

Recent judgement of the Madras High Court: Woman Giving Birth After Twins Not Eligible for Maternity Benefits

In an recent judgment of the Madras High Court (<https://www.indiatoday.in/india/story/working-woman-giving-birth-to-child-after-twins-in-1st-delivery-not-entitled-to-maternity-benefits-madras-hc-1651776-2020-03-03>), a working woman who gave birth to a child in her second delivery after having twins in the first delivery has been held to not be entitled to maternity benefits, as the second delivery should be treated as the third child.

The woman in the case is a member of the Central Industrial Security Force, where maternity leave is regulated by the Central Civil Services (Leave) Rules, 1972, as compared to the Maternity Benefit Act, 1961 (which applies to private sector companies in India). Under the said Rules, a female Government servant (including an apprentice) with less than two surviving children may be granted maternity leave by an authority competent to grant leave for a period of 180 days from the date of its commencement. The Madras High Court held that "when twins are born, they are delivered one after another, and their age and their inter-se elderly status is also determined by virtue of the gap of time between their arrivals, which amounts to two deliveries and not one simultaneous act." Based on this reasoning, the woman was entitled to avail of maternity leave under the Rules only for her first two deliveries, which the Court held to be the birth of the twins.

The Court allowed the appeal from Ministry of Home Affairs in this case, setting aside a June 2019 order of a single Judge who had extended the 180 days paid maternity leave and other benefits the woman.

The position is different under the Maternity Benefit Act as amended in 2017, which allows for 26 weeks paid maternity leave for up to two children, with 12 weeks paid leave for a woman employee having two or more than two surviving children. This law carves out a case where a woman has more than two children and allows for maternity leave in such situations. It is interesting to see whether a similar position will be taken in the private sector in case of the birth of twins.

For any queries, please feel free to reach our Employment law partner *Debjani Aich* at corporate@kochhar.com