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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 5th July, 2023*

\+ W.P.(C) 10521/2019

SHACHI GAHOI ..... Petitioner

Through: Mr. Shashank Singh, Mr. Varun Singh, Mr. Akash Alex and Mr. Santosh Kumar Shukla, Advocates.

versus

INDIAN AGRICULTURAL STATISTICS RESEARCH INSTITUTE AND ORS. ..... Respondents

Through: Mr. Subhash Kumar Mishra, Advocate.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. By this writ petition, Petitioner seeks a writ of certiorari quashing the impugned order dated 25.07.2019 whereby services of the Petitioner, while working on temporary basis as Research Associate with the Respondents/Indian Agricultural Statistics Research Institute (hereinafter referred to as 'ICAR-IASRI') were terminated.

2. Narrative of facts captured in the writ petition is that Petitioner having a Ph.D. degree in Bioinformatics was appointed as Research Associate in ICAR-IASRI in a project called 'Consortium Research Platform on Genomics' for the period ending 31.03.2017. The appointment was on a contractual basis for the said period or termination of the project, whichever was earlier. Appointment letter

dated 29.10.2016 was issued to the Petitioner which stipulated the terms and conditions of service including nature of admissible leaves which included casual leave, restricted holidays as per Government of India/ICAR Rules as applicable from time to time, maternity leave and compensatory leave in lieu of duty performed on holidays.

3. Clause 8 of the appointment letter permitted the Respondents to terminate the Research Associateship, with or without notice, at any time, if the Research Associate was found to be negligent in his or her work or in case of unbecoming conduct. Petitioner avers that she was sincerely and diligently performing her duties which is evident from communications of the Respondents between January, 2019 to June, 2019 and for two and a half years that she worked with the Respondents, she shouldered several important responsibilities and published five research papers in reputed International journals. On account of her good performance in the project, she was granted third extension from 01.04.2019 to 31.03.2020.

4. According to the Petitioner, the problem started when she applied for leave on 13.06.2019 on account of back ache and weakness by an email addressed to Project Co-in-charge. Since Petitioner was not recovering, she repeated her request by email dated 15.06.2019. On 19.06.2019, Petitioner informed the concerned officers through an email communication that medical tests confirmed her pregnancy and on account of bed rest advised by the doctor, she would need leave for two weeks. Petitioner kept the Respondents updated on her medical condition and the tests she was undergoing and finally vide email dated 15.07.2019 she expressed her willingness to join back. On joining back on 22.07.2019, Petitioner submitted all

her medical reports to the Project in-charge Dr. Anil Rai/Respondent No. 2 indicating her visits, case history and doctor's prescription at Sir Ganga Ram Hospital.

5. Respondents terminated the services of the Petitioner by the impugned order dated 25.07.2019 on three grounds viz. absence without information, not performing duties consistently and obstruction in the work of the institution. On 29.07.2019, Petitioner made a representation to the Director apprising him of her medical condition and the fact that she had kept the institution informed of the same. Request was made to review her case of termination as the same was during the period of pregnancy. However, the termination order was not recalled and the representation was rejected by a letter dated 26.08.2019. The pending salary bills for the months of June and July, 2019 were also not cleared, compelling the Petitioner to approach this Court.

6. Learned counsel for the Petitioner submitted that Petitioner is a meritorious student with Ph.D. degree in Bioinformatics and had secured 16th All India Rank in DBT-BINC Examination and had also qualified the GATE Exam. Additionally, she has published 15 research papers in National and International journals. On account of her sincere and diligent working, Petitioner was granted four extensions in the contract and from time to time her work was appreciated by the concerned officers and thus there was no justifiable reason for terminating her services, particularly, when the project was ongoing.

7. It was contended that termination letter refers to three grounds for termination, each of which are factually and legally flawed.

Petitioner had duly intimated her inability to attend office for some time on 19.06.2019, on account of her pregnancy as she was unwell since 13.06.2019 and sought leave for two weeks. Emails to this effect were duly received by the Project Co-in-charge/Respondent No. 3 herein. By email dated 04.07.2019, Petitioner expressed her willingness to join followed by emails dated 15.07.2019 and 20.07.2019, informing that she would be joining soon and, in fact, joined on 22.07.2019 and furnished all the medical certificates/ prescriptions with the case history. Therefore, it cannot be stated that Petitioner was "absent without informing", as alleged by the Respondents. Insofar as the leaves referred to in the counter affidavit are concerned, the period of leaves shown includes 46½ days with 8 casual leaves, 10 sick leaves and 2 restricted holidays. Petitioner's contract was renewed from 01.04.2019 to 31.03.2020 and in this fourth extension, Petitioner only took the entitled leaves, which is 2 days sick leave from 29.05.2019 to 30.05.2019 and the remaining 39 days included 8 days sick leave and 31 days leave without pay between 13.06.2019 to 21.07.2019, which was within the period aforementioned, when she was sick on account of pregnancy. Additionally, this period included 6 Sundays, 1 second Saturday and 1 restricted holiday on 04.07.2019. Therefore, not only were the Respondents aware of the leaves taken by the Petitioner and the reasons thereof but each of the leave was her entitled and due leave in accordance with the contract of employment, which provided for various kinds of leaves including casual, maternity and compensatory, etc. Even assuming that the contract did not provide for leaves, Petitioner was entitled to maternity leave under the Maternity Benefits

Act, 1961 (hereinafter referred to as '1961 Act') and by virtue of Section 27 thereof, the provisions of this Act shall have an overriding effect on the contract of service. ***[Ref.: Municipal Corporation of Delhi v. Female Workers (Muster Roll) and Another, (2000) 3 SCC 224].***

8. The other two grounds of termination i.e. not performing the duties consistently and obstructing in the work of the institution have been created as an excuse to terminate the Petitioner as none of the allegations can be established by the Respondents and have been taken for the first time in the impugned termination order. Petitioner has placed on record a detailed chart showing all the responsibilities she carried out diligently and the termination order was not preceded by any show-cause notice.

9. The impugned action of termination is contrary to Section 12 of the 1961 Act which provides that when a woman absents herself from work in accordance with provisions of the said 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/dismissal on such a day that notice expires during such absence or to vary to her disadvantage any of the conditions of her service. In the present case, Petitioner had duly informed the Respondents of her pregnancy on 19.06.2019 and sought two weeks leave followed by some more leave on doctor's advise and despite this the termination order was issued on 25.07.2019. Therefore, the impugned order cannot be sustained being in the teeth of provisions of Section 12 of the 1961 Act as held by this Court in ***Asia Pacific Institute of Management v. Office of the Joint Labour Commissioner and Another, 2021 SCC OnLine Del 5243.***

10. It was further contended that the stand taken by the Respondents that Petitioner never applied for maternity leave is wholly incorrect. This stand is premised on an understanding that Petitioner was required to categorically mention 'maternity leave' and/or give specific dates from when she wanted the leave. This position adopted by the Respondents overlooks the fact that Petitioner had clearly stated in the email dated 19.06.2019 that after the medical tests in the hospital doctors had confirmed that she was pregnant and on account of the back pain and weakness owing to pregnancy, she was unable to sit continuously for more than few minutes and was advised bed rest. There can, therefore, be no doubt that the leave sought was on account of pregnancy even though Petitioner may not have specifically used the words "maternity leave". Even assuming that Petitioner had not put the Respondents to notice, she would be entitled to maternity benefits by virtue of Section 6(6) of the 1961 Act.

11. *Per contra*, it was contended on behalf of the Respondents that Petitioner was appointed on a contract basis and under Clause 8 of the appointment letter, she could be terminated with or without notice at any time, if found negligent in work or if she was guilty of an unbecoming conduct. No doubt, Petitioner's contract was extended four times but Petitioner was negligent towards her work and duties assigned to her as detailed in the counter affidavit. Petitioner was also rude towards her colleagues and superiors and her conduct was quarrelsome. Petitioner had been warned for her behaviour and conduct by a memo dated 20.04.2019. Even when the Petitioner joined back on 22.07.2019, after long absence, she failed to carry out the assigned task of submitting a complete report on the

project work done by her and to hand over collected data, lab notebooks, etc.

12. It was further submitted that during her last extension, Petitioner was on leave/absent from her duties for 44 days between 25.05.2019 to 21.07.2019. For all these reasons cumulatively, it was decided to terminate her services in accordance with Clause 8 of appointment letter. The case of the Petitioner that she was terminated on account of her pregnancy is completely wrong as she had never applied for maternity leave. In fact, the pregnancy had no relation with the termination which was on account of the three reasons mentioned in the termination order.

13. Reliance by the Petitioner on Section 12 of the 1961 Act is misplaced since she did not apply for maternity leave on account of pregnancy. Even if Section 12 is applicable, proviso to Section 12(2)(a) provides that maternity benefits or medical bonus or both can be withheld if the dismissal is for gross misconduct. In order to avail the benefit of Section 12, it would be important for the Petitioner to satisfy that she had complied with the provision of Section 6 of the 1961 Act by giving notice in writing in the Form prescribed stating that the maternity benefit or any other amount due under the 1961 Act be paid to her. In this case, Petitioner never applied for maternity leave and no notice was given as required under Section 6 and hence invocation of both Sections 12 and 17 is misplaced. Reliance by the Petitioner on the judgment in ***Municipal Corporation of Delhi (supra)*** is misplaced as in the said case the Supreme Court was deciding the question whether provisions of the 1961 Act are applicable to women engaged on casual/muster roll/daily wage basis

apart from regular appointees. Reliance on the judgment in ***Asia Pacific (supra)*** is equally misplaced as in the said case the employee had applied for maternity leave and was yet dismissed during her pregnancy, which is not the case here.

14. I have heard the learned counsels for the parties and examined their contentions.

15. Before embarking on the journey to decide the issues that arise in the present writ petition, a little background to the 1961 Act needs a reference. Part IV of the Constitution of India contains the Directive Principles of State Policy. Article 39 reads as follows:-

> *"**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 to livelihood;*
>
> *xxxx xxxx xxxx xxxx*
>
> *(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."*

16. Article 42 provides as follows:-

> *"**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."*

17. Be it mentioned that the United Nations recognized rights of women and children and genesis of these rights is in Article 1 of Universal Declaration of Human Rights i.e. "All human beings are born free and have equal dignity and rights". Right to seek benefits relating and pertaining to maternity emanates from Article 42 of the Constitution of India. In ***Mohini Jain (Miss) v. State of Karnataka,***

(1992) 3 SCC 666, Supreme Court held that Directive Principles which are fundamentals in the governance of the country cannot be isolated from Fundamental Rights guaranteed under Part III. Both are supplementary to each other and State is under a Constitutional mandate to create conditions in which Fundamental Rights guaranteed to individuals could be enjoyed by all.

18. 1961 Act clearly emerges from the aforesaid ethos and is founded on the concept of maternity and child care. Significantly, Section 27 of the 1961 Act embodies that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any law or terms of any award, agreement or contract of service. Section 27 reads as follows:-

> *"**27. Effect of laws and agreements inconsistent with this Act.**-(1) 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, whether made before or after the coming into force of this Act:*
>
> *Provided that where under any such award, agreement, contract of service or otherwise, a woman is entitled to benefits in respect of any matter which are more favourable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that she is entitled to receive benefits in respect of other matters under this Act.*
>
> *(2) Nothing contained in this Act shall be construed to preclude a woman from entering 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 to which she would be entitled under this Act."*

19. Therefore, benefits and/or safeguards provided under the 1961 Act have a mandate of law and are required to be followed irrespective of the terms of contract between the employer and the employee, save and except, where contractual terms are more favourable to the women employees. Interpreting Section 27, the

Supreme Court in ***Municipal Corporation of Delhi (supra),*** held that benefits of the provisions of the 1961 Act would be available to women engaged on casual/muster roll/daily wage basis apart from regular employees as also that the right to get maternity leave including other benefits available under the 1961 Act must be read into service contracts of the Municipal Corporation. I would profitably extract a few passages from the judgment as under:-

> *"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 o/any matter which are more favourable to her than those she would be entitled to under this Act.*
>
> *24. 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 of on muster roll on daily wage basis.*
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> *xxx xxx xxx*
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> *33. A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work, they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would*

face in performing her duties at the workplace while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre-or post-natal period.

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These principles which are contained in Article 11, reproduced above, have to be read into the contract of service between Municipal Corporation of Delhi and the women employees (muster roll); and so read these employees immediately become entitled to all the benefits conceived under the Maternity Benefit Act, 1961. We conclude our discussion by providing that the direction issued by the Industrial Tribunal shall be complied with by the Municipal Corporation of Delhi by approaching the State Government as also the Central Government for issuing necessary Notification under the Proviso to Subsection (1) of Section 2 of the Maternity Benefit Act, 1961, if it has not already been issued. In the meantime, the benefits under the Act shall be provided to the women (muster roll) employees of the Corporation who have been working with them on daily wages."

20. Therefore, beyond a doubt, the provisions of the 1961 Act would apply to the Petitioner irrespective of the nature of her employment being contractual. The first contention of the Respondents that needs to be considered and which, to my mind, is the main pedestal of their argument is that no notice was given by the Petitioner under Section 6 of the 1961 Act seeking maternity leave and even in the email dated 19.06.2019 sent by the Petitioner, there is no reference to maternity leave or the dates from which she wanted to proceed on leave and thus the 1961 Act is inapplicable ousting her right to invoke Section 12 thereof.

21. Sections 6 and 12 of the 1961 Act, in my view, operate in two different fields. While Section 6 of the said Act by its plain reading postulates that any woman employed in an establishment and entitled to maternity benefit under the provisions of the 1961 Act may give

notice in writing in such Form as may be prescribed, to her employer stating the maternity benefit and any other amount to which she may be entitled as also that she will not work in any establishment during the period for which she receives maternity benefit. Sub-section (2) of Section 6 of the said Act further provides that in case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery. Sub-section (3) is by way of a proviso which permits the notice to be given as soon as possible after the delivery. Pertinently, sub-section (6) carves out an exception and stipulates that failure to give notice shall not disentitle a woman to maternity benefit if she is otherwise entitled. Section 12, on the other hand, underscores an obligation of an employer and mandates that when a woman absents herself from work in accordance with the provisions of the 1961 Act, the employer shall not discharge or dismiss her during or on account of such absence and any such action, if taken, would be unlawful. Conjoint reading of Sections 6 and 12 shows that the former requires giving of a notice by the employee for seeking maternity benefits while the latter proscribes dismissal/ discharge of a woman employee during or on account of such absence, which, needless to state, is an absence from work in accordance with provisions of the 1961 Act.

22. Insofar as the argument of failure to give notice under Section 6 is concerned, the issue is no longer *res integra* and has been decided by this Court in ***Asia Pacific (supra),*** relevant paras of which are as follows:-

> *"14. The Petitioner's claim however, is that it was not informed of Respondent No. 2's pregnancy and therefore the termination would*

not be unlawful. Coming to the issue of notice of claim for maternity benefits, the same is dealt with under Section 6(6) of the Act which reads:

> ***"6. Notice of claim for maternity benefit and payment thereof.—***
>
> *(1) Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in such form as may be prescribed, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.*
>
> *(2) In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery.*
>
> *(3) Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.*
>
> *(4) On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.*
>
> *(5) The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof as may be prescribed that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed that the woman has been delivered of a child.*
>
> *(6) The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Act if she is otherwise entitled to such benefit or amount and in any such case an Inspector may either of his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order."*

15. Thus, under Section 6, it is clear that the failure to give notice would not disentitle the woman from such benefits. The question as to whether the notice to be given under Section 6 (6) of the Act is mandatory, was considered in Sunita Baliyan v. Director Social Welfare Department GNCTD, (2007) 99 DRJ 551. In the said case, the Ld. Single Judge held that immediate notice to the employer, of pregnancy of an employee is not required, however, notice would be

required to be served within a reasonable period and in any event as soon as possible after delivery. The relevant observations of the Court are as under:

> *"6. Counsel for the petitioner also submitted that the provisions of the aforesaid Act do not make it mandatory for the petitioner to give a notice to her employer and hence her services could not be terminated by the respondent management. The aforesaid plea is found to be untenable for the reason that while the said provision does not mandate a woman to immediately intimate the employer of her pregnancy, for claiming benefit of the Act, it certainly calls upon her to give a notice in writing during her pregnancy as soon as possible after delivery. The obvious intendment of the provision is to ensure that while a woman working in an establishment gets the maternity benefit, at the same time, inconvenience is not caused to the establishment where she is engaged and adequate alternate arrangements can be made by the management to ensure that the work does not suffer in her absence. In the present case, as per the records, the petitioner failed to take any steps in this regard. Further, as observed in the impugned award, it is not a case of termination of the petitioner, as the respondent management has not taken any steps against her in terms of Rule 4.21 of the General Guidelines governing the respondent management."*

16. Going by the test laid down in this decision, as also a reading of the provision it is clear that in the facts of the present case, the email dated 17th October, 2021 was just two months before the delivery of Respondent No. 2's child and in any event, this Court is unable to believe the stand of the Petitioner that the relieving letter or termination, was without knowledge of the pregnancy. The said letter was served upon Respondent No. 2 who was in her seventh month of pregnancy, which is an advanced stage. It is unfathomable as to how when she was working with the Petitioner which is an academic establishment, the Petitioner can claim to be completely ignorant of this fact. The plea that the Petitioner was not aware of Respondent no. 2's pregnancy and that the relieving letter was served on her, as it had no notice of the same, is specious to say the least."

23. It is true that Section 6 contemplates giving of a notice, which may be during pregnancy or as soon as possible after delivery. While this Court is not subscribing to the view that procedures required under a Legislation or Rules should not be adhered to as a matter of course and ideally a woman employee must follow the procedure

prescribed under the 1961 Act, both of giving a notice and specifically requesting for "maternity leave", however, it must be kept in mind that the 1961 Act is a welfare legislation and must be so construed. A hyper-technical approach should not be adopted in all cases while dealing with beneficial and welfare legislations and measures, leaving no scope for exceptional circumstances, which in fact, even Section 6(6) contemplates. Section 6 does prescribe that notice must state the date from which the employee will be absent and requires a format in which the notice is to be given, however, looking at the aims and objectives of the 1961 Act, this Court is unable to agree with the Respondents that a communication by the employee intimating that she is unwell on account of pregnancy and seeking leave for a specified period on that count, should be so strictly construed against the employee so as to deprive her of the benefits that the legislation seeks to bestow. Petitioner has placed on record an email dated 19.06.2019, the receipt of which is admitted by the Respondents, in which it is stated that the medical tests revealed that she was pregnant and on account of back pain and weakness she was unable to sit continuously for more than few minutes. She also stated that doctor had advised her to take rest for a couple of weeks and accordingly she sought leave stating that she would join back after two weeks. Petitioner also offered to work from home in case of any urgent requirement. It is thus clear that Respondents had intimation/ information both of the fact that Petitioner was pregnant and that on account of medical issues, she was seeking leave for two weeks. To my mind, this communication cannot be construed anything but a notice envisaged under Section 6 *albeit* it may not be strictly in the

required format. It would be apposite to refer to the judgment of the Supreme Court in ***Richa Mishra v. State of Chhattisgarh and Others, (2016) 4 SCC 179,*** relating to the principle of 'purposive interpretation' or 'purposive construction' which means and connotes that the Court is required to attach that meaning to the provisions which serve the 'purpose' behind the provision i.e. to ascertain what the provision is designed to achieve and/or its aims and objectives. Holding in favour of the Respondents that despite this communication, there was failure to give notice under Section 6 of the 1961 Act would be violating the avowed purpose and objective of the beneficial legislation in question. Relevant passages from the judgment in ***Richa Mishra (supra)*** are as under:-

> *"30. In order to gather the intention of the lawmaker, the principle of "purposive interpretation" is now widely applied. This has been explained in Shailesh Dhairyawan v. Mohan Balkrishna Lulla [Shailesh Dhairyawan v. Mohan Balkrishna Lulla, (2016) 3 SCC 619 : (2015) 11 Scale 684] in the following words: (SCC pp. 641-42, paras 31-33)*
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> > *"31. The aforesaid two reasons given by me, in addition to the reasons already indicated in the judgment of my learned Brother, would clearly demonstrate that provisions of Section 15(2) of the Act require purposive interpretation so that the aforesaid objective/purpose of such a provision is achieved thereby. The principle of "purposive interpretation" or "purposive construction" is based on the understanding that the court is supposed to attach that meaning to the provisions which serve the "purpose" behind such a provision. The basic approach is to ascertain what is it designed to accomplish? To put it otherwise, by interpretative process the court is supposed to realise the goal that the legal text is designed to realise. As Aharon Barak puts it:*
> >
> > > *'Purposive interpretation is based on three components: language, purpose, and discretion. Language shapes the range of semantic possibilities within which the interpreter acts as a linguist. Once the interpreter defines the range, he or she chooses the legal meaning of the text from among the*

(express or implied) semantic possibilities. The semantic component thus sets the limits of interpretation by restricting the interpreter to a legal meaning that the text can bear in its (public or private) language.' [Aharon Barak, Purposive Interpretation in Law (Princeton University Press, 2005).]

32. Of the aforesaid three components, namely, language, purpose and discretion "of the Court", insofar as purposive component is concerned, this is the ratio juris, the purpose at the core of the text. This purpose is the values, goals, interests, policies and aims that the text is designed to actualise. It is the function that the text is designed to fulfil.

33. We may also emphasise that the statutory interpretation of a provision is never static but is always dynamic. Though literal rule of interpretation, till some time ago, was treated as the "golden rule", it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced. Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principle is now widely applied by the courts not only in this country but in many other legal systems as well." *(emphasis in original)*

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33. What should be the approach in interpreting such laws is explained in Badshah v. Urmila Badshah Godse [Badshah v. Urmila Badshah Godse, (2014) 1 SCC 188 : (2014) 1 SCC (Civ) 51] in the following words: (SCC pp. 196-99, paras 13.3-22)

"13.3. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125 of the Code of Criminal Procedure. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice.

While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.

14. Of late, in this very direction, it is emphasised that the courts have to adopt different approaches in "social justice adjudication", which is also known as "social context adjudication" as mere "adversarial approach" may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:

> *'It is, therefore, respectfully submitted that "social context judging" is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the Judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication.' [Keynote address on "Legal Education in Social Context" delivered at National Law University, Jodhpur on 12-10-2005, available on http://web.archive.org/web/20061210031743/http://www.nlujodhpur.ac.in/ceireports.htm [last visited on 25-12-2013]]*

15. The provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from 'adversarial' litigation to social context adjudication is the need of the hour.

16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes,

the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purpose of the law.

17. Cardozo acknowledges in his classic [Benjamin N. Cardozo: The Nature of Judicial Process.] :

> *'... no system of jus scriptum has been able to escape the need of it',*

and he elaborates:

> *'It is true that codes and statutes do not render the Judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. ... There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however, obscure and latent, had nonetheless a real and ascertainable pre-existence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a Judge's troubles in ascribing meaning to a statute. ... Says Gray in his lectures [John Chipman Gray: The Nature and Sources of the Law.] : "The fact is that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the Judges have to do is, not to determine that the legislature did mean on a point which was present to its mind, but to guess what is would have intended on a point not present to its mind, if the point had been present."'*

18. The court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision — libre recherché scientifique i.e. "free scientific research". We are of the opinion that there is a non-rebuttable presumption that the legislature while making a provision like Section 125 of the Code of Criminal Procedure, to fulfil its constitutional duty in good faith, had always intended to give relief to the woman becoming 'wife' under such circumstances. This approach is particularly needed while deciding the issues relating to gender justice. We already have examples of exemplary efforts in this regard.

Journey from Shah Bano [Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556 : 1985 SCC (Cri) 245] to Shabana Bano [Shabana Bano v. Imran Khan, (2010) 1 SCC 666 : (2010) 1 SCC (Civ) 216 : (2010) 1 SCC (Cri) 873] , guaranteeing maintenance rights to Muslim women is a classical example.

19. In Rameshchandra Rampratapji Daga v. Rameshwari Rameshchandra Daga [Rameshchandra Rampratapji Daga v. Rameshwari Rameshchandra Daga, (2005) 2 SCC 33] , the right of another woman in a similar situation was upheld. Here the Court had accepted that Hindu marriages have continued to be bigamous despite the enactment of the Hindu Marriage Act in 1955. The Court had commented that though such marriages are illegal as per the provisions of the Act, they are not "immoral" and hence a financially dependent woman cannot be denied maintenance on this ground.

20. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon case [Heydon case, (1584) 3 Co Rep 7a : 76 ER 637] , Co Rep at p. 7b : ER p. 638 which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction ut res magis valeat guam pereat, in such cases i.e. where alternative constructions are possible the court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125 of the Code of Criminal Procedure, such a woman is to be treated as the legally wedded wife.

21. The principles of Hindu Personal Law have developed in an evolutionary way out of concern for all those subject to it so as to make fair provision against destitution. The manifest purpose is to achieve the social objectives for making bare minimum provision to sustain the members of relatively smaller social groups. Its foundation spring is humanistic. In its operation field

all though, it lays down the permissible categories under its benefaction, which are so entitled either because of the tenets supported by clear public policy or because of the need to subserve the social and individual morality measured for maintenance.

22. In taking the aforesaid view, we are also encouraged by the following observations of this Court in Capt. Ramesh Chander Kaushal v. Veena Kaushal [Capt. Ramesh Chander Kaushal v. Veena Kaushal, (1978) 4 SCC 70 : 1978 SCC (Cri) 508] : (SCC p. 74, para 9)

> *'9. ... The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause—the cause of the derelicts.'" (emphasis supplied)*

34. When all the aforesaid Rules are seen in juxtaposition and in conjunction with each other, intention of the rule-making authority becomes apparent and is clearly ascertained. The intention of the rule-making authority was, and it continues to be so, to give benefit of age relaxation to women candidates. That, according to us, represents the true intention. Otherwise the very purpose of such Rules is defeated. The rule-making authority has manifest its intention by removing the ambiguity and providing a specific provision even in the 2005 Rules which, according to us, is by way of abundant caution so that such kinds of disputes or situations with which we are confronted here, are eliminated."

24. Coming to Section 12 of 1961 Act, it is rightly contended by the counsel for the Petitioner that where a woman absents herself from work in accordance with the provisions of the Act, her dismissal/discharge on account of such absence is legally untenable and unlawful. By virtue of The Maternity Benefit (Amendment) Act, 2017, No.06 of 2017, sub-section (3) to Section 5 of the 1961 Act underwent an amendment and post the amendment, the maximum period for which any woman is entitled to maternity benefit is 26 weeks, of which not more than 8 weeks shall precede the date of her

expected delivery. Applying the said provision, Petitioner was entitled to total maternity leave of 26 weeks, pre and post delivery. Another provision that deserves a mention at this stage is Section 10 of the 1961 Act which *inter alia* stipulates that a woman suffering from illness arising out of pregnancy shall, on production of such proof as may be prescribed, be entitled, in addition to the period of absence allowed to her under Section 6, or as the case may be under Section 9, to leave with wages at the rate of maternity benefit for a maximum period of one month. Being a benevolent legislation, Section 10 has been carefully and consciously enacted enabling a pregnant woman to take leave in excess of the period under Section 6 on account of illness that may arise out of pregnancy, as it is a matter of common knowledge as well as medical jurisprudence that in a given case pregnancy can result into various medical complications at any time during the pregnancy.

25. As a matter of fact and as held above, Petitioner had applied for leave on 19.06.2019 and was entitled in law to leave of one month over and above the entitlement under Section 6 of the 1961 Act. It is not disputed by the Respondents that Petitioner was pregnant at the time when she applied for leave as also at the time when she joined back on 22.07.2019 and more importantly at the time when she was terminated on 25.07.2019. Thus, it was during the subsistence of the contract that application for leave was made on health grounds specifying pregnancy as a reason and even assuming that it was not specifically in the required format, ostensibly the reason for applying for leave was 'pregnancy'. Leave was on account of an illness related to pregnancy and medical documents were also submitted by the

Petitioner on joining back, which is a fact not disputed by the Respondents. Therefore, Petitioner has correctly invoked Section 12 of the 1961 Act and the absence was under the provisions of the Act i.e. Section 10 and Respondents were proscribed from terminating her services as the absence was during and/or on account of pregnancy and the termination order is clearly unlawful.

26. It is no doubt true that the termination order does not directly refer to termination for absence on account of pregnancy and the reason is not far to seek. Respondents were aware and conscious of the fact that Petitioner had communicated to them her health condition arising out of pregnancy, which did not permit her to join back at the initial stage and therefore any termination for absence on account of pregnancy, particularly, when they failed to even grant her the entitled maternity leave, would have been against the law. In these circumstances, termination order was cleverly drafted to overcome the rigours of Section 12 of the 1961 Act and to my mind, is a mere camouflage and a colourable exercise of power.

27. Petitioner has also rightly pointed out that each of the three reasons for termination are factually and legally flawed. Insofar as the ground of 'absence without information' is concerned, emails placed on record reflect that the factual scenario was otherwise. Starting from the email dated 13.06.2019 to 20.07.2019, Petitioner had been communicating to the Respondents about her illness and requesting for leave and also assuring them that she would be joining as soon as she was better. It is not the case of the Respondents that these emails were not received by them as each of them is addressed to the Project Co-in-charge/Respondent No. 3 herein. For the period prior thereto,

Petitioner has stated that during her fourth extension she had taken 2 days sick leave on 29.05.2019 and 30.05.2019. It also requires a mention that even during the period between 13.06.2019 to 20.07.2019, there were 6 Sundays, 1 second Saturday and 1 Restricted Holiday, which the Petitioner was even otherwise entitled to as holidays, by virtue of her contract of employment.

28. The second and third ground for termination that Petitioner was not performing her duties consistently and obstructing the work of the institution is not supported by any material on record. Even assuming that in the perception of the Respondents, Petitioner was guilty of dereliction of duty, no termination could have been effected on these grounds, which are punitive and stigmatic, without an inquiry or to say the least, a show-cause notice giving an opportunity to the Petitioner to explain and defend the allegations levelled. Interestingly, in the counter affidavit and the short note of argument, the reasons propounded to show the alleged conduct of the Petitioner leading to her termination are that Petitioner was negligent, insincere, rude towards her colleagues and superiors and quarrelsome. The only memorandum that is referred to and placed on record to justify the termination order is a memorandum dated 20.04.2019. A reading of the memorandum shows that Petitioner was advised to improve her behaviour as a first warning and this was triggered by an incident where Petitioner had allegedly entered the cabin of Respondent No.3 and argued with respect to her claim for salary arrears. Even assuming this to be factually correct and that Petitioner was given a warning, it is not understood what triggered the termination letter on 25.07.2019, as admittedly there are no allegations of any kind between 20.04.2019

and 25.07.2019 and the only logical and irresistible conclusion that this Court is able to draw is that the termination was on account of leave sought by the Petitioner due to the medical complications arising out of pregnancy.

29. The last contention of the Respondents that needs to be considered is that Proviso to Section 12(2)(a) carves out an exception where if the dismissal is for prescribed gross misconduct, the employer may deprive the woman employee of maternity benefit or medical bonus or both. The contention needs to be rejected outrightly. First and foremost, the alleged conduct of the Petitioner cannot be classified in the category of 'gross misconduct'. What constitutes gross misconduct has been a subject of consideration in several judgments and there is no straight-jacket formula to define the expression. Some clue can be taken by the Court from Rule 8 of The Maternity Benefit (Mines and Circus) Rules, 1963, framed by the Central Government exercising powers conferred by Section 28 of the 1961 Act which enumerates that "acts" that would constitute 'gross misconduct' for purpose of Section 12. Rule 8 is extracted hereunder for ready reference:-

> *"8. Acts which constitute gross misconduct.—The following acts shall constitute gross misconduct for purpose of section 12, namely:—*
>
> *(a) wilful destruction of employer's goods or property;*
>
> *(b) assaulting any superior or co-employee at the place of work;*
>
> *(c) criminal offence involving moral turpitude resulting in conviction in a court of law;*
>
> *(d) theft, fraud, or dishonesty in connection with the employer's business or property; and*
>
> *(e) wilful non-observance of safety measure or rules on the subject or wilful interference with safety devices or with fire fighting equipment."*

30. From the enumerated gross misconducts, it is clear that the alleged conduct of the Petitioner does not fall under any of the Clauses (a) to (e). This was only by way of illustration, however, a further clue can be taken from the observations of the Division Bench of this Court in ***Union of India & Ors. v. Dr. V.T. Prabhakaran, 2010 SCC OnLine Del 2478,*** relevant passages from which are as under:-

> *"31. The Supreme Court in the case (1992) 4 SCC 54, State Bank of Punjab v. Ram Singh Ex Constable discussed and decided what misconduct is. The relevant paras of the judgment are reproduced below:*
>
> > *"In usual parlance, misconduct means transgression of some established and defined rule of action, where no discretion is left, except that necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where, some direction is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."*
> >
> > *"Thus it could be seen that the word "misconduct" though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, willful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."*
>
> *32. Having understood what misconduct is, it becomes easy to understand what a grave misconduct would be. It has to be the aggravated form of misconduct.*

33. Acts of moral turpitude, acts of dishonesty, bribery and corruption would obviously be an aggravated form of misconduct because of not only the morally depraving nature of the act but even the reason that they would be attracting the penal laws. There would be no problem in understanding the gravity of such kind of offences. But that would not mean that only such kind of indictments would be a grave misconduct. A ready example to which everybody would agree with as a case of grave misconduct, but within the realm of failure to maintain devotion to duty, would be where a fireman sleeps in the fire office and does not respond to an emergency call of fire in a building which ultimately results in the death of 10 persons. There is no dishonesty. There is no acceptance of bribe. There is no corruption. There is no moral turpitude. But none would say that the act of failure to maintain devotion to duty is not of a grave kind.

34. It would be difficult to put in a strait jacket formula as to what kinds of acts sans moral turpitude, dishonesty, bribery and corruption would constitute grave misconduct, but a ready touchstone would be where the 'integrity to the devotion to duty' is missing and the 'lack of devotion' is gross and culpable it would be a case of grave misconduct. The issue needs a little clarification here as to what would be meant by the expression 'integrity to the devotion to duty'. Every concept has a core value and a fringe value. Similarly, every duty has a core and a fringe. Whatever is at the core of a duty would be the integrity of the duty and whatever is at the fringe would not be the integrity of the duty but may be integral to the duty. It is in reference to this metaphysical concept that mottos are chosen by organizations. For example in the fire department the appropriate motto would be: 'Be always alert'. It would be so for the reason the integrity of the duty of a fire officer i.e. the core value of his work would be to be 'always alert'. Similarly, for a doctor the core value of his work would be 'duty to the extra vigilant'. Thus, where a doctor conducts four operations one after the other and in between does not wash his hands and change the gloves resulting in the three subsequent patients contacting the disease of the first, notwithstanding there being no moral turpitude involved or corruption or bribery, the doctor would be guilty of a grave misconduct as his act has breached the core value of his duty. The example of the fireman given by us is self explanatory with reference to the core value of the duty of a fireman to be 'always alert'.

35. What we have stated in para 34 above is best understood with reference to the example in para 33 above.

xxxx xxxx xxxx xxxx

37. As regards WP(C) No. 559/2010 we note that while passing the order imposing the cut in pension the disciplinary authority has not returned a finding that the misconduct proved is grave misconduct and neither has the appellate authorities so found, no case is made

out to interfere with the findings returned by the Tribunal. We may simply add that the file in question for purposes of a second appeal to be filed was with an Office Assistant and the respondent in said writ petition was the Superintendent of the branch i.e. was not directly dealing with the file. The respondent, at best, would be guilty of failing to exercise proper supervision, which may be a misconduct but would prima facie be a case not of grave misconduct."

31. In view of the aforesaid, reliance of the Respondents on Proviso to Section 12(2)(a) cannot rescue them from the rigours of Section 12. Before drawing the curtains, I may only reiterate the sentiments of the Courts echoed in several judgments that the 1961 Act is a beneficial legislation meant to protect the rights of pregnant women and must be implemented fully and liberally without being caught in the web of technicalities. Keeping the aim and object of the beneficial legislation in mind, which is to regulate employment of women in certain establishments, before and after child birth and to provide maternity benefits including maternity leave, an organization should be empathetic to a woman employee who is pregnant rather than make all kinds of vague and bald allegations and to find means and ways to dispense with her services.

32. For all the aforesaid reasons, the impugned order of termination dated 25.07.2019 is quashed and set aside. Ordinarily, the Court does not direct reinstatement where the nature of employment is contractual or short term, however, in the present case, it is an undisputed fact that the Petitioner was appointed for the period mentioned in the appointment letter or till the termination of the project, whichever was earlier. During the course of hearing, learned counsel for Respondents, on instructions, had stated that the project has not ended and is ongoing. In these circumstances, Respondents are directed to reinstate

the Petitioner with 50% back wages from the date of termination till the date of reinstatement. Petitioner shall also be entitled to all maternity benefits in consonance with provisions of 1961 Act. This Court is also of the view that since the Petitioner had sought maternity leave on genuine grounds and not only was she deprived of her statutory rights but was unlawfully terminated for which she has undergone mental suffering as also lost of livelihood, she would be entitled to cost of Rs.25,000/-. The entire exercise of reinstating the Petitioner including payment of the monetary benefits shall be completed within four weeks from today.

33. Writ petition is allowed in the aforesaid terms.

JYOTI SINGH, J

JULY 5, 2023/kks