



HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 11078/2010

Smt Basanti Devi Wife of Shri Surendra Singh, aged about 27 years, resident of Village and post Rajwara, Tehsil Mundawar, District Alwar.

----Petitioner

Versus

1. State Of Rajasthan through Secretary to the Government, Medical & Health Department, Secretariat, Jaipur.
2. Additional Director (Administration) Medical & Health Services, Rajasthan, Jaipur.
3. Chief Medical Officer, Government B.D,M. Hospital, Kotputli.

----Respondents

For Petitioner(s) : Mr. Vinodi Lal Mathur with
Mr. Amit Dhawan

For Respondent(s) : Mr. Prakhar Jain for
Mr. Archit Bohra, AGC

JUSTICE ANOOP KUMAR DHAND
Order

20/02/2025

Reportable

The object of maternity leave is to protect the dignity of motherhood by providing full and healthy environment to the women and her child, maternity leave intends to achieve the social justice to women, motherhood and childhood, both require special attention.

1. Mother is mother, whether she is working on regular basis or on contract basis. Denial of benefits of maternity leave to females working on contract basis as they are equivalent to the females working on regular basis is



violative of their right to life guaranteed under Article 21 of the Constitution of India.

2. The right to life under Article 21 of the Constitution of India encompasses the right to motherhood, as well as the right of every child to receive complete love, care, protection, and development from their mother. Therefore, mothers should be entitled to the same maternity leave benefits that are provided to any female employees, regardless of whether they are employed on a contract or ad-hoc basis.

3. The participation of women in the workplace plays a key role in the economic growth of a country. The Government of India has been pushing for the cause of increasing women's participation in the overall economy. According to the Periodic Labour Force Survey (PLFS), there has been an increase in women's workforce participation from 22% in 2017-18 to 35.9% in 2022-23. To enable more women to join the workforce and meaningfully contribute to the economy, the implementation of the provision related to maternity benefits, both in the private and public sector is vital.

4. To ensure that the women of the society feel safe and secure, they should be able to make decisions in their personal and professional life, without one having an implication or bearing over the other. The work environment should be conducive enough for a woman to facilitate unimpaired decision making regarding personal and professional life and to ensure that a woman who choose to have both, a career and motherhood, is not forced to make an either or decision.





5. Newborn babies of women working on a contractual basis have the same right to life as those of women working on a regular basis. The question arises whether a distinction can be made between a female employee on a contract basis and one on a regular basis when it comes to granting maternity leave benefits. It is within this context that the issue raised in this petition needs to be addressed.

6. The instant writ petition has been filed with the following prayer:

- "i) Direct the respondents to grant benefit of maternity leave as applicable to female employees getting regular salary in pay scale to petitioner;
- ii) Since petitioner has been deprived of the benefit without any lawful reasons as such petitioner be suitably compensated with interest @18% p.a.
- iii) any other order or direction which this Hon'ble Court may deem fit and proper may kindly be passed in favour of the petitioner.
- iv) Cost of the writ petition be awarded in favour of the humble petitioner."

7. By way of filing this petition, the petitioner is seeking directions against the respondents to grant her the benefit of maternity leaves, as applicable to the female employees receiving regular salary in the pay-scale of the petitioner.

8. Counsel for the petitioner submits that the petitioner was appointed on contract basis on the post of Nurse Gr-II, vide order dated 17.09.2003, and after her marriage, she became pregnant, and from the wedlock, a daughter was born on 29.09.2008. Counsel submits that an application was submitted by the petitioner for grant of six months maternity





leaves w.e.f. 29.09.2008 till 23.03.2009. Counsel submits that the respondents sanctioned only two months maternity leaves to the petitioner. Counsel submits that as per the notification issued by the Department of Finance, an amendment was brought under Rule 103 of the Rajasthan Service Rules, 1951 (for short 'Rules of 1951'), in which the period of maternity leave was increased from 135 days to 180 days. Counsel submits that there is no distinction between a female appointed on contract basis or a female appointed on regular basis so far as the grant of maternity leave is concerned. Counsel submits that no discrimination can be made between two similarly situated persons, hence, interference of this Court is warranted.

9. Per contra, learned counsel for the State respondents opposes the arguments raised by the counsel for the petitioner and submits that the petitioner's appointment was on contract basis and as per the circular dated 06.11.2007, issued by the Department of Finance, Government of Rajasthan, a female contractual employee engaged in any department of the State is entitled to avail maternity leaves for a period of two months and accordingly two months maternity leave was granted to the petitioner. Counsel submits that under these circumstances, the respondents have not caused any illegality in sanctioning only two months maternity leave to the petitioner. Counsel submits that under these circumstances, interference of this Court is not warranted.





10. Heard and considered the submissions made at Bar and perused the material available on the record.

11. Perusal of the record indicates that the petitioner was appointed on the post of Nurse Gr.-II on contract basis and after her marriage, a daughter was born on 29.09.2008 from the wedlock. After the birth of the child, the petitioner applied for six months maternity leaves w.e.f. 29.09.2008 till 28.03.2009. The respondents have sanctioned only two months maternity leaves to the petitioner in pursuance of the circular dated 06.11.2007. This fact is not in dispute that at the relevant time, the circular dated 06.11.2007 was applicable to the circumstances of the present case. This fact is also not in dispute that at the relevant time, an amendment was brought under Rule 103 of the Rules of 1951 on the basis of recommendation made in this regard in the month of March, 2008 by the Law Commission, in Sixth Pay Commission Report, in pursuance of which maternity leaves granted to a female employee were increased from 135 days to 180 days, for women employees working under the departments of the State. It appears that subsequently, the respondents took note of the said amendment and similar benefits were granted to the contractual employees vide circular dated 19.06.2009, and this time the maternity leave of 180 days has been made available to all female contractual employees engaged in different departments of the State.

12. It is pertinent to mention here that the Sixth Pay Commission recommended increasing the ceiling limit for





maternity leave from 135 days to 180 days. In response, the Government of India, through the Department of Personnel, issued an office memorandum on 11.09.2008, amending Rule 43 (1) of the Central Civil Services (Leave) Rules, 1972, to raise the maternity leave limit to 180 days. Following this, the Government of Rajasthan also decided on 10.10.2008, to extend the maternity leave ceiling to 180 days, becoming the first state in India to implement the Sixth Pay Commission's recommendation, effective from 01.09.2006.

13. Once the provisions contained under Rule 103 of the Rules of 1951 were amended in pursuance of the recommendations made by the Law Commission, the respondents could not have discriminated between the contractual female employees and regular female employees, as there is no distinction between mothers, whether working on contractual basis or on regular basis. Such act on the part of the respondents is a violation of the right to equality contained under Article 14 of the Constitution of India.

14. The benefit of enhanced Maternity Leave to women employees is undoubtedly a piece of welfare legislation which is intended to give women equal opportunity in public employment. Therefore, granting only 60 days of Maternity Leave to the female employees working on contractual basis would amount to discrimination against the women employees in other departments only for the reason that they are employed on contract basis. The inalienable right of maternity should not and cannot be a reason to deny equal opportunity to women employees working on contract basis.



This precisely would be the result of limiting Maternity Leave to women employees, irrespective of nature of their employment. The Maternity Benefit Act, 1961 (for short 'the Act of 1961') was enacted to secure women's right to pregnancy and maternity leaves and to afford them as much flexibility as possible to live an autonomous life, both as mothers and as workers.

15. Women contribute to half of the segment of our society and they have to be honoured and treated with dignity at all places, including where they earn their livelihood. Whatever be the nature of the duties, in the place of work, they must be provided with all facilities to which they are entitled. The Act of 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may navigate through the state of motherhood honourably, peacefully, undeterred by the fear of being victimized for her absence during the pre or post-natal period.

16. Maternity benefits are not merely statutory rights or contractual agreements between the employer and the employee; they are fundamental aspects of a woman's identity and dignity when she chooses to start a family. The freedom to bear a child is a fundamental right guaranteed by the Constitution under Article 21, and the choice not to bear a child is also an extension of this right. Any attempt to obstruct a woman from exercising this right violates her fundamental rights, as enshrined in the Constitution, and contradicts the principles of social justice.



17. Additionally, Article 15(3) of the Constitution of India provides the State to make special provisions for women and children, supporting the principle of substantive equality. Article 42 of the Constitution of India calls for humane working conditions and maternity relief. The right to life under Article 21 of the Constitution of India encompasses not only bodily protection but also the right to a meaningful and dignified life. The State is obligated to ensure that pregnant working women receive all necessary support and protection for their health and that of their child while maintaining their employment.

18. UNICEF emphasizes that newborns need to experience their surroundings through sight, sound, movement and touch immediately after birth. To help the baby feel secure and content, they should be held gently, stroked and comforted. Additionally, UNICEF suggests that parents should engage with their baby through laughter and smiles during the first 1-6 month. To meet these sensitive needs, it's crucial for mothers to spend ample amount of time with their babies to ensure that they receive proper care and attention.

19. The global recognition of Maternity Leave underscores its critical role in safeguarding the health and well-being of both mothers and their children. These benefits also support women's ability to thrive in their careers, which can contribute to overall economic growth. The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of All Forms of Discrimination against Women,



highlight the importance of providing maternity benefits to working women, reflecting its vital significance.

20. There is no distinction between the females working on contract basis or regular basis with regard to grant of maternity benefits to them. This issue has been considered and decided on different occasions by several Courts of our Nation.

21. The High Court of Himachal Pradesh in **State of H.P. and Ors. vs. Sudesh Kumari** and connected matter **State of H.P. and Ors. vs. Alpana**, collectively reported as **2014 SCC OnLine HP 4844**, while upholding the decision of the writ court quashing the Office Memorandum in question, on the issue of maternity benefits being extended to all employees equally held as follows:

"8. In law, there is no difference between a female regular employee and a contractual employee/ad hoc employee because a female employee whether regular, temporary or ad hoc, is a female for all intents and purposes and she has a matrimonial home, matrimonial life, and after conception, she has to undergo the entire maternity period, same treatment, pains and other difficulties which a regular employee has to undergo. Thus, there is no occasion for making discrimination and if, less period of maternity leave is granted to a contractual employee, it will amount to discrimination, in terms of Article 14 of the Constitution of India.

9. The claim of maternity leave is founded on the grounds of fair play and social justice. There cannot be discrimination and if any discrimination is made, it is in breach of Articles 14 and 15 of the Constitution...



15. Having said so, the office memorandum dated 31.7.2009 and circular dated 2.9.2009, made by the State are quashed and all female employees whether on contract, ad hoc, permanent and temporary are held entitled to materiality leave at par with the regular employees."



22. The Delhi High Court in **Govt. of NCT of Delhi vs. Shweta Tripathi**, reported in **2014 SCC OnLine Del 7138**, while dismissing a challenge to a decision of the Central Administrative Tribunal, whereby it was held that GNCTD could not treat two women employees differently on the question of grant of maternity benefits due to the nature of their employment, held as under:

"6. The CAT's reasoning is premised upon its previous ruling in Dr. Shilpa (supra) which has, in turn, relied upon several other judgments, including that of the Supreme Court in the Female Workers (Muster Roll) (supra) as well as Neetu Chaudhary (Smt.) v. State of Rajasthan 2008 (2) RLW 1404 (Raj). The reasoning adopted by the CAT, for proceeding in the way it did, is that the higher benefit which is given to employees who are not contractual but are borne in the establishment of the GNCTD itself, is a standard which should not have been deviated. This Court is of the opinion that keeping in mind the larger public interest subserved in the grant of maternity benefit, the GNCTD, as a model employer, which is bound by Articles 14 and 16(1), could not have discriminated between two female employees, for the purpose of maternity benefit, on the basis that one of them is a contractual employee and thus entitled to lesser extent of pay, whereas the other, being a permanent employee, could be favoured with a better term. This cannot be treated as a reasonable classification, considering the object of the rule for grant of maternity benefit."



23. In the case of **Dr. Deepa Sharma vs. State of Uttarakhand & Ors.**, reported in **2016 SCC OnLine Utt 2015**, the High Court of Uttarakhand was also faced with a similar situation where the maternity leave of the petitioner, being a contractual employee, was not sanctioned. While allowing the claims of the petitioner, the High Court passed the following observations and directions:



"10. Maternity benefit is a social insurance. There should be a system for breast feeding/nursing care at the workplace. The maternity leave is key for maternal and child health and family support. The maternity leave is of utmost importance to fight against social injustice, poverty and gender inequality.

11. The 44th Session of Indian Labour Conference (ILC) has also recommended for enhancing maternity leave under Maternity Benefit Act, 1961. This recommendation was reiterated in 45 and 46 Session of ILC.

12. A male government servant is also entitled paternity leave for a period of at least three weeks to enable the father to look after the mother and child. A female employee appointed on regular basis, contractual basis, ad hoc/tenure or temporary basis is also entitled to child adoption leave for a period of 135 days' in case of valid adoption of child below the age of one year.

13. A female government employee is also entitled to Child Care Leave (CCL), as per the recommendation of the 6 Central Pay Commission of 730 days' during the entire service. However, it will not be admissible, if the child is 18 years of age or older. The women employees shall be paid leave salary equal to the pay drawn immediately before proceeding on leave. It can be availed of in more than one spell. As per the Government of India, Department of Personnel and Training order dated



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11.09.2008, it can be combined with leave of the kind due and admissible.

15. The International Labour Organization (ILO) has conducted the survey for maternity and paternity at work (Law and practice across the world) in 2014. The survey has covered the period w.e.f. 1994-2013 for duration of maternity leave across the world, maternity cash benefits, finance of maternity cash benefits, scope and eligibility requirements. The survey has also been undertaken for paternity, parental and adoption leave as well as protection of employment during maternity and non-discrimination in employment in relation to maternity, healthy arrangement of working time and arrangement of nursing breaks.

16. We are required to make labour laws in conformity with the recommendations made by the International Labour Organization read with Article 42 of the Constitution of India.

17. According to the Article 42 of the Constitution of India, "the State is required to make provision for securing just and humane conditions of work and for maternity relief."

18. The objective of ILO to conduct the survey was to promote motherhood and child care as well as to promote gender equality. Every female employee and male employee whether appointed on regular basis, contractual basis, ad hoc/tenure or temporary basis have a fundamental right to reasonable duration of maternity leave as well as paternity leave, child care leave (CCL) and adoption leave to promote motherhood and child care under Article 21 of the Constitution of India read with Article 42 of the Constitution of India.

20. Thus, the petitioner cannot be denied the maternity leave w.e.f. 07.01.2015 to 07.06.2015 with full pay. The decision to deny the maternity leave to the petitioner was arbitrary, thus, violative of Articles 14 and 16 of the Constitution of India.

21. Accordingly, the writ petition is allowed with the following mandatory directions: -





a.) Respondents are directed to grant maternity leave to the petitioner with full pay w.e.f. 07.01.2015 to 07.06.2015 within eight weeks from today.

b.) The respondent-State is also directed to grant maternity leave to all the female employees with full pay for 180 days, even working on contractual basis, ad hoc/tenure or temporary basis.

c.) The State Government is further directed to grant at least 60 days' maternity leave to the daily wage female employees working for more than 240 days' in a block of 12 months calendar with full wages.

d.) The State Government is directed to provide every establishment to have the facility of crèche having 50 or more than 50 employees with liberty reserved to the mother to visit the crèche/nursing care at least four times daily, including the interval for rest allowed to the employees.

e.) The State Government is also directed to grant Child Care Leave (CCL) of 730 days' to all the female employees, whether appointed on regular basis, contractual basis, ad hoc/tenure or temporary basis having minor children with a rider that the child should not be more than 18 years of age or older. The female employees shall be entitled to paid leave equal to the pay drawn immediately before proceeding on leave. CCL can be combined with leave of the kind due and admissible.

f.) The State Government is also directed to grant 15 days' paternity leave to a male employee appointed on regular basis, contractual basis, ad hoc/tenure or temporary basis to enable the father to look after the mother and child. This leave can be combined with leave of any other kind.

g.) The State Government is also directed that a female employee appointed on regular basis,





contractual basis, ad hoc/tenure or temporary basis, with fewer than two surviving children, on valid adoption of a child below the age of one year be granted child adoption leave for a period of 135 days' immediately after the date of valid adoption.

h.) The State Government shall not dismiss, terminate, remove any female employee whether appointed on contractual basis, ad hoc/tenure or temporary basis immediately before her delivery and thereafter to deprive her of maternity leave, adoption leave and child care leave etc. i.) The Chief Secretary shall personally be responsible to comply with these mandatory directions in letter and spirit."

24. The High Court of Madhya Pradesh in **Smt. Brijlata Sharma vs. the State of Madhya Pradesh**, reported in **2017 SCC OnLine MP 958** also observed that the question whether a contractual employee is entitled to the benefit of child care leave is no more res integra after the decision of the Hon'ble Supreme Court in **Municipal Corporation of Delhi vs. Female Workers (Muster Roll)** reported in **2000 (3) SCC 224** and while observing so passed the decision in favour of the female employee holding that her claim for child care leave could not be rejected because she is a contractual teacher.

25. Further, the Punjab and Haryana High Court also upheld the view that the benefit of maternity leave and consequential benefits extend to employees who are working on contractual basis, as has been held in **Raj Bala vs. State of Haryana**, reported in **2002 SCC OnLine P&H 1297** and





followed in **Harjinder Kaur vs. State of Haryana and Ors.**, reported in **2019 SCC OnLine P&H 1153**.

26. The Bombay High Court in the judgment of **Archana vs. State of Maharashtra and Anr.**, reported in **2018, SCC OnLine Bom 4136**, while deciding the issue of "maternity benefit: entitlement to claim benefit", referred to the various pronouncements on the issue that whether contractual employees are entitled to get the benefits pertaining to maternity and held as under:

"29. In our opinion, therefore, the action of the respondents in denying the claim of the petitioner for grant of maternity benefits during her maternity leave period runs contrary to the legislative mandate flowing from the provisions of the said Act. Since this Court has already held that the benevolent object of grant of 180 days maternity leave to the woman employees cannot be and should not be limited to the women Government servants of the State of Maharashtra only, the same are also extended to the petitioner who is working as a Project Officer with the respondent No. 2 on contractual basis..."

27. Even, the Delhi High Court in **Dr. Baba Saheb Ambedkar Hospital Govt. of NCT of Delhi and Anr. Vs. Krati Mehrotra**, reported in **2022 SCC OnLine Del 742**, dealt extensively with the issue of maternity benefit, where it was found that the maternity benefit period spilled over and beyond the tenure of the contract of the employee and held that there was no error in the order of the Central Administrative Tribunal in passing directions to the organisation/Hospital to consider the case of the employee





sympathetically and to the GNCTD to release her unpaid salary, holding that the employee was entitled to maternity benefits. The employee, respondent before the Court, also preferred a fresh action and sought that her maternity benefits be extended for a period of 26 weeks from the date of her application, which was also partly allowed by the Tribunal. The Court observed that the Act of 1961 is a social legislation that should be worked in a manner that progresses not only the best interest of the women employees but also of the child. The relevant portion of the judgment is reproduced hereunder:

"41. Clearly, the provisions of the 1961 Act seek to invest a woman with a statutory right to take maternity leave and seek payment for the period that she is absent from duty on account of her pregnancy, albeit in accordance with the provisions of the 1961 Act.

43. The provisions of the 1961 Act do not differentiate between a permanent employee and a contractual employee, or even a daily wage (muster roll) worker. This position stands unambiguously articulated in the judgment of the Supreme Court rendered in MCD v. Female Workers (Muster Roll).

44. Pertinently, the 1961 Act does not tie in the grant of maternity benefit to the tenure of the woman employee.

45. There are two limiting factors for the grant of maternity benefits.

(i) First, the woman employee should have worked in an establishment of her employer for a minimum period of 80 days in 12 months immediately preceding the date of her expected delivery.





(ii) Second, the maximum period for which she can avail maternity leave benefit cannot exceed 26 weeks, of which, not more than 8 weeks shall precede the date of her expected delivery.

46. For a woman employee who has two or more surviving children, although the maximum period for which she can claim maternity benefit is 12 weeks, the period preceding the date of expected delivery cannot be more than 6 weeks.

47. Therefore, linking the tenure of employment, in this case, a contractual employee, with the period for which maternity benefits can be availed by a woman employee, is not an aspect that emerges on a plain reading of the provisions of the 1961 Act.

48. Section 27 of the 1961 Act, which embeds, a non obstante clause, expounds that the provisions of the said Act would apply notwithstanding the provisions contained, inter alia, in any other law, agreement or contract of service, to the extent it is inconsistent with the provisions of the said Act.

49. The object and purpose of the 1961 Act being, to not only regulate employment but also maternity benefits which precede and follow childbirth, point in the direction that tying up the tenure of the contract with the period for which a woman employee can avail of maternity benefit is contrary to the mandate of the legislation i.e. the 1961 Act.

50. Thus, as long as conception occurs before the tenure of the contract executed between a woman employee and her employer expires, she should be entitled to, in our opinion, maternity benefits as provided under the 1961 Act."

28. It is clear, upon considering the view that has been repeatedly taken, that the Act of 1961 is a social welfare legislation and the intent of the legislature in no manner could have been to limit or restrict the extent and scope of the reliefs that may be granted to all those falling within the ambit of the said Act. There is nothing in the language of the





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Act of 1961 or in its provisions which suggests that an expecting working woman would be barred from receiving the reliefs due to the sole reason of the nature of their employment.



29. The Act of 1961 being a social welfare legislation certainly does not discriminate on the basis of the nature of employment of the beneficiaries. It is also certain that the mere creation of a welfare legislation is not enough, a duty is cast upon the State and all those who are subjects of the Act to uphold the integrity, objective and provisions of the legislation in its letter and spirit. Moreover, even the Constitution of the India advances the ideals which have been culminated and translated into the Act of 1961.

30. The petitioner in the instant case was working on contract basis at the time of delivery of her child on 29.09.2008, and she was granted only two months maternity leaves and thereafter, she was compelled to work. During such crucial period, compelling her to work is detrimental not only to her health and safety but also to the health, safety and growth of the child. The maternity leave is a fundamental right of the petitioner which could not have been denied. The respondents were having no authority to make discrimination between the contractual female employee like the petitioner, when 180 days maternity leaves are being granted to the females working on regular basis. Therefore, the action of the respondents is not only violative of the right to life enshrined under article 21 but also the



equality guaranteed under Article 14 of the Constitution of India.

31. Keeping in view the above proposition of law as laid down by several Courts as well as the circular issued by the Department of Finance, Government of Rajasthan, by which 180 days maternity leave has been made available to all female contractual persons engaged in various department of the State, the petitioner is also entitled to get the benefit of same, thus, the instant writ petition stands allowed, accordingly. The respondents are directed to grant 180 days maternity leave to the petitioner after adjusting her two months maternity leaves with all consequential benefits.

32. If grant of enhanced maternity leave is not possible due to lapse of time, the respondents are directed to pay additional salary for rest of the period as compensation to the petitioner with interest @9% per annum.

33. Needless to observe that the respondents would comply the order passed by this Court within a period of three months from the date of receipt of certified copy of this order.

34. Pending applications, if any, stand disposed of.

(ANOOP KUMAR DHAND),J

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