IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4343 Of 2019
and CMP No.27997 of 2019

1. The Union of India,
   Represented by its Secretary to Government,
   Ministry of Home Affairs,
   New Delhi – 110 001.

2. The Director General,
   Central Industrial Security Force,
   CGO Complex, Lodhi Road,
   New Delhi – 110 003.

3. The Inspector General,
   Central Industrial Security Force,
   TS Head Quarters,
   Hyderabad.

4. The Deputy Inspector General,
   Central Industrial Security Force,
   Recruitment Training Centre,
   Arakonam .... Appellants

-vs-

M. Asiya Begum (L/SI/Exe),
No.308-A, Suraksha Campus,
Central Industrial Security Force,
RTC, Arakkonam-631152, Tamil Nadu ... Respondent

..

Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.20797 of 2018 dated 18.06.2019.

For appellants : Mr.K. Srinivasa Murthy

For respondent : Mr.R. Thiyagarajan

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

The Union of India has come up assailing the impugned judgment of the learned Single Judge dated 18.06.2019, whereby, the learned Single Judge has extended the benefit of maternity leave as well as other pecuniary benefits and has set aside the proceedings dated 08.05.2018 with a direction that 180 days of maternity period shall be treated as maternity leave for all purposes.

2. The learned Single Judge has examined the facts and also has referred to certain definitions relating to a women's right to maternity. The learned Single Judge has further analysed various decisions, as also such decisions that rest upon the interpretation of Rules relating to maternity as applicable to State Government Servants in the State of Tamil Nadu. The learned Single Judge has further dwelt upon the object of maternity leave as explained by the Apex Court in the case of *Municipal Corporation of Delhi vs Female Workers (Muster Roll), decided on 08.03.2000.*

3. Learned counsel for the appellant contends that the impugned judgment proceeds on an incorrect application of the Rule applicable to the controversy and by not appreciating the law in correct perspective inasmuch as the Rule applicable in the present context is entirely different. The claim of maternity leave is by a member of Central Industrial Security Force to whom neither the maternity Rules of the State or otherwise apply and to the contrary, it is the maternity benefits as provided under Central Civil Services (Leave) Rules, 1972 that are applicable to the controversy.

4. Learned counsel invited the attention of this Court to the said Rule that is a part of the typed set viz., Central Civil Services (Leave) Rules, 1972. Learned counsel has straight away taken us to Rule 43 that is extracted herein under:-

> *" 43(1) A female Government servant (including an apprentice)* ***with less than two surviving children*** *may be granted maternity leave by an authority competent to grant leave for a period of 180 days from the date of its commencement."*
>
> *43(2) During such period, she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave..."*

5. There is no dispute between the parties that the respondent / writ petitioner had two surviving children, but, learned counsel for the respondent / writ petitioner informs that they were twins. His contention, therefore, is that the claim is being made in respect of the second delivery giving birth to a third child and therefore, the same should be construed treating it to be an exceptional case for extending

the benefits of the maternity leave Rules and 180 days benefit with emoluments should be extended. There is no dispute that the respondent / writ petitioner has not been denied leave, but the dispute is only with regard to the pecuniary emoluments of the said period on the ground that Rule 43 of Central Civil Services (Leave) Rules, 1972, extracted herein above does not authorise the payments unless the pre-condition is fulfilled viz., that such benefit would be extendable unless the claimant has not more than two surviving children.

6. Learned counsel for the appellant along with typed set has also filed three judgments viz.,

i) (J.Sharmila vs The Secretary to Government, Education Department, Fort.St. George, Chennai-9 and others) decided on 19.10.2010.

ii) (T. Priyadharsini and another vs The Secretary to Government, Department of School Education, Government of Tamil Nadu, Secretariat, Chennai – 600 009 and others) decided on 19.10.2016

iii) (State of Uttarkhand vs Smt.Urmila Masih and others) (S.A.No.736 of 2019) decided on 17.09.2019

7. On the strength thereof, it is contended by the learned counsel for the appellants that the validity of the Rules and its interpretation would not be dependant upon exceptional circumstances as sought to be projected on behalf of the respondent / writ petitioner, and the Rules will have to be interpreted keeping in view the fact that number of children governs the pecuniary benefits available.

8. We have considered the submissions raised and we find that a second delivery, which, in the present case, has resulted in a third child, cannot be interpreted so as to add to the mathematical precision that is defined in the Rules. The admissibility of benefits would be limited if the claimant has not more than two children. Even otherwise it is debatable as to whether the delivery is not a second delivery but a third one, inasmuch as ordinarily when twins are born they are delivered one after another, and their age and their *inter-se elderly status is* also determined by virtue of the gap of time between their

arrivals, which amounts to two deliveries and not one simultaneous act, but without entering into these issues any further, the Rule under interpretation clearly spells out that the benefit would be available only if the claimant has not more than two children.

9. This fact therefore changes the entire nature of the relief which is sought for by the respondent / writ petitioner which aspect has been completely over looked by the learned Single Judge.

10. Thus, without taking notice of the appropriate Rules and the aforesaid admitted facts and circumstances, the learned Single Judge appears to have erroneously extended the benefit to the respondent / writ petitioner.

11. We, therefore, set aside the impugned judgment of the learned Single Judge dated 18.06.2019 and allow the writ appeal, but, without any concessions in law, in the event, the appellants have any power to grant any relaxation in exceptional circumstances, then, in that view of the matter, a natural happening that gives rise to

exceptional facts as presently involved, may be a matter worth consideration, as it entails financial consequences which ultimately results in deprivation of benefits to the new born child who is no way concerned either with the framing of Rules or the choice of parents to have a child. The authorities would be therefore well advised to take an appropriate decision in the matter. No costs. Consequently, connected miscellaneous petition is closed.

(A.P.S., CJ.) (S.P., J.)
27.02.2020

Index : Yes
sr

To

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The Hon'ble Chief Justice
and
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