

MATERNITY BENEFIT

Justice for Women : Legal Compendium
THE MATERNITY BENEFIT ACT, 1961

[Act, No. 53 of 1961]

[12th December, 1961]

PREAMBLE

An Act to regulate the employment of women in certain establishments for certain period before and after child-birth and to provide for maternity benefit and certain other benefits.

BE it enacted by Parliament in the Twelfth Year of the Republic of India as follows:—

Section 1 - Short title, extent and commencement

(1) This Act may be called the Maternity Benefit Act, 1961.

(2) It extends to the whole of India¹[* * *].

(3) It shall come into force on such date²as may be notified in this behalf in the Official Gazette,--

³[(a) in relation to mines and to any other establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances, by the Central Government; and]

(b) in relation to other establishments in a State, by the State Government.

1. The words "except the State of Jammu and Kashmir" omitted by Act 51 of 1970, section 2 and Schedule w.e.f. 1-9-1971.

2. 1st November, 1963: vide Notification No. S.O.2920, dated 5th October, 1963, Gazette of India, Pt. II, section 3, page 3735.

3. Substituted by Act 52 of 1973, section 2 w.e.f. 1-3-1975.

Section 2 - Application of Act

¹[(1) It applies, in the first instance,--

(a) to every establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;

(b) to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed on any day of the preceding twelve months:]

Provided that the State Government may, with the approval of the Central Government, after giving not less than two months' notice of its intention of so doing, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply also to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

(2)²[Save as otherwise provided in³[sections 5A and 5B] nothing contained in this Act] shall apply to any factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948, (34 of 1948), apply for the time being.

1. Substituted by Act 61 of 1988 section 2 w.e.f. 10-1-1989.

2. Substituted by Act 21 of 1972, section 2, for "Nothing contained in this Act".

3. Substituted by Act 53 of 1976, section 2 w.e.f. 1-5-1976.

Section 3 - Definitions

In this Act, unless the context otherwise requires,--

(a) "appropriate Government" means, in relation to an establishment being a mine,¹ [or an establishment wherein persons are employed for the exhibition of

equestrian, acrobatic and other performances] the Central Government and in relation to any other establishment, the State Government;

(b) "child" includes a still-born child;

(c) "delivery" means the birth of a child;

(d) "employer" means--

(i) in relation to an establishment which is under the control of the Government, a person or authority appointed by the Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;

(ii) in relation to an establishment under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;

(iii) in any other case, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other persons whether called a manager, managing director, managing agent, or by any other name, such person;

¹ [(e) "establishment" means--

(i) a factory;

(ii) a mine;

(iii) a plantation;

(iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;² [***]

³ [(iv) a shop or establishment; or]

(v) an establishment to which the provisions of this Act have been declared under sub-section (1) of section 2 to be applicable;]

(f) "factory" means a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(g) "Inspector" means an Inspector appointed under section 14;

(h) "maternity benefit" means the payment referred to in sub-section (1) of section 5;

⁴ [(ha) "medical termination of pregnancy" means the termination of pregnancy permissible under the provisions of Medical Termination of Pregnancy Act, 1971.];

(i) "mine" means a mine as defined in clause (j) of section 2 of the Mines Act, 1952 (35 of 1952);

(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);

(k) "plantation" means a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(l) "prescribed" means prescribed by rules made under this Act;

(m) "State Government" in relation to a Union territory, means the Administrator thereof;

(n) "wages" means all remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, were fulfilled and includes--

(1) such cash allowances (including dearness allowance and house rent allowance) as a woman is for the time being entitled to;

(2) incentive bonus, and

(3) the money value of the concessional supply of foodgrains and other articles, but does not include--

(i) any bonus other than incentive bonus;

(ii) over-time earnings an any deduction or payment made on account of fines;

(iii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force; and

(iv) any gratuity payable on the termination of service;

(o) "woman" means a woman employed, whether directly or through any agency, for wages in any establishment.

1. Inserted by Act 52 of 1973, section 4 w.e.f. 1-3-1975.
2. Word "or" omitted by Act 61 of 1988, section 3 w.e.f. 10-1-1989.
3. Inserted by Act 61 of 1988, section 3 w.e.f. 10-1-1989.
4. Inserted by Act 29 of 1995, section 2 w.e.f. 1-2-1996.

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

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

(2) No woman shall work in any establishment during the six weeks immediately following the day of her delivery²[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.

1. Substituted by Act 29 of 1995, section 3(a), for "or her miscarriage" w.e.f. 1-2-1996.

2. Substituted by Act 29 of 1995, section 3(b), for "or her miscarriage" w.e.f. 1-2-1996.

Section 5 - Right to payment of maternity benefit

¹[(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 and including the day of her delivery, the actual day of her delivery and any period immediately following that day.]

Explanation.-- 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,¹[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 the claims maternity benefit, for a period of not less than²[eighty days] in the twelve months immediately preceding the date of her expected delivery:

Provided that the qualifying period of²[eighty day] aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

Explanation.-- For the purpose of calculating under this sub- section the days on which a woman has actually worked in the establishment,³[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 holiday with wages] during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

³[(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks, of which not more than six weeks shall precede the date of her expected delivery:]

Provided that where a woman dies during this periods, the maternity benefit shall be payable only for the days up to and including the day of her death:

³[Provided further 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.]

1. Substituted by Act 61 of 1988, section 4 w.e.f. 10-1-1989.
2. Substituted by Act 61 of 1988, section 4 for "one hundred and sixty days" w.e.f. 10-1-1989.
3. Substituted by Act 61 of 1998, section 4 w.e.f. 10-1-1989.

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

¹[5A. Continuance of payment of maternity benefit in certain cases

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.]

1. Inserted by Act 21 of 1972, section 3.

Section 5B - Payment of maternity benefit in certain cases

¹[5B. Payment of maternity benefit in certain cases.--

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 over-time 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.]

1. Inserted by Act 53 of 1976, section 3 w.e.f. 1-5-1976.

Section 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.

¹[(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.

1. Substituted by Act 61 of 1988, section 5 w.e.f. 10-1-1989.

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

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.

Section 8 - Payment of medical bonus

²[8. Payment of medical bonus-

(1) Every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of ³[two thousand five hundred 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.]

1. Substituted by Act 61 of 1988, section 6, for "twenty five rupees" w.e.f. 10-1-1989.

2. Substituted by the Maternity Benefit (Amendment) Act, 2008 for the following :-

"Every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of ¹[two hundred and fifty rupees],

If no pre-natal confinement and post-natal care is provided for by the employer free of charge."

3. Medical bonus revised from one thousand rupees to two thousand five hundred rupees vide Notification No. S.O.2016(E) dated 11.08.2008 w.e.f. 11.08.2008.

Section 9 - Leave for miscarriage, etc.

¹ [9. Leave for miscarriage, etc.—

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].

1. Substituted by Act 29 of 1995, sec.4 w.e.f. 1-2-1996.

Section 9A - Leave with wages for tubectomy operation

¹ [9A. Leave with wages for tubectomy operation

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].

1. Inserted by Act 29 of 1995, section 5 w.e.f. 1-2-1996.

Section 10 - Leave for illness arising out of pregnancy, delivery, premature birth of child, miscarriage, medical termination of pregnancy or tubectomy operation

Leave for illness arising out of pregnancy, delivery, premature birth of child,¹[miscarriage, medical termination of pregnancy or tubectomy operation]

A woman suffering from illness arising out of pregnancy, delivery; premature birth of child¹[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.

1. Substituted by Act 29 of 1995, section 6, for "or miscarriage" w.e.f. 1-2-1996.

Section 11 - Nursing breaks

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.

Section 12 - Dismissal during absence of pregnancy

(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.

[**(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).

1. Substituted by Act 61 of 1988, section 7 w.e.f. 10-1-1989.

Section 13 - No deduction of wages in certain cases

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.

Section 14 - Appointment of Inspectors

The appropriate Government may, by notification in the Official Gazette, appoint such officers as it thinks fit to be Inspectors for the purposes of this Act and may define the local limits of the jurisdiction within which they shall exercise their functions under this Act.

Section 15 - Powers and duties of Inspectors

An Inspector may, subject to such restrictions or condition as may be prescribed, exercise all or any of the following powers, namely:--

(a) enter at all reasonable times with such assistants, if any, being persons in the service of the Government or any local or other public authority, as he thinks fit, any premises or place where women are employed or work is given to them in an establishment, for the purposes of examining any registers, records and notices required to be kept or exhibited by or under this Act and require this production for inspection;

(b) examine any person whom he finds in any premises or place and who, he has reasonable cause to believe, is employed in the establishment:

Provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself;

(c) require the employer to give information regarding the names and addresses of women employed, payments made to them, and applications or notices received from them under this Act; and

(d) take copies of any registers and records or notices or any portions thereof.

Section 16 - Inspectors to be public servants

Every Inspector appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Section 17 - Power of Inspector to direct payments to be made

¹[(1) Any woman claiming that--

(a) maternity benefit or any other amount to which she is entitled under this Act and any person claiming that payment due under section 7 has been improperly withheld;

(b) her employer has discharged or dismissed her during or on account of her absence from work in accordance with the provisions of this Act, may make a complaint to the Inspector.

(2) The Inspector may, of his own motion or on receipt of a complaint referred to in sub-section (1), make an inquiry or cause an inquiry to be made if satisfied that--

(a) payment has been wrongfully withheld, may direct the payment to be made in accordance with his orders;

(b) she has been discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Act, may pass such orders as are just and proper according to the circumstances of the case.]

(3) Any person aggrieved by the decision of the Inspector under sub- section (2) may, within thirty days from the date on which such decision is communicated to such person, appeal to the prescribed authority.

(4) The decision of the prescribed authority where an appeal has been preferred to it under sub- section (3) or of the Inspector where no such appeal has been preferred, shall be final.

²[(5) Any amount payable under this section shall be recoverable by the Collector on a certificate issued for that amount by the Inspector as an arrear of land revenue.]

1. Substituted by Act 61 of 1988, section 8 w.e.f. 10-1-1989.

2. Substituted by Act 61 of 1988, section 8 w.e.f. 10-1-1989.

Section 18 - Forfeiture of maternity benefit

If a woman works in any establishment after she has been permitted by her employer to absent herself under the provisions of section 6 for any period during such authorised absence, she shall forfeit her claim to the maternity benefit for such period.

Section 19 - Abstract of Act and rules thereunder to be exhibited

An abstract of the provisions of this Act and the rules made thereunder in the language or languages of the locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which women are employed.

Section 20 - Registers, etc.

Every employer shall prepare and maintain such registers, records and muster-rolls and in such manner as may be prescribed.

Section 21 - Penalty for contravention of Act by employer

¹ [21. Penalty for contravention of Act by employer

(1) If any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of this Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees:

Provided that the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in lieu of imprisonment.

(2) If any employer contravenes the provisions of this Act or the rules made thereunder, he shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both:

Provided that where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the courts shall, in addition, recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto.]

1. Substituted by Act 61 of 1988, section 9 w.e.f. 10-1-1989.

Section 22 - Penalty for obstructing Inspector

Whoever fails to produce on demand by the Inspector any register or document in his custody kept in pursuance of this Act or the rules made thereunder or conceals or prevents any person from appealing before or being examined by an Inspector shall be punishable with imprisonment which may extend to¹[one year, or with fine which may extend to five thousand rupees], or with both.

1. Substituted by Act 61 of 1988, section 10 w.e.f. 10-1-1989.

Section 23 - Cognizance of offences

¹ [23. Cognizance of offences

(1) Any aggrieved woman, an office-bearer of a trade union registered under the Trade Unions Act, 1926 (16 of 1926) of which such woman is a member or a voluntary organisation registered under the Societies Registration Act, 1860 (21 of 1860) or an Inspector, may file a complaint regarding the commission of an offence under this Act in any court of competent jurisdiction and no such complaint shall be filed after the expiry of one year from the date on which the offence is alleged to have been committed.

(2) No court inferior to that of a metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.]

1. Substituted by Act 61 of 1988, section 11 w.e.f. 10-1-1989.

Section 24 - Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or order made thereunder.

Section 25 - Power of Central Government to give directions

The Central Government may give such directions as it may deem necessary to a State Government regarding the carrying into execution of the provisions of this Act and the State Government shall comply with such directions.

Section 26 - Power to exempt establishments

If the appropriate Government is satisfied that having regard to an establishment or a class of establishments providing for the grant of benefits which are not less favourable than those provided in this Act, it is necessary so to do, it may, by notification in the Official Gazette, exempt, subject to such conditions and restrictions, if any, as may be specified in the notification, the establishment or class of establishments from the operation of all or any of the provisions of this Act or of any rule made thereunder.

Section 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.

Section 28 - Power to make rules

(1) The appropriate Government may, subject to the condition of previous publication and by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the preparation and maintenance of registers, record and muster- rolls;

(c) the exercise of powers (including the inspection of establishments) and the performance of duties by Inspectors for the purposes of this Act;

(d) the method of payment of maternity benefit and other benefits under this Act in so far as provision has not been made therefor in this Act;

(d) the form of notices under section 6;

(e) the nature of proof required under the provisions of this Act;

(f) the duration of nursing breaks referred to in section 11;

(g) acts which may constitute gross misconduct for purposes of section 12;

(h) the authority to which an appeal under clause (b) of sub- section (2) of section 12 shall lie; the form and manner in which such appeal may be made and the procedure to be followed in disposal thereof;

(j) the authority to which an appeal shall lie against the decision of the Inspector under section 17; the form and manner in which such appeal may be made and the procedure to be followed in disposal thereof;

(k) the form and manner in which complaints may be made to Inspectors under sub-section (1) of section 17 and the procedure to be followed by them when making inquiries or causing inquiries to be made under sub-section (2) of that section;

(k) any other matter which is to be, or may be, prescribed.

¹[(3) Every rule made by the Central Government under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session² [or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions, aforesaid] both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

1. Substituted by Act 52 of 1973, section 5 w.e.f. 1-3-1975.

Section 29 - Amendment of Act 69 of 1951

In section 32 of the Plantations Labour Act, 1951,—

- (a) in sub-section (1), the letter and brackets "(a)" before the words "in the case of sickness", the word "and" after the words "sickness allowance" and clause (b) shall be omitted;
- (b) in sub-section (2), the words "or maternity" shall be omitted.

Section 30 - Repealed

On the application of this Act--

- (i) to mines, the Mines Maternity Benefit Act, 1941 (19 of 1941); and
- (ii) to factories situate in the Union territory of Delhi, the Bombay Maternity Benefit Act, 1929, (Bombay Act VII of 1929);

as in force in that territory, shall stand repealed.

MATERNITY BENEFIT (MINES AND CIRCUS) RULES, 1963

In exercise of the powers conferred by section 28 of the Maternity Benefit Act, 1961 (53 of 1961), the Central Government hereby makes the following rules, the same having been previously published as required by sub-section (1) of the said section, namely: -

1. Short title and commencement.--

- (1) These rules may be called the Maternity Benefit (Mines and Circus) Rules, 1963.
- (2) They shall come into force on the 1st November, 1963.

2. Definitions.--

In these rules, unless the context otherwise requires-

- (a) the "Act" means the Maternity Benefit Act, 1961 (53 of 1961);
 - (aa) "circus" means an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;
- (b) "competent authority" means the Chief Labour Commissioner (Central);
- (c) "Form" means a form appended to these rules;
- (d) "muster-roll" means a muster-roll maintained under rule 3;
- (e) "Registered Medical Practitioner" means a medical practitioner whose name has been enrolled in a register maintained under any law for the time being in force regulating the registration of practitioners of medicine;
- (f) "section" means a section of the Act;
- (g) All other words and expressions used hereinafter but not defined herein shall have the same meaning as respectively assigned to them in the Act.

3. Muster-roll.--

- (1) The employer of every mine or circus in which women are employed shall prepare and maintain a muster-roll in Form 'A' and shall enter therein particulars of all women workers in the mine or circus.

(2) All entries in the muster-roll shall be made in ink and maintained up-to-date and it shall always be available for inspection by the Inspector during working hours.

(3) The employer may enter in the muster-roll such other particulars as may be required for any other purpose of the Act.

4. Proof.—

(1) The fact that a woman is pregnant or has been delivered of a child [or has undergone miscarriage or medical termination of pregnancy or tubectomy operation or is suffering from illness arising out of pregnancy, delivery, premature birth of a child or miscarriage production of, a certificate to that effect,-

(a) from a Medical Officer of a regional hospital or a dispensary set up under the Coal Mines Welfare Organisation; or

(b) where there is a Mines Board of Health within whose jurisdiction the mine is situated, from the Medical Officer of that Board; or

(c) from a Registered Medical Practitioner.

The certificate shall be in Form 'B'.

(2) The fact that a woman has been confined may also be proved by the production of a certified extract from a birth register maintained under the provisions of any law for the time being in force or a certificate signed by a registered midwife.

(3) The fact that a woman has undergone miscarriage may also be proved by the production of a certificate signed by a registered midwife.

(4) The fact of death of a woman or a child may be proved by the production of a certificate to that effect in Form 'C' from any of the authorities referred to in sub-rule (1) or by the production of a certified extract from a death register maintained under the provisions of any law for the time being in force.

(5) The certificate from a registered midwife shall be in Form 'D'.

5. Payment of maternity and other benefit.—

(1) A woman employed in a mine or circus and entitled to maternity benefit shall give notice to her employer in Form 'E' and the employer shall make payment of the

maternity benefit and any other amount due under the Act to the woman concerned, or, in case of her death before receiving such maternity benefit or amount, or where the employer is liable for maternity benefit under the second proviso to section 5(3), to the person nominated by the woman in her notice in Form 'E' and in case there is no such nominee to her legal representative.

(2) In case of doubt, the maternity benefit or other amount due to a woman employed in a mine or circus shall be deposited by the employer, within two months of the date of death of the woman concerned with the competent authority, who shall, after making necessary enquiries, pay it to the person who, in his opinion, is entitled to receive it.

(3) Whenever the payment referred to in sub-rule (1) is made, a receipt shall be obtained by the employer in Form 'F' from the person to whom the payment is made. In cases falling under sub-rule (2), a receipt shall be given to the employer by the competent authority.

(4) The medical bonus shall be paid along with the second instalment of the maternity benefit.

(5) The maternity benefit or any other amount payable under section 7 shall be paid within two months of the date of death of the woman entitled to receive such benefit or amount.

(6) The wages payable under section 9 shall be paid to the woman entitled to receive such wages within forty-eight hours of production by her of the certificate in Form 'B' or Form 'D'.

(6a) The wages payable under section 9A of the Act shall be paid to the woman entitled to receive such wages within forty-eight hours of production by her of the certificate in Form B.

(7) The wages payable under section 10 shall be paid to the woman entitled to receive such wages within forty-eight hours of the expiry of the period of leave referred to in that section.

6. Break for nursing child.--

Each of the two breaks mentioned in section 11 shall be of 15 minutes' duration. An extra sufficient period, depending upon the distance to be covered, shall be allowed for the purpose of journey to and from the creche or the place where the children are left by women while on duty, provided that such extra period shall not be of less than 5 minutes

and more than 15 minutes' duration. If any dispute arises regarding such extra period, the matter shall be referred to the competent authority for decision.

7. Duties and powers of the competent authority and Inspectors.--

(1) The competent authority shall be responsible for the administration of these rules throughout the territories to which they extend.

(2) Every Inspector shall discharge his duties within the area assigned to him by the Central Government and shall act under the supervision and control of the competent authority.

(3) Every Inspector shall at each inspection of a mine or circus see,-

(a) whether due action has been taken on every notice given under section 6;

(b) whether the muster-roll prescribed under rule 3 is correctly maintained;

(c) whether there have been any cases of discharge or dismissal or notices of discharge or dismissal in contravention of the provisions of section 12 since the last inspection;

(d) whether the provisions of section 4(1), sub-sections (5) and (6) of section 6, sections 8, 9, 9A, 10, 11, 13 and 19 have been complied with and whether amounts due have been paid within the prescribed time;

(e) whether there have been any cases of deprival of maternity benefit or medical bonus in contravention of section 12(2); and

(f) how far the irregularities pointed out at previous inspections have been remedied and how far orders previously issued have been complied with.

(4) Where an Inspector observes irregularities against the Act or these rules, he shall issue orders in writing to the employer asking the latter to rectify the irregularities within a specified period and to report compliance to the Inspector.

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.

9. Appeal under section 12.--

- (1) An appeal under section 12 (2) (b) shall be preferred to the competent authority in Form 'G'
- (2) The appeal may be made in writing and either handed over personally or sent under a registered cover to the competent authority.
- (3) When an appeal is received, the competent authority shall furnish a copy of the memorandum of appeal to the employer, call for his reply thereto and also ask him to produce documents connected with the issue of the appeal by a fixed date. The competent authority may ascertain further details, if necessary, from the employer as well as from the woman. On considering the facts presented to him and ascertained by him the competent authority shall give his decision. In case the employer fails to submit his reply or produce the required documents within the specified period, the competent authority may give his decision ex parte.

10. Complaint under section 17.--

- (1) A complaint under section 17(1) shall be made in writing in Form 'H', or 'I' as the case may be.
- (2) When a complaint referred to in section 17 is received by an Inspector, he shall examine the relevant records maintained by the employer in this behalf, examine any person employed in the mine or circus and take down necessary statement for the purpose of the enquiry and if he is satisfied that the maternity benefit or the amount has been improperly withheld, he shall direct the employer to make the payment to the

woman or to the person claiming the payment under section 7, as the case may be, immediately or within a specified period.

11. Appeal under section 17.—

- (1) An appeal against the decision of the Inspector under section 17(2), shall lie to the competent authority.
- (2) The aggrieved person shall prefer an appeal in writing to the competent authority in Form 'J' and file other supporting documents.
- (3) When an appeal is received, the competent authority shall call from the Inspector before a fixed date, the record of the case. The competent authority shall, if necessary, also record the statements of the aggrieved person, and of the Inspector and seek clarification if any is required.
- (4) Taking into account the documents, the evidence produced before him and the facts presented to him or ascertained by him, the competent authority shall give his decision.

12. Supply of forms.—

The employer shall supply to every woman employed by him at her request free of cost copies of Forms 'B', 'C', 'D', 'E', 'F', 'G', 'H' and 'I'.

13. Non-submission of notices, appeals or complaints in the prescribed forms.—

Nothing in rules 5, 9 and 10 shall affect the right of a woman entitled to receive maternity benefit or any other amount due under the Act if she fails to submit a notice, appeal or complaint under the said rules, as the case may be, in a prescribed form:

PROVIDED that where a notice, appeal or complaint under the said rules has been submitted by a woman entitled to receive maternity benefit or any other amount due under the Act in a form other than the prescribed form, the authority concerned may, within 15 days of the receipt of such notice, appeal or complaint require the woman to submit the notice, appeal or complaint, as the case may be, in the prescribed form

14. Records.—

Records kept under the provisions of the Act and these rules shall be preserved for a period of two Years from the date of their preparation.

15. Abstract.—

The abstract of the provisions of the Act and these rules required to be exhibited under section 19 shall be in Form 'K' and shall be exhibited in such manner as the competent authority may require

16. Annual returns.—

(1) The employer of every mine or circus shall on or before the 21st day of January in each year submit to the competent authority a return in each of the Forms 'L', 'M', 'N' and 'O' giving information as to the particulars specified in respect of the preceding year.

(2) If the employer of a mine or circus to which the Act applies sells, abandons or discontinues the working of the mine or circus he shall, within one month of the date of sale or abandonment or four months of the date of discontinuance, as the case may be, submit to the competent authority a further return in each of the said forms in respect of the period between the end of the preceding year and the date of sale, abandonment or discontinuance.

LANDMARK JUDGMENTS

- The High Court of Delhi in 'Mrs. Bharti Gupta v Rail India Technical and Economical Services Ltd. (RITES) and Others' 123(2005)DLT138 held that The nature of maternity benefits and the entitlement of employees have been clearly spelt out by provisions of the Act. The provisions of the enactment apply to establishments, which have been defined in an expansive manner. Being a benevolent and social welfare legislation, the term ""establishment" has to be construed liberally. Therefore, it was directed that the respondent RITES calculate and release all amounts payable under the Maternity Benefits Act, 1961 (including full salary for the maximum periods of leave permissible under the Act and also the bonus amount admissible) within a period of six weeks.
- The High Court of Punjab & Haryana in Reena Singla vs State Of Punjab And Others (2013)171PLR222 held that There can be no discrimination on this score with regard to the grant of maternity benefits to a female employee.