KERALA HIGH COURT

Malayalam Plantations

Vs

Inspector of Plantations

Writ Appeal No. 185 of 1974 and O. P. No. 3612 of 1971

(P. Subramonian Poti, G. Viswanatha Iyer and Miss P. Janaki Amma, JJ.)

20.12.1974

JUDGEMENT

Viswanatha Iyer, J.

1. This appeal has been referred to a Full Bench as it involves a nice question relating to the scope of Section 5 of the Maternity Benefit Act, 1961 (Central Act). That Act replaced the Kerala Maternity Benefit Act, 1957 from 15-8-1970. The 1st respondent Inspector of Plantations, Mundakayam, inspected the appellant's estate on 6-5-1971, and on such inspection felt that 11 women workers were not given maternity benefit according to the provisions of the Central Act. This resulted in the issue of a notice to the 1st respondent to show cause why the balance amount due was not disbursed to them. The Superintendent of the appellant submitted his explanation stating that the workers work for six days in a week only. Sunday being a wageless holiday, that the workers are entitled to maternity benefit only on that basis and as such no more amount is due to them. The 1st respondent did not accept this explanation. He passed an order directing that these women workers are entitled to maternity benefit on the basis of their average daily wage multiplied by seven. This was challenged by a writ petition which was dismissed by a learned Single Judge of this Court. This appeal is filed against that judgment.

2. To understand the respective contentions urged before us it is necessary to state at the outset the scope of the various provisions of the Maternity Benefit Act, 1961. This Act has been made applicable to establishments in plantation as defined in Plantations Labour Act, 1951. The Act is intended to regulate the employment of women in certain establishments for certain periods before and after child birth and to provide for maternity benefit and certain other benefits. Section 4 prohibits employment of a woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage. She is prohibited from work in any establishment during the said six weeks. For a period of six weeks preceding the date of her expected delivery, if she makes a request in that behalf, she should not be required to do any work which is of an arduous nature or which involves long hours of standing, or which in any way is likely to interfere with her pregnancy. She is given a right to the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence immediately preceding and including the date of delivery and for six weeks thereafter. The average daily wage

is the average of a 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, or one rupee a day, whichever is higher. A woman worker is entitled to maternity benefit only if she has actually worked in the establishment for a period of not less than 160 days in the 12 months immediately preceding her expected delivery. The maximum period for which a woman shall be entitled to maternity benefit is 12 weeks, that is to say, six weeks preceding and six weeks succeeding the date of her delivery. By Section 6 she is required to give notice in writing to her employer stating that her maternity benefit and any other amount to which she is entitled under this Act may be paid to her or to her nominee and that she will not work in any establishment during the period she receives maternity benefit. On receipt of such a notice the employer is required to permit such woman to absent herself from the establishment until the expiry of six weeks after the date of her delivery. In the case of miscarriage a woman worker on production of such proof shall be entitled to leave with wages at the rate of the maternity benefit for a period of six weeks immediately following the day of her miscarriage. Over and above such leave a woman worker is also entitled to leave with wages for a maximum period of one month in case she suffers any illness arising out of pregnancy, delivery, premature birth of child or miscarriage. The employer is prohibited from dismissing a woman who absents herself from work in accordance with the provisions of this Act during that period. If the employer fails to pay the benefit as provided for by the Act, the worker is allowed to appeal to the prescribed authority and claim reliefs. The amount determined by such authority as due can be recovered under the provisions of the Revenue Recovery Act and paid to the worker.

3. In the background of these provisions the controversy centres round the scope of Section 5 (1). It is in the following terms:-

> "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 immediately preceding and including the day of her delivery and for the six weeks 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 absented herself on account of maternity, or one rupee a day, whichever is higher."

Here the period for which a worker is entitled to benefit is divided into two parts. For the period before her date of delivery she is entitled to maternity benefit only for the period of her actual absence. For six weeks after her delivery she is entitled to maternity benefit. The difference between these two periods is understandable. For the earlier period she is not prohibited from working. She may absent herself after giving the required notice. So, maternity benefit is limited to the period of her actual absence only. But she is prohibited from doing work in any establishment during the six weeks after delivery, and the liability to pay maternity benefit is absolute for that period. Section 5 (3) provides for payment of maternity benefit for the maximum period of 12 weeks. The period of benefit is described in terms of weeks. Whether the Legislature contemplated a week of seven calendar days or a working week is not expressed.

That is the controversy here. So, to resolve that we have to find out the legislative intent from other provisions of the Act. For this purpose the subject of the legislation must be kept in view. The following passage from "Maxwell on The Interpretation of Statutes, 12th Edition" page 76 is pertinent in this context.

> "The words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonies with the subject of the enactment. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject, or in the occasion on which they are used, and the object to be attained. Grammatically, words may cover a case; but whenever a statute or document is to be construed it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used, unless there is something which renders it necessary to read them in a sense which is not their ordinary sense in the English language as so applied."

The expression "week" has different shades of meanings depending on context. Generally it applies to a seven-day period reckoned from saturday mid-night to next Saturday mid-night. It is used also to cover a continuous period of 7 days from any day in a week. It is also used to denote a working day week (See Shorter Oxford Dictionary and Chambers's Twentieth Century Dictionary). In the case of industrial establishments for payment of wages this is generally understood with reference to the working day week. Under the Payment of Wages Act each establishment will have a wage period. A worker is paid his wage for each day of work and the wage-period is generally a week and shall not exceed a month. At the end of the period the wage earned by him for the days he worked is calculated and paid. The day of rest is not reckoned in the calculation. When such a worker takes leave for a week or for a month, his leave wage is calculated on the basis of the wage that he may receive during the period of leave. Here also the day of rest is not reckoned. Even then he is said to be on leave for a week or for a month and leave with wages will not give him anything more than what he would have earned during the period. A woman worker during her maternity period is under a disability to work and the statute compulsorily prohibits her from working in the establishment for the post-delivery period of six weeks. She is on compulsory leave then. She loses what she would have earned. A period of leave with wages would fetch her what she would have got if she had worked. That is intended to be given as maternity benefit. There is nothing to suggest or to infer from Section 5 of the Act that she should be paid by way of maternity benefit anything more than what she would have earned if she had worked during the same period. In other words the law does not require the employer to treat her differently from a worker on leave with wages. That this is the idea of the Parliament in enacting this law is clear from other provisions as well. For the period before her delivery she is not prohibited from working and the section provides that she must be paid at the rate of the average daily wage for the period of her actual absence. The expression "actual absence" emphasizes the fact that it covers only working days. Nobody will say that a worker is absent on a holiday. That shows that the Legislature intended only to direct the employer to pay maternity benefit at the rate of the average daily wage for the working days absented by the worker during a period of six weeks before delivery. A fortiori the post-delivery period of six weeks' compulsory absence cannot have a different scope in the matter of payment of maternity

benefit. In other words, maternity benefit is given for a period and the maximum period is reckoned with reference to the date of delivery - six weeks before and six weeks after delivery - and "week" is to be understood in terms of working day week only. This is further clear from the other provisions in the section.

4. The rate of maternity benefit is linked with the average daily wage. This average is ascertained on the basis of the wages payable to her for the days on which she worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity. Here emphasis is on the days she worked and the wages she received. This will not take in a wageless holiday like a Sunday. Again, to qualify for maternity benefit she must have actually worked in the establishment for a period of not less than 160 days in the 12 months immediately preceding the date of her expected delivery. Here again emphasis is on the days she actually worked. In the Explanation to sub-section (2) of Section 5 the days for which she has been laid off during the period of 12 months immediately preceding the date of her expected delivery is required to be taken into account. These show that the working days and the wages received by her during those days form the basis of determining her average daily wage for the purpose of payment of maternity benefit. Thus the linking of maternity benefit with average daily wage indicates that maternity benefit is to be calculated with reference to the working days only. Again, Section 9 providing for leave with wages for a period of 6 weeks following the day of miscarriage supports this conclusion. There the payment is equated with the maternity benefit. The measure of payment for both is the same. That shows that working days in a week alone should be taken into account.

5. The respondents' counsel referred to some of the earlier enactments which provided for maternity benefit and wanted us to construe the expression "week" as meaning seven consecutive calendar days. We shall refer to those enactments presently. Under the Madras Maternity Benefit Act, 1934, a woman worker in a factory was entitled to payment of maternity benefit at the rate of eight annas a day for the actual days of her absence during the period immediately preceding her confinement and for four weeks immediately following her confinement. Here the emphasis is on the actual days of her absence during the period. That shows she was eligible for maternity benefit only for the working days. The Mines Maternity Benefit Act of 1941 (Central Act) originally contained a provision similar to the present provision in question. In 1943 that was amended and a provision was made for payment of maternity benefit for every day of the week. A woman worker is allowed maternity benefit at the rate of twelve annas a day for every day during the four weeks immediately preceding and including the day of her delivery and for each day of the four weeks following her delivery. Here the language is clear that she should be paid for each day of the four weeks. This is irrespective of any holiday and this cannot be relied on to construe the present Act. In 1948 Employees' State Insurance Act was passed which provides in Section 50 of the Act for payment of maternity benefit to a woman worker. This provides for a benefit period and a contribution period. Under sub-section (2) of Section 50 of the Act the maternity benefit is payable for all days on which she does not work for remuneration during a period of twelve weeks. The said Act provides for calculating the daily wage and there the worker also makes a contribution and therefore the provision for payment of maternity benefit for all the seven days in a week is understandable. In the Kerala Maternity Benefit Act, 1957, a provision was made under Section 4 for payment of maternity benefit at the rate of Rs. 5.25 a week or at a rate of 7/12 of the average daily wage multiplied by seven for a week whichever is higher during the period of her actual absence immediately preceding and following her delivery.

There was no ambiguity in this provision. A fixed sum for a week or a lesser sum other than the average daily wage multiplied by seven was directed to be paid. The intention of the Legislature is clear that payment is to be made for all the seven days in a week irrespective of whether any day is a holiday or not. In the present Act the language used is different. The quantum of benefit is also increased and there is nothing to show that period of maternity benefit covers non-working wageless days in the week. When Parliament enacted in 1961 the present Act they had before them all these various enactments. They had also before them the conventions and recommendations of the International Labour Organization of which India is a member. Convention No. 103 adopted by the said Organization in 1952 with reference to maternity protection for labourers under Article 4, Clauses (4) and (6) states as follows:-

> "4. The cash and medical benefits shall be provided either by means of compulsory social insurance or by means of public funds; in either case they shall be provided as a matter of right to all women who comply with the prescribed conditions.
> 5. ....
> 6. Where cash benefits provided under compulsory social insurance are based on previous earnings, they shall be at a rate of not less than two-thirds of the woman's previous earnings taken into account for the purpose of computing benefits."
> Recommendation No. 95 made by the said Organisation in 1952 is in the following terms:-
> "RECOMMENDATION NO. 95
> Recommendation concerning Maternity Protection
> I. Maternity Leave
> 1.....
> II. Maternity Benefits
> 2. (1) Wherever practicable, the cash benefits to be granted in conformity with Article 4 of the Maternity Protection Convention (Revised, 1952), should be fixed at a higher rate than the minimum standard provided in the Convention, equaling, where practicable, 100 per cent of the woman's previous earnings taken into account for the purpose of computing benefits."

This recommendation to equate the maternity benefit to 100 per cent of the woman's previous earnings was alone taken into account by the Parliament for computing the benefit. They chose to enact that she must be given the maternity benefit at the rate of the average daily wage for the period of her absence whether compulsory or optional. So, we are of opinion that Parliament did not intend payment of maternity benefit to a woman worker for all the days in a week provided in Section 5 (3) of the Act irrespective of whether any day in it is a wageless holiday or not.

6. In this connection it is necessary to refer to a decision of the Madras High Court interpreting Section 5 of the present Act. A learned Single Judge of that Court in *B. Shah Mount Stuart Estate v. Labour Court*[1], construed Section 5 as we have construed it. The learned Judge has observed that for the pre-delivery period of six weeks the Parliament has limited the right for the benefit for the period of the actual absence only and then the learned Judge proceeds at page 310 to state thus:-

"The scheme of Section 5 (1) is to confer only such a benefit equivalent to that which the woman would have earned but for the maternity. In other words, the maternity benefit represents that benefit which the woman worker would have earned if she had worked during the days of which her absence is authorised by the Act on account of maternity. If the intention were to confer benefit even for non-working days falling within the pre-delivery period of six weeks different language should have been adopted. Having regard to the language found in Section 5 (1) applicable to the pre-delivery period, no other inference is possible. The question is whether for the post-delivery period of six weeks, a different interpretation should be given to the word "week". Unless there is need to compel a contrary view to be taken, we have got to interpret it in the same way. Obviously, the intention of the Parliament is to confer only that benefit which the woman worker would have derived if she had attended to the work but for the maternity. Therefore, the expression "for the six weeks immediately following that day" occurring in sub-section (1) of Section 5 should also be construed as meaning "six weeks of work" which would exclude holidays or Sundays." This decision was appealed against and a Division Bench in a very short judgment set aside that decision. That judgment is quoted in full hereunder:-

"In our opinion the expression "absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day" in Section 5 (1) of Act 53 of 1961, would mean the actual period of absence, including Sunday, which is included in a week. The sub-section is quite clear when it says "six weeks following that day". If, according to the Management, a week meant only six days for which wages were paid, the section could have said so. Also, it is significant that the section says "including the day of hey delivery" which means that if it happened to be Sunday, it would also be included in the period of absence, whether she received wages or not while she was working. We are, therefore, of the view that the appellant is entitled to receive maternity benefit for the period of her absence before delivery, including the day of delivery, and also for six weeks thereafter, each week consisting of seven days, including Sundays.

The appeal is allowed with costs.

x x x x x x"

With respect, we do not agree with the reasoning adopted there. With respect, we

[1](1971) 40 FJR 302 (Mad)

understand the expression "actual absence preceding and including the date of her delivery" in the context in a different way from what the Division Bench of the Madras High Court has stated. As stated earlier, absence implies a duty to attend and a failure. There is no duty to attend on a holiday and therefore it cannot be said that the worker is absent on a holiday. Even if the delivery takes place on a holiday, maternity benefit is only paid for a period and the quantum is reckoned with reference to a week of work. The expression "day of her delivery" is used to denote the end of the first part of the period of maternity benefit, and the beginning of the second part of the maternity period which is 6 weeks. The day of delivery fixes this benefit period. It has nothing to do with the payment of maternity benefit for the date of delivery if it is non-working

wageless day.

7. The learned Single Judge has observed in his judgment under appeal that "week" must be understood as meaning seven consecutive days. The provision relating to the method of finding out average daily wage and to the period of actual absence preceding the date of delivery give an indication that maternity benefit for the period is to be calculated only for the actual working days in a week excluding wageless holidays. Hence, with regret, we have to differ from the conclusion of the learned Judge. The Inspector in his order Ext. P-1 has also strained to make out that the woman worker is entitled to maternity benefit at the rate of the average daily wage for all the days in the week. He takes the view that a week must be understood, in the absence of a separate definition in the Act, as a period of seven consecutive days only. According to him Section 5 of the Act provides for payment even for the day of confinement. He again holds, that maternity benefit is intended not only for the worker but for the child also and if the mother dies during the delivery or during the period of six weeks following the delivery maternity benefit is payable for the entire period if the child is alive and it is stopped only if the child also dies. These reasons ignore the legislative intention conveyed by the expression "at the rate of the average daily wage for the period of actual absence immediately preceding and including the day of her delivery and for six weeks immediately following that day." The Legislature has not intended to give anything more than what the worker would have earned had she worked for the 12 weeks provided for in Section 5 (3) of the Act. She is being paid cent per cent of the daily wage that she would have earned had she worked. What she would have got will be given to the child if the worker dies during the period. The provision for payment to the child does not alter the measure of payment in any way. The section, if understood to mean a right to get maternity benefit for wageless holidays also, will be really in the nature of an incentive for pregnancy and child birth which is far from the intention of the Legislature in enacting the Maternity Benefit Act. It is only an Act to compensate the worker for the loss that she may incur on account of the disability arising out of her pregnancy and delivery. The liability is on the employer and to direct him to pay maternity benefit even for wageless holidays will be to make him pay more than what he would have to pay if she had worked and to make him an insurer without any contribution from the worker. That is not the scheme of the Act. Really employer's liability to pay maternity benefit and an insurance for that benefit are separate pieces of social welfare legislations and an employer's liability to pay for all days irrespective of the working days - if that is the intention of the Legislature - will be practically getting out of the Employees State Insurance Act which provides for payment for all the seven days and for contributions for that being made by the employer and the employee. By the Maternity Benefit Act the employee gets the benefit with no obligation to contribute anything for the contingency that may arise on account of the inability to work during the maternity period. In such a case to construe the Act as imposing an obligation on the employer to pay the worker for wageless holidays will be going against the intention of the Legislature. We do not agree with the learned Judge in his conclusion that the employer is liable to pay maternity benefit calculating average daily wage for all the seven days in a week.

8. We set aside the judgment of the learned Judge and we allow the original petition and quash Ext. P-1 to the extent that it provides for payment of maternity benefit to the woman worker for wageless holidays in a week during the twelve weeks provided for in Section 5 (3) of the Act. The parties shall bear their costs.

9. In O. P. No. 3612 of 1971 the same question arises for determination. The petitioner is the

same but the employees are different. In the light of what we have stated in the writ appeal this Original Petition has only to be allowed. We set aside the order Ext. P-1 of the Inspector of Plantations, Mundakkayam, in so far as it directs the petitioner to pay maternity benefit to a woman worker for wageless holidays during the weeks referred to in Section 5 (3) of the Act. The parties shall bear their costs.

Order accordingly.