

F.M. Kolia and anr. Vs. Manager, the Tiles and Pottery Works Ltd. and ors.

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Court : Gujarat

Decided On : Apr-11-1980

Reported in : (1981)22GLR528

Judge : S.H. Sheth and; S.L. Talati, JJ.

Appellant : F.M. Kolia and anr.

Respondent : Manager, the Tiles and Pottery Works Ltd. and ors.

Judgement :

S.L. Talati, J.

1. Petitioner No. 1 is the General Secretary of Vapi General Kamdar Mandal at Bilimora. Petitioner No. 2 is a woman worker working in the factory of which respondent No. 1 is the Manager.

2. Petitioner No. 2 applied for her maternity leave pay under the Maternity Benefit Act, 1961. The Senior Factory Inspector replied that she was not entitled to maternity leave pay inasmuch as she had attended only for 143 days and, therefore, in view of the provisions contained in Section 5(2) of the Maternity Benefit Act, 1961 she was not entitled to maternity leave pay. Under these circumstances this petition is filed for obtaining the directions to get the maternity leave pay.

3. It may be stated that certain facts are not in dispute. It is not in dispute that petitioner No. 2 is a woman worker working in a Company known as 'The Tiles and Pottery Works Ltd., Bilimora'. She is working there for the last eight or ten years as stated by the General Secretary who argued the matter personally. That fact is not challenged. She worked for a period of 143 days. That fact is also not disputed. We are told that she delivered a child on 13-2-1977. The learned advocate Shri H.B. Shah submitted that during twelve months between 13-2-1976 and 13-2-1977 she should have worked at least for a period of 160 days and in as much as she worked for 143 days only, she is not entitled to the benefit. This question is required to be resolved by construing Section 5(2) of the Maternity Benefit Act, 1961. That Section reads as follows:

5(2) No woman shall be entitled to maternity benefit unless she has actually worked in establishment of the employer from whom she claims maternity benefit for a period of not less than one hundred and sixty days in the twelve months immediately preceding the date of her expected delivery:

Provided that the qualifying period of one hundred and sixty 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.

Explanation: 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 during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

'Lay off' is defined in Section 2(kkk) of the Industrial Disputes Act, 1947. The definition is as under:

2. (kkk) 'lay off (with its grammatical variation and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or for any other reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

In this particular case it is submitted that the establishment is a seasonal factory which works for only eight months in a year. It is submitted by the learned advocate Shri Shah that since this is a Tiles and Pottery Factory, it does not work during monsoon. Now, therefore, it is clear that during monsoon days petitioner No. 2 is prevented from working, indeed on account of factory remaining closed during rainy season. Thus the establishment remains closed 'for any other reason' contemplated by Section 2(kkk) of the Industrial Disputes Act, 1947. Therefore, days during rainy season when factory remains closed should be added to the days during which she worked. In that view of the matter it is undisputed that she had completed 160 days and qualified herself for benefit as provided by Section 5(2) of the Maternity Benefit Act, 1961.

4. In the result petition is allowed. Respondent No. 1 is directed to pay to the petitioner No. 2 maternity leave pay as provided by Section 5(2) of the Maternity Benefit Act, 1961. Rule is made absolute with no order as to costs.

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