
Moot Proposition



**5th SURANA & SURANA
&
SCHOOL OF LAW,
RAFFLES UNIVERSITY
NATIONAL LABOUR LAW MOOT
COURT CUM JUDGMENT WRITING
COMPETITION**

18th to 20th November 2022

Moot Proposition

KANGANA

v

ANTARIKSH LOGISTICS (ASGARD) Ltd.

Facts:

1. The sovereign “Republic of Asgard” is a South Asian democratic country; the laws are parimateria with the laws of India, subject to exceptions specified below.
2. The decisions of major countries including India (where common law is prevalent) are of significant value to the Republic of Asgard also. The Apex Court of Asgard also relies on established Labour Law precedents of the European Union and the United States of America.
3. In 2020 ANTARIKSH LOGISTICS (ASGARD) LTD employed 16 persons. In June one of the four employees working in the import operations department, Ms. Rakhi found that she was pregnant. ANTARIKSH LOGISTICS (ASGARD) LTD decided not to wait until her departure on maternity leave before engaging a replacement whom Ms. Rakhi could train during the six months before she went on leave. Ms.Kangana was recruited with a view, initially, to replace Ms. Rakhi following a probationary period. However, it was envisaged that Ms.Kangana would continue to work for ANTARIKSH LOGISTICS (ASGARD) LTD following Ms. Rakhi's return. The documents before the

Court show that Ms. Kangana did not know she was pregnant when the employment contract was entered into. (Note: Ms. Kangana is the sole earner for her family as her husband died one month back in an accident)

4. Ms. Kangana started work at ANTARIKSH LOGISTICS (ASGARD) LTD on 1 July 2020. Two weeks later, she thought that she might be pregnant. Her employer was informed of this indirectly. He then called her in to see him and informed her of his intention to dismiss her. Ms. Kangana's pregnancy was confirmed a week later.

On 30 July she received a letter dismissing her in the following terms: “You will recall that at your interview some four weeks ago you were told that the job for which you applied and were given had become available because of one of our employees becoming pregnant. Since you have only now told me that you are also pregnant, I have no alternative other than to terminate your employment with our company.”

5. Soon after this decision was made by the company the Republic of Asgard declared a national emergency as the global pandemic covid 19 also hit Asgard. Therefore many companies allowed workers to work remotely and some companies offered work from home on one condition employees will get 50% of their monthly salary. There was much news regarding the exploitation of employees by employers; some of the bottom-level labourers were forced to leave their jobs and some of them committed suicide too.

6. Ms. Kangana then brought proceedings before the Labour Court, pleading direct discrimination on grounds of sex and, in the alternative, indirect discrimination.

7. The relevant national legislation, in this case, is the Sex Discrimination Protection under the Constitution & Maternity Benefit Act, 1961. It is apparent from the documents before the Court that Ms. Kangana cannot rely on the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (the “EPF Act”), the Employees State Insurance Act, 1948 (the “ESI Act”), and the Payment of Gratuity Act, 1972, (the “PGA Act”) which provide for certain social security

benefits to employees; because she was not a regular employee and was in the probation period.

8. The Labour Court dismissed Ms. Kangana's action. It held that she had not been directly discriminated against on the grounds of sex. In its view, the real and significant reason for Ms. Kangana's dismissal was her anticipated inability to carry out the primary task for which she had been recruited, namely to cover the job of Ms. Rakhi during the latter's absence on maternity leave. According to the Labour Court, if a man recruited for the same purpose as Ms. Kangana had told his employer that he would be absent for a period comparable to the likely absence of Ms. Kangana, he would have been dismissed.

9. The Labour Court also held that Ms. Kangana had not suffered indirect discrimination. More women than men were likely to be unable to do the job for which they had been recruited because of the possibility of pregnancy. However, according to the Industrial Tribunal, the employers had shown that the reasonable needs of their business required that the person recruited to cover for Ms. Rakhi during her maternity leave be available throughout the time.

10. Ms. Kangana was not satisfied with the decision of the Labour Court and thus she filed an appeal in High Court for relief.

11. The High Court found that the special feature of this case lay in the fact that the pregnant woman who was dismissed had been recruited precisely to replace, at least initially, an employee who was herself due to take maternity leave. The court is uncertain whether it was unlawful to dismiss Ms. Kangana on the ground of her pregnancy, or whether greater weight should be attached to the reasons for which she was recruited.

12. As is apparent from the documents before the Court, the question submitted for a preliminary ruling relates to a contract of employment concluded for the age of 60 years including one year probation period.

13. In response to the initial findings of the Labour Court, there can be no question of comparing the situation of a woman who finds herself incapable, because of pregnancy discovered very shortly after the conclusion of the employment contract, of performing the task for which she was recruited with that of a man similarly incapable for medical or other reasons to work.

As Ms.Kangana rightly argues, pregnancy is not in any way comparable with a pathological condition, and even less so with unavailability for work on non-medical grounds, both of which are situations that may justify the dismissal of a woman without discriminating on grounds of sex.

14. Ms. Kangana has no other option except to move to the Supreme Court of Asgard under a Special Leave Petition against the successive orders/decisions of the Labour Court and High Court causing grave injustice to her during the pandemic during which time it is difficult to get another job and without which it will be difficult for her to keep herself and her unborn child alive.

The appellant filed an Appeal at the Supreme Court on the following issues:

1. Is it discrimination on grounds of sex contrary to Standing Orders for an employer to dismiss a female employee (“the appellant”);

a. whom he engaged for the specific purpose of replacing (after training) another female employee during the latter's forthcoming maternity leave,

b. when, very shortly after the appointment, the employer discovers that the appellant herself will be absent on maternity leave during the maternity leave of the other employee, and the employer dismisses her because he needs the job holder to be at work during the absentee period of Ms. Rakhi.

c. had the employer known of the pregnancy of the appellant at the date of appointment, she would not have been appointed, and

d. the employer would similarly have dismissed a male employee engaged for this purpose who required leave of absence at the relevant time for medical or other reasons?"

2. Whether the dismissal of Ms. Kangana is a clear case of violation of human rights which are protected under the Constitution, and other human rights treaties and conventions signed and ratified by Asgard.

3. Teams are free to frame preliminary and other related issues but in no case, the issues should exceed more than four in number.