are extracted hereunder for the purpose for ready reference.

"THE MATERNITY BENEFIT (AMENDMENT) ACT, 2017
No.6 of 2017

27th March, 2017

An Act further to amend the Maternity Benefit Act, 1961.

Be it enacted by Parliament in the Sixty-eight year of the Republic of India as follows:-

(1) This Act may be called the Maternity Benefit (Amendment) Act, 2017.

(2) It shall come into force on such date as the Central Government, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. In the Maternity Benefit Act, 1961 (hereinafter referred to as the principal Act), in section 3 after clause (b), the following clause shall be inserted, namely:-

'(ba) "Commissioning mother" means a biological mother who uses her egg to create an embryo implanted in any other woman'.

(A) In sub-section (3) –

(i) For the words "twelve weeks of which not more than six weeks", the words "twenty-six weeks of which not more than eight weeks" shall be substituted.

(ii) after sub-section (3) and before the first proviso, the following proviso shall be inserted, namely:-

"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,";

(iii) in the first proviso, for the words "Provided that" the words "Provided further that" shall be substituted;

(iv) in the first proviso, for the words "Provided further that", the words, "Provided also that" shall be substituted;

(B) After sub-section (3), the following sub-section shall be inserted, namely. -

"(4) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit 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."

In terms of the afore-extracted mandate of the statute viz., the Amendment Act of 2017, a pregnant woman is entitled to maternity leave for a period 26 weeks which would come to 6 months and 15 days.

13. In terms of the afore-extracted Act and the judgment of the Apex Court (*supra*), the petitioner was entitled to maternity leave of six months in all in terms of the amended Act of 2017 (*supra*). The action of the second respondent cannot be countenanced, as maternity or the Act does not classify or qualify a mother to be, a government servant, temporary employee, employee on contract basis or an employee on daily wages. The order impugned infers such an harrowing classification.

14. The afore-extracted judgment of the Apex Court is followed by a Co-ordinate Bench of this Court in writ petition No.44563/2013 disposed on 05.09.2018, concerning a contract employee and the said order of the Co-ordinate Bench is affirmed by the learned Division Bench of this Court in writ appeal No.3259/2018 and the learned Division Bench of this Court while dismissing the appeal has held as follows:-

> *"13. As stated earlier, the termination of the first respondent from employment is only on the ground that the first respondent is not entitled to Maternity Leave. Therefore, apart from directing payment of salary to the first respondent during the period of Maternity Leave, for the further period till the date of reinstatement, the appellant and the Deputy Commissioner have been directed to pay 25% back-wages to the first respondent.*
>
> *14. In the normal course, the first respondent would have been entitled to full back-wages. However, the learned Single Judge has, perhaps, taken a liberal view as the first respondent was a contractual employee. Therefore, it is impossible to find fault with the view taken by the learned*

Single Judge which is consistent with the law laid down by the Apex Court.

15. The order of reinstatement has been made against the Deputy Commissioner. The State or the Deputy Commissioner has not challenged the impugned order. As even the appellant declined to grant Maternity Leave as a matter of right and even on humanitarian grounds, the order of payment of back-wages is rightly made both against the appellant-Town Municipal Council and the Deputy Commissioner. As the order of reinstatement has been passed against the Deputy Commissioner, the appellant cannot be aggrieved by the same."

The learned Division Bench while dismissing the appeal has observed that the learned Single Judge was right in directing reinstatement with 25% back wages and it also observed that the grant of full back wages would be the appropriate remedy and also held that the learned Single Judge has taken a liberal view as the respondent/employee was a contract employee.

15. In terms of afore-narrated facts of the case, the Act and the judgment of the Apex Court as followed by this Court in the aforesaid judgments, the writ petition deserves to succeed. The petitioner in her representation seeking rejoining to duties refers to the act and the judgments rendered by this court supra and notwithstanding this being brought to the notice of the second respondent the order impugned is passed ostensibly on the ground the petitioner had sought maternity leave which was not available in terms of the contract between the parties. Therefore, it is a fit case where, apart from granting back wages to the petitioner, in the peculiar facts, the second respondent will have to be mulcted with exemplary costs.

16. Before I say omega, I wish to emphasize that men who man such offices become insensitive to the issue of the kind that is alleged in the petition, it would become *"power at wrong hands".*

17. For the praefatus reasons, the following:

ORDER

a. The writ petition is allowed with costs of Rs.25,000/- payable to the petitioner.

b. The impugned notice dated 29.08.2019, of the second respondent is quashed.

c. The petitioner shall be reinstated to the post that she held earlier with 50% back wages from the date of cancellation of appointment till the date of reinstatement.

d. The State shall pay costs to the petitioner and recover the same from the Officer who passed the order impugned, in accordance with law.

e. The second respondent shall comply with the order of reinstatement of the petitioner with payment of costs, within two weeks from the date of receipt of the copy of the order.

Sd/-
JUDGE

nvj/CT:MJ