



Tax alert: Supreme Court rules that contract tenure not an obstacle to entitlement of maternity benefits

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As per an order (CIVIL APPEAL NO(S). 5010/2023) passed by the Supreme Court ('SC') in August 2023, employers in India need to provide maternity benefit to female employees engaged through fixed term agreements even if the maternity period is beyond the contract tenure. In this regard, the SC observed that the Maternity Benefit Act, 1961 ('Act') creates a fiction of continued employment by treating the woman to be in employment solely for her to avail her maternity benefits entitlement.

In a nutshell



As per the Maternity Benefit Act, companies need to provide maternity leave and maternity benefit to eligible female employees at the rate of the average daily wage for the period of her actual absence.

However, the female employee will be eligible for maternity benefit only if she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.



The Petitioner was appointed as a senior resident at a hospital on June 12, 2014, where her appointment letter had specified that the posting was for a period of 1 year, extendable on a yearly basis up to a maximum of 3 years.

Upon application for maternity benefit during the last year of her contract extension, her employer informed her that she would be entitled to only 11 days of maternity benefits as her contract was due to expire on June 11, 2017.



The petitioner unsuccessfully challenged this in the Delhi High Court. In the appeal against the HC Decision, the Supreme Court addressed the applicability of the Act to fixed-term contracts.

The Supreme Court observed that Section 12(2)(a) of the Act encapsulates the principle of continuation of maternity benefits despite cessation of employment.



The Supreme Court held that the Act creates a fiction of continued employment by treating the woman to be in employment solely for her to avail her maternity benefits entitlement.

The Supreme Court has confirmed that once a women employee meets the eligibility condition as laid down in the Act, she would be entitled to maternity benefits as provided thereunder irrespective of her contract tenure.



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Facts of the case:

The Petitioner was appointed as a senior resident at a hospital on June 12, 2014, for a period of 1 year. Her appointment letter also specified that the period was extendable on a yearly basis up to a maximum of 3 years.

During the last year of her contract extension, she applied for maternity benefits from June 1, 2017, in accordance with the Maternity Benefit Act, 1961 ('Act'). However, her employer informed her that she would be entitled to only 11 days of maternity benefits as her contract was expiring on June 11, 2017. Further, the employer stated that their rules did not allow/permit any further extension of the period of posting.

The petitioner challenged this in the Delhi High Court ('HC'). In 2019, the HC held that the term "actual absence" used in section 5(1) of the Act presupposes that the woman would be "present" at work if not for the maternity leave. However, if the employment contract was time bound with an outer limit, then the question of the woman being present does not arise. The Delhi HC therefore held that the right to maternity benefits would be subject to the terms of the contractual employment, including the length of the contract, and that the Act does not purport to extend the woman's term of contract or period of service.

The Petitioner appealed this decision before the SC.

Issue:

Would maternity benefits, as contemplated in the Act, apply to a woman employee appointed on contract (for a fixed term) if the period for which she claims such benefits, extends beyond her contractual period?

• Highlights of the Order

The SC held that once a female employee fulfills the conditions for eligibility for maternity benefit under Section 5(2) of the Act ("worked for a period not less than 80 days in the twelve months preceding the expected date of delivery"), the continuation of maternity benefits is inbuilt in the statute itself, where the benefits would survive and continue despite the cessation of employment.

- **Once eligibility is met, benefits accrue:** The SC held that the Act envisages entitlement to maternity benefits, which accrues on fulfillment of the conditions specified in Section 5(2) thereof, and such benefits can travel beyond the term of employment also. It is not coterminous with the employment tenure.
 - The analysis of the provisions of the 1961 Act does not lead to an interpretation that the maternity benefits **cannot survive or go beyond the duration of employment** of the applicant thereof.
 - The expression employed in the legislation is maternity benefits [in Section 2(h)] and not leave. Section 5(2) of the statute stipulates the conditions on the fulfilment of which such benefits would accrue.
 - The benefits under the Act would be applicable, even if a woman dies after delivery of the child, **for the full term she would have otherwise been entitled to.**
- **Discharge/Dismissal not to effect maternity benefit which accrues once eligibility is met:** The SC observed that the discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus referred to in Section 8, shall not have the effect of depriving her of the maternity benefit or medical bonus.

In this regard, the SC held that the term "discharge" in the statute is of wide import and would include **discharge on the conclusion of the contractual period.**

- **Overriding effect of the Act:** The SC also drew attention to the language used in this statement from Section 27 of the Maternity Benefit Act – “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.

Our comments:

The SC has clearly concluded that the Act creates a fiction of continued employment by treating the woman to be in employment solely to avail her maternity benefits entitlement. Therefore, once a women employee meets the eligibility condition as laid down in the Act, she would be entitled to maternity benefits as provided thereunder, including those under fixed term contracts. Further to this ruling, such employees cannot be denied the maternity benefit citing the contract tenure. This would have an additional cost impact for companies engaging fixed term employees.

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