

WORK FROM HOME ONLY IF THE NATURE OF WORK SO PERMITS, RULES THE KARNATAKA HIGH COURT

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In March 2022, the Karnataka High Court passed an order clarifying the scope of the work from home benefit for mothers on maternity leave. The court held that the work from home benefit can only be provided when the nature of work assigned to the employee is such that it can be performed from home.

In this update, we analyze the order in the context of the Maternity Benefit Act, 1961 and advisories issued by the Indian government.

Background

In India, maternity benefits are governed under the Maternity Benefit Act, 1961 (the “Act”). The Act is applicable to every organization having ten (10) or more employees. As per the Act, every woman who is employed in an organization for eighty (80) days or more is eligible for maternity benefits.

In 2017, the Government of India amended the Act (available [here](#)) and provided for more inclusive maternity benefits to women. Among other changes, a new provision, i.e., Section 5(5), was inserted in the Act, under which the work from home benefit was provided to women availing maternity leave. As per Section 5(5) of the Act, an employer may allow nursing mothers to work from home if the nature of work assigned to them so permits, on mutually agreed conditions between the employer and woman employee.

In furtherance of the amendment and due to the Covid-19 pandemic, in June 2021, the Government of India issued an advisory (available [here](#)) encouraging employers to provide the work from home benefit to nursing mothers wherever the nature of work so permits for at least one (1) year from the date of childbirth. The advisory further directed the employers to spread awareness about the benefits provided under Section 5(5) of the Act.

The Karnataka High Court’s ruling

In the case under discussion *Prachi Sen v. Ministry of Defence* (Writ Petition no. 22979 of 2021), the Karnataka High Court reiterated that, the work from home benefit under Section 5(5) of the amended Act could be given only in cases where the nature of work assigned to the women allows her to work from home.

The brief facts of the case are summarized below:

- The petitioner was employed as an executive engineer at the Semi-Conductor Technology and Applied Research Centre (STARC), which is an arm of the Ministry of Defence, Government of India.

- The petitioner had not returned to work after her maternity leave. Instead, she requested childcare leave from STARC and sought to work from home in accordance with the Government of India advisory.
- After two (2) months of unauthorized absence, STARC issued a communication to the petitioner requesting her to resume office.
- The petitioner approached the court challenging the communication and seeking benefits under the Act.

The court noted that the employee was involved in research work, which was both sensitive as well as complicated. Sensitive, in the sense, that the research was in the defence field, which was confidential and could not be disclosed to the public. As such, the nature of the work assigned to the petitioner was such that it could not be carried out from home.

Therefore, the court held that the work from home benefit under Section 5(5) of the Act would not be applicable in the present case. Nevertheless, the court directed STARC to exercise sympathy towards working mothers of newborns keeping in mind the pandemic situation, and to provide them with adequate childcare facilities.

Our comments

The Indian government has amended the maternity benefits law on many occasions to provide more benefits to working women. The courts have also taken a flexible and inclusive approach towards working mothers.

The Karnataka High Court order clarifies the scenario as to when the work from home benefit can be availed by women employees under Section 5(5) of the Act. In our view, the order is a right step in understanding the limitations of certain employers in providing benefits under the Act. At the same time, the order should not be construed as a leeway for employers to deny the benefits under Section 5(5) of the Act, wherever the work so permits. Instead, employers must be proactive in providing flexibility to nursing mothers and ensure that adequate childcare facilities are available in or near the office premises.