

## ERGO

*Analysing developments impacting business*

### WOMAN'S BIOLOGICAL CHILD V/S CHILDREN OF SPOUSE: SUPREME COURT'S PROGRESSIVE VIEWS ON MATERNITY BENEFITS

30 August 2022 **Background**

The Supreme Court of India (Court), in its recent judgement in the case of Deepika Singh v Central Administrative Tribunal and Others [Civil Appeal No. 5308 of 2022] (*Deepika Singh*), has reiterated that the rule of purposive interpretation should be adopted while giving effect to the provisions of social welfare legislations. In line with this principle, the Court held that a woman shall be eligible for maternity benefit related to the birth of her first biological child even though she is already a mother to her spouse's two biological children from his first marriage.

The primary issue before the Court was interpretation of Rule 43 read with Rule 43-C of the Central Civil Services (Leave) Rules, 1972 (CCSL Rules) and to determine whether both the provisions form separate entitlements.

The relevant portion of Rule 43 states that a female employee with less than two surviving children may be granted maternity leave by an authority competent to grant leave for a period of 180 days. On the other hand, Rule 43-C states that a female employee having minor children below the age of eighteen years and who has no earned leave at her credit, may be granted childcare leave by an authority competent to grant leave, for a maximum period of two years (730 days) during the entire service, for taking care of up to two children whether for rearing or to look after any of their needs like examination, sickness, etc.

#### **Case for and against the appeal**

In the present case, the appellant, who was working as a Nursing Officer at Post Graduate Institute of Medical Education and Research, contended that availing childcare leave on account of the two children from her spouse's first marriage is distinct from availing paid maternity leave in connection with her first biological child. The case of the appellant rested on the submission that Rule 43 provides for maternity leave while Rule 43-C forms a different entitlement altogether and is granted on separate grounds. Therefore, provision of childcare leave should not disentitle her from claiming maternity leave.

The respondents contended that the limitation laid down under Rule 43 which entitles a woman to maternity leave only if she has less than two surviving children would be applicable. The respondents submitted that by availing childcare leave for her two children from her spouse's first marriage, she has accepted the fact that she has two surviving children. Therefore, she should be disentitled from availing maternity leave for the birth of her first biological child.

#### **Court's analysis and discussion**

The Court first analyzed the nature of social welfare legislations to understand the intent and object behind provisions of maternity leave. In furtherance of this, the Court sought guidance from the Maternity Benefit Act, 1961 (MB Act), which was enacted to secure a

woman's participation in workplace by ensuring that her right to attain maternity status is balanced against her right to work. Per the Court, this is achieved by providing the woman with maternity benefit which enables her to proceed on her maternity leave for delivery and taking care of her child post-delivery.

The Court recalled the principle laid down in *Municipal Corporation of Delhi v Female Workers (Muster Roll)* [2000 (3) SCC 224], that obligations laid down under Articles 14, 15, 39, 42 and 43 of the Constitution of India (Constitution) mandated that the benefits provided under the MB Act be made applicable to the women engaged in casual / daily basis. The Court then carried this principle forward in *Deepika Singh* by stating that the rules prescribed under the CCSL Rules must also similarly achieve the objectives laid down and protected under relevant constitutional rights.

The Constitution secures the right of reproduction and at the same time ensures humane conditions of work and maternity relief. The Court also referred to India's international treaty obligations and reaffirmed that social legislations in the country need to be purposively interpreted to ensure that the gap between the society and law is bridged by appropriate application of their provisions.

The Court held that there is a distinction between maternity leave and childcare leave provided under the CCSL Rules by stating that they form different entitlements. The latter entitlement can be availed on occurrence of any of the situations averred to in Rule 43-C. The grant of the childcare leave does not disentitle the woman from availing maternity benefit which is a separate right provided for in the CCSL Rules.

#### Comment

Even though the contentious issue pertains to the interpretation of Rules 43 and 43-C of the CCSL Rules which regulate the public sector leave entitlements, the judgement rendered in *Deepika Singh* becomes relevant for private sector employers as well, as the Court commented on the realities of changing family structure. The Court took cognizance of the fact that traditional family structures which involved a mother and father have evolved into family structures that include unmarried partnerships to queer relations. A definition of a "parent" could change on account of adoption, remarriage or fostering of the children.

These changing dynamics permeates to the private sector as well. In this context, the Court has opined that a compassionate view should be taken in application of provisions pertaining to maternity reliefs. Maternity relief and benefits provisions should be applicable to women who may undertake duties of motherhood in atypical family structures.

More specifically, what holds relevance to the private sector is the Court adding the biological aspect to the expression 'less than two surviving children', meaning that such surviving children need to be biological children for a woman to not be allowed further maternity leave or to be provided with further maternity leave in a restricted manner. This aspect assumes significance from the standpoint of MB Act as well, where women with less than two surviving children are entitled to 26 weeks of maternity leave and those with two or more surviving children are allowed 12 weeks' paid maternity leave. The biological dimension in determining the quantum of maternity leave to be offered to a woman, as set out in *Deepika Singh*, may also help employers in the private sector to appropriately deal with the so-called atypical family structure cases. The development of social welfare jurisprudence suggests that the Court will look sympathetically upon the needs and requirements of employees who may have families that do not conform to a "traditional family" structure.

- Anshul Prakash (Partner), Deeksha Malik (Senior Associate) & Sana Sarosh (Associate)

For any queries please contact: editors@khaitanco.com

We have updated our *Privacy Policy*, which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).