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### FEMALE PROFESSIONALS, NOT BEING EMPLOYEES, ARE NOT ENTITLED TO MATERNITY BENEFIT: DELHI HIGH COURT

3 May 2024

In a development that could be significant in developing jurisprudence on the issue of maternity benefits for a female professional, a Division Bench of the Delhi High Court (High Court), in its judgement in the case of *Delhi State Legal Services Authority (DSLISA) v Annwasha Deb MANU/DE/2951/2024*, held that a female advocate appointed in a professional capacity in an organisation is not entitled to maternity benefits in the absence of an employer-employee relationship. In this update, we discuss the ruling in detail to understand the rationale of the court and its ramifications.

#### **Factual Background**

The respondent in the present case was appointed as a Legal Services Advocate (LSA) before the Juvenile Justice Board in 2016 for 3 years as a panel lawyer with the Delhi State Legal Services Authority (DSLISA). In 2017 upon conceiving a child, the respondent applied for maternity leave for 7 months, but her request was denied by DSLISA citing the absence of provisions for granting such benefits to LSAs. Aggrieved by the decision of the authorities, the respondent approached the High Court by way of a writ petition. A learned Single Judge of the Delhi High Court took a view that the language of the law does not imply any exclusion of working women from receiving benefits under the Maternity Benefit Act, 1961 (Act) based on the nature of their engagement. Consequently, the Learned Single Judge held that the respondent was entitled to benefits under the Act, equating her position with any other employee of DSLISA. Hence, the present appeal was filed by DSLISA against the order of the learned Single Judge.

#### **Issues**

The issue that, therefore, came to be presented before the Division Bench of the Delhi High Court was whether the maternity benefit under the Act is available to professionals such as the respondent, being engaged as a consultant and not an employee.

#### **Contentions**

- **Stance put forth by the appellant:** DSLISA argued that the Act is applicable only to a female employee within an established employer-employee relationship. Furthermore, it was submitted by the appellant that the empanelment of an advocate by an entity does not alter the nature of the relationship from a professional engagement, such as a client-advocate relationship, to an employment arrangement. Additionally, it was contended that the remuneration received by the respondent did not fulfil the criteria of 'wages' under the Act, as the payment of 'wages' pre-supposes the existence of an employment contract. Finally, the appellant argued that while the social welfare legislation warrants a broad and generous interpretation, such interpretation should not yield unforeseen or illogical outcomes beyond the legislative intent. For instance, in a scenario where an Advocate provides services to multiple entities in the course of professional engagements, the question arises as to which entity is responsible for providing maternity benefits as mandated by the Act.
- **Stance put forth by the respondent:** It was argued by the respondent that being an employee is not a prerequisite for invoking provisions of the Act; rather it is sufficient if a person is a

woman and is engaged for wages. Further, the respondent emphasized the existence of an employer-employee relationship between DSLSA and herself, as the authority exercised supervision/control over her actions and had the power to terminate her services as per internal regulations. Further, the respondent relied on Section 27 of the Act, which overrides any conflicting laws or agreements unless they are more favourable to the woman.

## Key Takeaways from the Ruling

The following are a few important observations made by the High Court that laid the foundation for its decision:

- **Existence of employer-employee relationship a must:** The court analysed the definitions of 'employer', 'woman' and 'wages' as set out in the Act and determined that a woman is an individual who is employed for wages paid or payable in cash in accordance with the terms of the contract of employment, either express or implied. Furthermore, the court concluded that the benefits provided under the said Act are exclusively applicable to a woman employed within an establishment under the control of the employer who is paying wages to her. In the present case, the supervision exercised by the authorities was solely with respect to the work assigned to the respondent for which she was appointed.
- **Distinction between 'wages' and 'honorarium':** While analysing the distinction between the two concepts, the court relied upon the Supreme Court's interpretation of honorarium in Karbhari Bhimaji v Shanker Rao, (1975) 1 SCC 252 to mean "payment made other than salary". In the present case, the payment made to the respondent was in the form of an honorarium, as opposed to wages paid to an employee for regular work. Notably, in the present scenario, if the respondent did not render services on a given day, the corresponding fees would not be paid. Hence, the engagement of the respondent was irregular, diverging from the predictable nature of typical employment arrangements.
- Therefore, the court held the learned Single Judge's interpretation extending the benefits under the Act to the respondent as erroneous given the nature of the respondent's appointment, which was characterized as professional rather than employment.

## Comments

The issue whether a woman professional is eligible to maternity benefits has always been a topic of debate and discussion. In 2017, pursuant to the significant amendments made to the Act, the Ministry of Labour and Employment, Government of India, received numerous queries as to whether the Act was applicable to contractual or consultant women employees. The Ministry issued a [clarification](#) stating that "the Act is applicable to all women who are employed in any capacity, directly or through any agency either on contractual or as a consultant". However, these clarifications led to a considerable amount of confusion in the industry, particularly because the Indian employment laws generally do not cover consultants within their scope.

Against this backdrop, the judgement of the Delhi High Court may provide some clarity for an establishment which appoints a woman professional for a specific assignment or specific period. However, the ruling leaves a few aspects unaddressed, such as the examination of the above-mentioned clarification of the government and the treatment of contract labour who are 'employed for wages' (the expression used in the definition of 'woman' under the Act) albeit with a different entity (contractor / services provider). It is yet to be seen how other courts would perceive the above observations of the Delhi High Court and what view they would take when confronted with a similar issue.

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