

Post Delivery Maternity Leave for Surrogate Mothers?

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The Kerala High Court, in the case of **P.Geetha vs Kerala Livestock Development Board** [2015 SCC Online Ker 71, WP(C).No. 20680 of 2014 (H)], held that a mother who has obtained the baby through surrogacy is entitled to all the benefits that an employee could have on post-delivery, i.e. the child specific statutory benefits.

Facts

The respondents, The Kerala Livestock Development Board Ltd., refused to grant maternity leave to their employee, the Petitioner, to take care of the new born on the ground that the Kerala Livestock Development Board Ltd Rules and Regulations, 1993 only provide maternity leave envisaged under 'normal circumstances'.

Judgment

The court declared that keeping in view the dichotomy of maternity or motherhood, the petitioner is entitled to all the benefits an employee could have on post-delivery, sans the leave involving the health of the mother after the delivery. The Court relied on the decision of Madras High Court in *Kalaiselvi v. Chennai Port of Trust 2013 SCC OnLine Mad 811*, where it was held that a women employee was entitled to avail 'child care leave' even in case where she got a child through an arrangement of surrogacy, and held that "though the petitioner has not undergone any pre-natal phase, however, from the day one, after the delivery , the petitioner is required to be treated as the mother with the new born, and thus without discrimination, the petitioner is entitled to all the benefits that accrue to an employee after the delivery".

Analysis

The Court has, in accordance with international conventions, the constitutional principal of equality and the law of the land, rightfully declared that welfare of the child shall be the primary consideration and there ought not to be any discrimination of a woman as far as the maternity benefits are concerned only on the ground that she has obtained the baby through surrogacy.