

LL.B. Three Year Course (Second Year) IVth Semester

Paper IV

Labour Laws-II (Social Security and Wage Legislation)

Dr. Mahendra Kumar

Unit- II-

Maternity Benefit Act, 1961

**Employment of, or work by, women prohibited during certain period-
Section-4**

(1)- No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

(2)- No woman shall work in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

(3)- Without prejudice to the provisions of section 6, no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do during the period specified in sub-section (4) 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 or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

(4)- The period referred to in sub-section (3) shall be--

(a) the period of one month immediately preceding the period of six weeks, before the date of her expected delivery;

(b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 6.

Case-

1. Tata Tea Ltd. vs Inspector Of Plantations (1992) ILLJ 603 Kerala High Court
2. Punjab National Bank By Chairman & ... vs Astamija Dash, 2008 III L.L.J. 584 (S.C.)

Right to Maternity Benefit – Section-5

(1) 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, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

Average Daily Wage- 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 absents herself on account of maternity, the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 (11 of 1948) or ten rupees, whichever is the highest.

(2) No woman shall be entitled to maternity benefit unless 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.

Provided that the qualifying period of 1[eighty days] aforesaid shall not apply to a woman who has **immigrated into the State of Assam** and was pregnant at the time of the immigration.

For the purpose of calculating under this sub-section the days on which a woman has actually worked in the establishment, the days for which she has been **laid off** or was on **holidays** declared under any law for the time being in force to be holidays with wages during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

Maximum Period of Maternity Benefit

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be **twenty-six weeks** of which not more than eight weeks shall precede the date of her expected delivery,

1- Provided that the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be **twelve weeks** of which not more than six weeks shall precede the date of her expected delivery.

2- Provided further that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the **day of her death**.

3- Provided also that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that **entire period** but if the child also dies during the said period, then, for the days up to and including the date of the death of the Child.

(4) A woman who legally **adopts a child** below the age of three months or a **commissioning mother** shall be entitled to maternity benefit for a period of **twelve weeks** from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

(5) In case where the nature of work assigned to a woman is of such nature that she **may work from home**, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.

Cases-

1. B. Shah vs Presiding Officer, Labour Court, 1978 AIR 12
2. Ram Bahadur Thakur (P) Ltd. vs Chief Inspector Of Plantations, (1989) IILLJ 20 Ker (Kerala High Court)
3. Mrs. Bharti Gupta vs Rail India Technical And Economical Services Ltd. 2005 (84) DRJ 53

Continuance of payment of maternity benefit in certain cases- Section- 5A

Every woman entitled to the payment of maternity benefit under this Act shall, notwithstanding the application of the Employees' State Insurance Act, 1948 (34 of 1948), to the factory or other establishment in which she is employed, continue to be so entitled until she becomes qualified to claim maternity benefit under section 50 of that Act.

Payment of maternity benefit in certain cases- Section- 5B

Every woman—

- (a) who is employed in a factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), apply;
- (b) whose wages (excluding remuneration for overtime work) for a month exceed the amount specified in sub-clause (b) of clause (9) of section 2 of that Act; and
- (c) who fulfils the conditions specified in sub-section (2) of section 5, shall be entitled to the payment of maternity benefit under this Act.

Notice of claim for maternity benefit and payment thereof – Section- 6

- (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.

Payment of maternity benefit in case of death of a woman- Section- 7

If a woman entitled to maternity benefit or any other amount under this Act, dies before receiving such maternity benefit or amount, or where the employer is liable for maternity benefit under the second proviso to sub-section (3) of section 5, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given under section 6 and in case there is no such nominee, to her legal representative.

Payment of medical bonus- Section- 8

(1) Every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of **one thousand rupees**, if no **pre-natal confinement and post-natal care** is provided for by the employer free of charge.

(2) The Central Government may before every three years, by notification in the Official Gazette, **increase** the amount of medical bonus subject to the maximum of **twenty thousand rupees**.

Leave for miscarriage

Section- 9- In case of miscarriage or medical termination of pregnancy, a woman shall, on **production of such proof** as may be prescribed, be entitled to leave with wages at the rate of maternity benefit, for a period of **six weeks** immediately following the day of her miscarriage or, as the case may be, her medical termination of pregnancy

Section-3(j) “miscarriage” means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code (45 of 1860),

Case-

Management of Jay Shree Tea and Industries Ltd. vs. Chief Inspector of Plantations, Madras and Another, (1999) IL.L.J. 180 (Madras)

Leave with wages for tubectomy operation Section- 9A

In case of tubectomy operation, a woman shall, **on production of such proof** as may be prescribed, be entitled to leave with wages at the rate of maternity benefit for a period of **two weeks** immediately following the day of her tubectomy operation.

Leave for illness

Section-10- Leave for illness arising out of pregnancy, delivery, premature birth of child, miscarriage, medical termination of pregnancy or tubectomy operation- A woman suffering from illness arising out of pregnancy, delivery, premature birth of child , miscarriage, medical termination of pregnancy or tubectomy operation 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**.

Nursing breaks- Section- 11-

Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work **two breaks** of the prescribed duration for nursing the child until the child attains the **age of fifteen months**.

Crèche facility-Section- 11A

(1) Every establishment having **fifty or more employees** shall have the facility of crèche within such distance as may be prescribed, either separately or along with common facilities:

Provided that the employer shall allow **four visits** a day to the creche by the woman, which shall also include the interval for rest allowed to her.

(2) Every establishment shall intimate in writing and electronically to every woman at the time of her initial appointment regarding every benefit available under the Act.

Dismissal during absence of pregnancy-Section- 12

(1) When a woman absents herself from work in accordance with the provisions of this 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 or dismissal on such a day that the notice will expire during such absence, or to vary to her **disadvantage** any of the conditions of her service.

(2) (a) 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:

Provided that where the dismissal is for any prescribed gross misconduct, the employer may, by order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus or both,

Appeal

(b) Any woman deprived of maternity benefit or medical bonus, or both, or discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Act, may, **within sixty days** from the

date on which order of such deprivation or discharge or dismissal is communicated to her, **appeal to such authority** as may be prescribed, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefit or medical bonus, or both, or discharged or dismissed shall be final.

(c) Nothing contained in this sub-section shall affect the provisions contained in sub-section (1).

No deduction of wages in certain cases-Section- 13

No deduction from the normal and usual daily wages of a woman entitled to maternity benefit under the provisions of this Act shall be made by reason only of—

(a) the nature of work assigned to her by virtue of the provisions contained in sub-section (3) of section 4; or

(b) breaks for nursing the child allowed to her under the provisions of section 11.