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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 7th December, 2021

\+ **W.P.(C) 13923/2021 & CM APPL. 43967/2021**

ASIA PACIFIC INSTITUTE OF MANAGEMENT ..... Petitioner
Through: Mr. Sudhir Kumar Ojha, Advocate.
versus

OFFICE OF THE JOINT LABOUR COMMISSIONER AND ANOTHER ..... Respondent
Through: Mr. Satyakam, ASC for R-1. (M:9868219633)
Mr. Pushkar Karni Sinha, Advocate for R-2.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.

2. The present petition challenges the impugned order dated 13th August, 2020 passed by the Inspecting Officer/Inspector, Office of the Joint Labour Commissioner (District South) Labour Department, Govt. of NCT Delhi/Respondent No.1 (*hereinafter "Labour Commissioner"*) under the Maternity Benefit Act, 1961 (*hereinafter "Act"*).

3. Respondent No.2/Dr. Nidhi Maheshwari (*hereinafter "Respondent No.2"*) had joined the Petitioner – Asia Pacific Institute of Management (*hereinafter "Petitioner"*) as an Assistant Professor in 2011 and she was promoted to Associate Professor in 2015. On 17th October, 2018, the Petitioner discontinued the services of Respondent No.2 leading to her filing

a complaint before the Labour Commissioner under the Act.

4. The case of the Petitioner is that it was not aware that Respondent No.2 was pregnant and an intimation was given to the Petitioner only after the relieving letter bearing Ref: HR/FAC/2018 was served on her on 17th October, 2018. Thus, it is submitted that the awarding of maternity benefit for six months under the Act is untenable. Mr. Ojha, ld. counsel for the Petitioner submits that at the time when the relieving letter was served upon Respondent No.2, the Petitioner had no knowledge that Respondent No.2 was seven months' pregnant.

5. On the other hand, Mr. Sinha, ld. counsel appearing for Respondent No.2, submits that an email was sent to the Petitioner on 17th October, 2018, prior to the time the relieving letter was received by her. Vide the said email, Respondent No.2 informed the Petitioner of being at an advanced stage of pregnancy, and apprised the Petitioner that she would be required to go on maternity leave from the first week of November, 2018, on advice of her gynaecologist. He further submits that the copies of the emails were placed before the Labour Commissioner.

6. Mr. Satyakam, ld. ASC appearing for the Labour Commissioner, has placed on record the copy of the email, which he received from the Labour Commissioner's office, which according to him, completely falsifies the Petitioner's case. He submits that an email was sent on 17th October, 2018 by Respondent No.2 to the Petitioner and it is only thereafter, that the relieving letter was served. He further takes the Court through various provisions of the Act to argue that as per Section 6(6) of the Act, even if it is presumed that the notice of claim for maternity leave was not given, Respondent No.2 cannot be deprived of the benefits under the Act.

7. Heard. A perusal of the records and facts which have been placed on record, shows that Respondent No.2 was seven months' pregnant on 17th October, 2018 when the relieving letter is stated to have been served upon her. The content of the relieving letter would be very relevant and is set out herein below:

> " *Ref: HR/FAC/2018*
>
> *October 17, 2018*
>
> *Dr. Nidhi Maheshwari*
> *C-2/702, Belvedere Tower*
> *Charmwood Village*
> *Eros Garden*
> *Suraj Kund, Faridabad.*
>
> *Dr. Nidhi Maheshwari,*
> *As your services are no longer required by the Institute, you are hereby served a three months notice period w.e.f. 18th October, 2018. You will be relieved from the service of the Institute on 17th January, 2019.* "

8. A perusal of the relieving letter shows that there are no reasons assigned whatsoever for terminating her services in this manner, as no misconduct has been alleged in the said letter. The email of the Respondent no.2 which has been placed on record, also shows that she had written to the Chairman of the Petitioner that she would be proceeding on maternity leave on the advice of her gynaecologist. The extract of the email reads as under:

> "*Dear Sir,*
> *Greetings*
> *As you are aware that I am going under the advance stage of maternity and I would like to apprise you that my Gynaecologist has indicated that I may require to go on maternity leave during the eighth month due to certain medical attention*

> *requirement. Therefore, I may need to go for maternity leaves during the first week of November, 2018 onwards. So kindly oblige as per the employee maternity benefit provisions. Medical certificates, if needed, can be produced as and when asked for.*
> *Thanking you,*
> *Yours Sincerely,*
> *Dr. Nidhi Maheshwari*
> *9654502820* "

9. The impugned order clearly records that Respondent No.2 gave birth to a child on 19th December, 2018. Thus, it is highly suspect as to how Respondent No.2, having such high qualifications, is sought to be terminated by a completely unreasoned and abrupt. The fact that she was seven months' pregnant on the date when the relieving letter was served upon her, clearly shows that the intention behind the said letter was to somehow deprive Respondent No.2 of her maternity benefits.

10. In so far as the relieving letter being as per the terms of appointment of Respondent No.2 is concerned, this assertion itself is contrary to law. A perusal of the provisions of the Act makes it clear that the Act overrides all the provisions of any contract of service, which may be existing between the employee and employer. Section 27 of the Act reads as under:

> "*27.* ***Effect of laws and agreements inconsistent with this Act.—***
> *(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act:*
> *Provided that where under any such award, agreement, contract of service or otherwise, a*

> *woman is entitled to benefits in respect of any matter which are more favourable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that she is entitled to receive benefits in respect of other matters under this Act.*
>
> *(2) Nothing contained in this Act shall be construed to preclude a woman from entering into an agreement with her employer for granting her rights or privileges in respect of any matter which are more favourable to her than those to which she would be entitled under this Act."*

11. As per the above provision, the benefits under the Act have to be mandatorily extended, irrespective of any contractual conditions. It is only if the conditions in the contract of employment are more favourable to the woman that the same can be given effect to. Thus, no conditions, which are unfavourable or disadvantageous to a woman, in a contract of employment can override or supersede the benefits conferred upon pregnant women under the Act.

12. It is relevant here to refer to the decision of the Supreme Court, interpreting Section 27 of the Act, in ***Municipal Corporation of Delhi v. Female Workers (Muster Roll) & Anr., (2000) 3 SCC 224***. The question in the said case was whether, having regard to the provisions contained in the Act, apart from women who are in regular employment, those women engaged on casual basis or on muster roll basis on daily wages, were eligible for maternity leave. The Supreme Court while upholding the right of female workers to get maternity leave held that the provisions of the same must be read into service contracts of the Municipal Corporation. The relevant extract is as below:

"Section 27 deals with the effect of laws and agreements inconsistent with this Act. Sub-section (1) provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service. Sub-section (2) of this section, however, provides that it will be open to a woman to enter into an agreement with her employer for granting her rights or privileges in respect o/any matter which are more favourable to her than those she would be entitled to under this Act.

24. The provisions of the Act which have been set out above would indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other Articles, specially Article 42. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery. We have scanned the different provisions of the Act, but we do not find anything contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis of on muster roll on daily wage basis.

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33. A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their

livelihood. Whatever be the nature of their duties, their avocation and the place where they work, they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre-or post-natal period.

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These principles which are contained in Article 11, reproduced above, have to be read into the contract of service between Municipal Corporation of Delhi and the women employees (muster roll); and so read these employees immediately become entitled to all the benefits conceived under the Maternity Benefit Act, 1961. We conclude our discussion by providing that the direction issued by the Industrial Tribunal shall be complied with by the Municipal Corporation of Delhi by approaching the State Government as also the Central Government for issuing necessary Notification under the Proviso to Sub-section (1) of Section 2 of the Maternity Benefit Act, 1961, if it has not already been issued. In the meantime, the benefits under the Act shall be provided to the women (muster roll) employees of

> *the Corporation who have been working with them on daily wages."*

13. In this case, the relieving letter, which is relied upon as being based upon the appointment letter of Respondent No.2 would be clearly overridden by the provisions of the Act. The benefits under the Act are thus clearly applicable to Respondent No.2. This Court also takes note of Section 5 of the said Act, which provides that a pregnant woman is entitled to 26 weeks of maternity benefit with full wages.

14. The Petitioner's claim however, is that it was not informed of Respondent No.2's pregnancy and therefore the termination would not be unlawful. Coming to the issue of notice of claim for maternity benefits, the same is dealt with under Section 6(6) of the Act which reads:

> "*6.* ***Notice of claim for maternity benefit and payment thereof.—***
>
> *(1) Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in such form as may be prescribed, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.*
>
> *(2) In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery.*
>
> *(3) Any woman who has not given the notice when she was pregnant may give such notice as soon as*

possible after the delivery.

(4) On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.

(5) The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof as may be prescribed that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed that the woman has been delivered of a child.

(6) The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Act if she is otherwise entitled to such benefit or amount and in any such case an Inspector may either of his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order."

15. Thus, under Section 6, it is clear that the failure to give notice would not disentitle the woman from such benefits. The question as to whether the notice to be given under Section 6 (6) of the Act is mandatory, was considered in ***Sunita Baliyan v. Director Social Welfare Department GNCTD, 2007 (99) DDRJ 551***. In the said case, the Ld. Single Judge held that immediate notice to the employer, of pregnancy of an employee is not required, however, notice would be required to be served within a reasonable period and in any event as soon as possible after delivery. The

relevant observations of the Court are as under:

> *"6. Counsel for the petitioner also submitted that the provisions of the aforesaid Act do not make it mandatory for the petitioner to give a notice to her employer and hence her services could not be terminated by the respondent management. The aforesaid plea is found to be untenable for the reason that while the said provision does not mandate a woman to immediately intimate the employer of her pregnancy, for claiming benefit of the Act, it certainly calls upon her to give a notice in writing during her pregnancy as soon as possible after delivery. The obvious intendment of the provision is to ensure that while a woman working in an establishment gets the maternity benefit, at the same time, inconvenience is not caused to the establishment where she is engaged and adequate alternate arrangements can be made by the management to ensure that the work does not suffer in her absence. In the present case, as per the records, the petitioner failed to take any steps in this regard. Further, as observed in the impugned award, it is not a case of termination of the petitioner, as the respondent management has not taken any steps against her in terms of Rule 4.21 of the General Guidelines governing the respondent management."*

16. Going by the test laid down in this decision, as also a reading of the provision it is clear that in the facts of the present case, the email dated 17th October, 2021 was just two months before the delivery of Respondent No.2's child and in any event, this Court is unable to believe the stand of the Petitioner that the relieving letter or termination, was without knowledge of the pregnancy. The said letter was served upon Respondent No.2 who was in her seventh month of pregnancy, which is an advanced stage. It is

unfathomable as to how when she was working with the Petitioner which is an academic establishment, the Petitioner can claim to be completely ignorant of this fact. The plea that the Petitioner was not aware of Respondent no.2's pregnancy and that the relieving letter was served on her, as it had no notice of the same, is specious to say the least.

17. The relieving letter is nothing but a dismissal during pregnancy which is clearly prohibited under Section 12 of the Act.

> "*12. Dismissal during absence of pregnancy.—*
> *(1) When a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.*
>
> *(2) (a) The discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus referred to in section 8, shall not have the effect of depriving her of the maternity benefit or medical bonus:*
>
> *Provided that where the dismissal is for any prescribed gross misconduct, the employer may, by order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus or both.*
>
> *(b) Any woman deprived of maternity benefit or medical bonus, or both, or discharged or dismissed during or on account of her absence from work in accordance with the*

> *provisions of this Act, may, within sixty days from the date on which order of such deprivation or discharge or dismissal is communicated to her, appeal to such authority as may be prescribed, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefit or medical bonus, or both, or discharged or dismissed shall be final.]*
>
> *(c) Nothing contained in this sub-section shall affect the provisions contained in sub-section (1).”*

18. The said provision categorically provides that dismissal or discharge of a woman who absents from work during pregnancy is unlawful. In fact, the provision makes it abundantly clear that no notice can be given in a manner so as to vary the conditions of service of the woman in a manner that is disadvantageous to her. Under the *proviso* to Section 12(2)(a) of the Act, it is only when dismissal is for gross misconduct that the maternity benefits and bonus etc., can be withdrawn.

19. A Division Bench of this Court in ***Vishakha Kapoor v. National Board of Examination & Ors. [LPA 15/2009, decide on 3rd March, 2009]*** was dealing with a case where an employee had taken maternity leave on account of miscarriage, and she sought extension of the same because she became pregnant after the miscarriage. While she had apprised the management of the pregnancy for the first few months, post such date she did not keep them informed and continued her leave for another 4 months. The services of the employee were terminated while she was on maternity leave, claiming that the management had not been informed and had not

been specifically asked for extension of maternity leave for the last four months. The management was only subsequently informed of the same, after she gave birth. The Court, considering Section 5, 6 and 12 of the Act, held that:

> *"12. Section 12 of the Act makes it clear that where a woman absents herself from work in accordance with the provisions of the Act, it shall be unlawful for her employer to discharge or dismiss her on account of such absence. The second part of said Sub-section further stipulates that any notice of discharge or dismissal that would expire during such absence or which would vary to her disadvantage any of the conditions of her service shall be unlawful. A reading of the aforesaid Sections makes it clear that the Appellant was entitled to 12 weeks of leave including upto six weeks before delivery and the rest after birth of the child on 16.1.2008. This aspect was completely unnoticed and has been ignored while passing the termination order dated 8.2.2008. The entitlement to leave upto maximum period of 12 weeks is statutory and mandatory. The termination order ignores this and treats this period of 12 weeks as unauthorized leave and is, therefore, contrary to law. Secondly, the notice of discharge/dismissal could not have been issued during this period of statutory leave/absence. The Appellant was entitled to at least six weeks leave from the date of birth of her child on 16.1.2008. The notice of discharge/termination was issued on 8.2.2008 within this period of six weeks.*
>
> *Xxx*
>
> *We would have gone into further details and also on the question of discrimination and violation of human/fundamental rights but refrain from*

> *making any further observations as the Respondents have placed before us letter dated 26.2.2008 stating that they have decided to withdraw the discharge letter dated 8.2.2008 subject to the Appellant not claiming consequential or monetary benefits for the period of absence or leave and she would resume duties on the same rights, terms and conditions available to her on 3.5.2007. Accordingly, the appeal is allowed and the impugned order dated 27.11.2008 dismissing the writ petition filed by the Appellant is set aside."*

20. Thus, a conjoint reading of all these provisions leaves no manner of doubt whatsoever that Respondent No.2, who was pregnant on the date she was served with the relieving letter, could not have been terminated and discontinuation of her services was illegal, unlawful as well contrary to provisions of this Act. The relieving letter has no allegation against Respondent No.2. It is not even the Petitioner's case that there was any misconduct on her part. The motivation behind serving of the relieving letter is thus obviously to deprive her of the maternity benefits, which is contrary to law.

21. The stand of the Petitioner in this case, especially relating to the receipt of notice, is also completely unreasonable. A perusal of the relieving letter dated 17th October, 2018, shows that the allegations made in the writ petition against Respondent No.2, stating that the complaint of Respondent No.2 was false and self-created and that the Petitioner had served her notice of termination without knowledge of the fact that Respondent No.2 was pregnant, are untenable.

22. The impugned order, which records that Respondent No.2 gave birth

on 19th December, 2018, leaves no manner of doubt in the mind of this Court that at the advanced stage of pregnancy of seven months, the Petitioner was fully aware of the factum of Respondent No.2's pregnancy. The email written by Respondent No.2 is merely for purposes of record only. The Petitioner ought to be deemed to have had notice of the pregnancy especially because she was regularly working and rendering her services at the educational establishment. Thus, the plea, that at the time when the notice was served, she was not pregnant, is nothing but a specious plea and is not liable to be entertained. In fact, it is clear from the dates which emerge from the record, that the relieving letter of Respondent No.2 was almost simultaneous with the time when the Petitioner came to know that Respondent No.2 is likely to invoke the provisions of the Act and claim benefits under the Act.

23. Moreover, in the present writ petition, there has been clever concealment of the fact that an email was sent by Respondent No.2 to the Petitioner on 17th October, 2018. The order of the Labour Commissioner clearly records the following facts:

> *"xxx*
>
> *It is further stated that in the seven month of her pregnancy she had intimated to the management verbally as well as via e-mail dated 17.10.2018 for the maternity leave, but management served three months notice period with effect from 18.10.2018 that her services are no longer required by the institute and she will be relieved from service on 17.01.2019. Further she submitted on 06.11.2018, leaves for 08 & 09/11/2018, (Diwali, GH on 07.11.2018 & weekend holidays on 10-11/11/2018 & on 12/11/2018 apprised via e-mail about proceedings*

on 26 weeks maternity from 12/11/2018. She has further stated that, fulfilled all the given academic responsibilities and that still any need arises will be available on the address as per official record and the cell number provided. Thereafter, she was contracted the cell number by the academic department to take class on 27/11/2018, which she complied but on 27/12/2018 management sent her a salary slip for the month of November, 2018 with only eight days as paid days and no salary for the month of December, 2018 & January, 2019. She further prays that (1) she should be given maternity leaves as per Maternity Benefit Act, 1961 as amended. (2) She should be given three months pay as she has been dismissed from service by the management because of maternity leave by termination of contract, which is unlawful during pregnancy. (3) Legal action under section of Maternity Benefit Act, 1961 against the management of Asia Pacific Institute of Management, New Delhi.

On receipt of complaint/claim under Maternity benefit Act, notices were sent to the respondent/management for appearance in this office on the given date. The management representative appeared on some date and submitted written reply stating that (1) The present complaint filed by the complainant is not maintainable in the eyes of law as complainant has not come before this Hon'ble authority with clean hands and concealed the materials facts and hence the present complaint is liable to be dismissed with cost. (2) The present complaint is not maintainable as the same is frivolous, concocted and manipulated therefore the instant complaint is liable to be dismissed. (3) That the defendant/management has served the three

month notice w.e.f. 18/10/2018 to the complainant as per the terms of letter of appointment dated 19/12/2011 as per the contents of the notice, service of the complainant Dr. Nidhi Maheshwari are no longer required by the defendant institute and she will be relieved from service of the institute on 17/01/2019. It is further mention that prior to the issuance of notice dated 17/10/2018 by the institute to me complainant, complainant never intimated to the institute regarding pregnancy of the complainant, but after receiving the notice complainant made a false, frivolous and concocted to the institute by way of e-mail 12/11/2018 and complainant sought maternity leave for a period of 26 weeks commencing from 12/11/2018 without any medical document/support thereof and therefore was not substantiated.

Representative of complainant has filed rejoinder on the reply of the management stating that the present complaint is fully maintainable under Maternity Benefit (Amendment) Act, 2017. It has further denied that the complainant had never intimated management about her pregnancy before notice dated 17/10/2018 but the true and correct is that the complainant had working with the management from last seven years with dedication and put all her hard work for the rise of business of management, even then when on 17/10/2018 she intimated vide mail as well as aware and told fact about her pregnancy before the management and requested that complainant gynecologist has indicated that she may require to go on maternity leave during the eight month and that she may need to go for maternity leave during the first week of November, 2018 onwards but

> *the management instead of granting her the entitled rights rather terminated her and also handed over this letter to her on 22/10/2018.*
> *Xxx*
> *As per the documents/affidavit submitted by the claimant last fixed wages for the claimant was Rs.1,35,163/-. Therefore the claimant is entitled to receive Rs.8,10,978/- (1,35,163/- x 6 month) as Maternity Benefit and Rs.3500/- as medical bonus, total amounting Rs.8,14,478/- (Rupees Eight Lakh Fourteen Thousand Four Hundred Seventy Eight). The respondent is directed to make payment of Rs.8,14,478/- (Rupees Eight Lakh Fourteen Thousand Four Hundred Seventy Eight) to the claimant within 30 days of passing of the order, failing which a recovery shall be made under the Punjab and Land Revenue Act through collector under section 17(5) of Maternity Benefit Act, 1961 as arrear of land revenue through collector.*
> *For termination of employment, claimant/applicant may file a separate dispute before competent authority for adjudication of this issue.*"

24. The Act is a beneficial legislation for the purpose of safeguarding the rights of pregnant women. The provisions of the Act have to be given effect to, in letter and spirit. Technical issues would not come in the way of the Court or the authority concerned, in recognizing the said benefits. An organisation is expected to be empathetic to the cause of a pregnant woman rather than making bald allegations against her, especially when the Petitioner came to know that Respondent No.2 was at an advanced stage of pregnancy. The impugned order also shows clearly that in fact, after she has proceeded on maternity leave, she had been asked to take classes online,

which she did take on 27th November, 2018.

25. Therefore, in view of the circumstances in the present petition and the provisions of the Act, the Petitioner ought not to have pursued its objections and raise such baseless pleas against Respondent No.2.

26. Mr. Ojha, ld. counsel for the Petitioner, submits that the Petitioner is a private education institute and does not intend to cause any harm to Respondent No.2.

27. Be that as it may, this Court is clearly of the opinion that the present petition is not maintainable and no interference is warranted against the impugned order. However, since the awarded amount is yet to be paid since 2018 and three years have passed in pursuing this matter, in addition to the awarded amount, litigation expenses of Rs.50,000/- are directed to be paid to Respondent No.2. The entire awarded amount along with the litigation expenses shall be paid on or before 30th December, 2021. If the amount is not paid by 30th December, 2021, interest @ 9% per annum shall be liable to be paid with effect from 13th August, 2020, i.e., the date of the award.

28. The present petition, along with all pending applications, is dismissed.

PRATHIBA M. SINGH
JUDGE

DECEMBER 7, 2021/*dk/MS*
(corrected & released on 10th December, 2021)