

(2025) 11 SHI CK 1903

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No 14234 Of 2025

Anuradha Sharma

APPELLANT

Vs

State Of H.P. And Ors

RESPONDENT

Date of Decision : 18-11-2025

Acts Referred:

Constitution Of India, 1950 — Article 15, 21, 42, 51, 51(c)
Central Civil Service (Leave) Rules, 1972 — Rule 19, 30, 30(1), 43, 43(1), 43(3)
Maternity Benefit Act, 1961 — Section 5, 5(3), 27

Citation : (2025) 11 SHI CK 1903

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Vaibhav Tanwar, Anup Rattan, L.N.Sharma, Sikander Bhushan, Swati Draik, Shalabh Thakur

Final Decision : Allowed

Judgement

Jyotsna Rewal Dua, J

1. Petitioner was blessed with her third biological Child on 08.08.2025, first from her second marriage. Respondent-State has declined to accept petitioner's prayer for granting her the benefit of maternity leave under rule 43 of Central Civil Service (Leave) [CCS(leave)] Rules 1972, hence, the grievance.

2 The case

2(i) Petitioner entered Government service as a regular Trained Graduate Teacher (Arts) in the year 2002. Her marriage was solemnized on 17.11.2005. Two children were born to her from this wedlock during the years 2007 and 2012. Her second child-a daughter is stated to be suffering from a nervous system disease. The maternity leave was availed and granted to the petitioner by the respondent-State under Rule 43 of the CCS (Leave) Rules on both the occasions. Petitioner's marriage went into rough weather. Ex-parte decree of divorce was granted in her favour on the ground of desertion by the Court of competent jurisdiction on

01.06.2019. Petitioner solemnized second marriage on 16.03.2021 with one Sh. Surender Paul. It is the case pleaded by the petitioner that said Sh. Surender Paul was earlier married to one Smt. Suman Kumari and out of said wedlock, one male child Master Divyansh Thakur was born, but unfortunately, both Smt. Suman Kumari and Divyansh Thakur died in a road accident on 04.02.2020.

2(ii) Out of her second wedlock, the petitioner gave birth to her third biological child on 08.08.2025. The same day, petitioner applied for grant of maternity leave. It was rejected by respondents on 13.08.2025 citing there being no provision for maternity leave for the birth of third child under the Maternity Benefit Act, 1961.

Though the request of the petitioner for grant of maternity leave has been turned down citing Maternity Benefit Act 1961, however, both the sides are ad-idem that words Maternity Benefit Act is a typographical error and the same be read as Rule 43 of CCS (Leave) Rules. The case has been heard accordingly.

3. Heard learned counsel for the parties and considered the case file.

In order to avoid repetition, the submissions made by learned counsel on both sides and the discussion thereupon has been enumerated hereinafter.

4 Consideration .

It is an acknowledged position that being a regular government employee, petitioner is governed by the CCS (Leave) Rules. Rule 43 of Chapter V of these Rules provides for maternity leave:-

"43. Maternity Leave:

(1) 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.

(2) During such period, she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

(3) Maternity leave not exceeding 45 days may also be granted to a female Government servant (irrespective of the number of surviving children) during the entire service of that female Government in case of miscarriage including abortion on production of medical certificate as laid down in Rule 19:

Provided that the maternity leave granted and availed of before the commencement of the CCS (Leave) Amendment Rules, 1995, shall not be taken into account for the purpose of this sub-rule.

(4) (a) Maternity leave may be combined with leave of any other kind.

(b) Notwithstanding the requirement of production of medical certificate contained in sub-rule (1) of Rule 30 or sub-rule (1) of Rule 31, leave of the kind due and admissible (including commuted leave for a period not exceeding 60

days and leave not due) up to a maximum of two years may, if applied for, be granted in continuation of maternity leave granted under sub-rule (1).

(5) Maternity leave shall not be debited against the leave account.

(6) In case of surrogacy, the surrogate, as well as the commissioning mother with less than two surviving children, may be granted maternity leave of 180 days, in case either or both of them are Government Servants."

Rule 43 states that a female government servant with less than two surviving children may be granted maternity leave up to period of 180 days from the date of its commencement. During this period, she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

4(i) According to the respondent-State being a regular government employee, maternity leave can be allowed to the petitioner only as per Rule 43 of the CCS (Leave)Rules and not under the Maternity Benefit Act. Further, petitioner cannot be granted maternity leave as:- (i) She has two surviving children (before the birth of her third child for which petitioner now seeks maternity leave and (ii) Petitioner has already availed maternity leave for the birth of her two children. Leave cannot be granted to her for the third child. Whereas, according to learned counsel for the petitioner, in view of *Deepika Singh Vs. Central Administrative Tribunal and others*[(2023)13 SCC 681] and *K. Umadevi Vs. Government of Tamil Nadu and Others*[(2025)8 SCC 263], provisions of the Maternity Benefit Act, 1961 (the Act of 1961) are required to be read into Rule 43 of the CCS (Leave) Rules, more particularly, in the given facts of the case; Petitioner's first marriage was dissolved on ground of desertion, petitioner had also pleaded and demonstrated acts of cruelty committed upon her by her first husband (mentioned in the judgment at Annexure P-1); Her second child-a daughter, from her first marriage suffers from Tuberous Sclerosis (nervous system related disease, mentioned in the judgment at Annexure P-1); Petitioner's second husband had lost his first wife and the sole child in a road accident; In this background, the couple had their first child (petitioner's third biological child). Learned counsel also submitted that petitioner intends to utilize the child care leave under Rule 43(3) of the CCS (Leave) Rules for the well being of her second daughter, who requires permanent care and treatment. Prayer was made to direct the respondents to sanction maternity leave in petitioner's favour.

4(ii) The stand-alone ground of there being no provision for maternity leave under the CCS (Leave) Rules for the birth of third child, has been dewelled upon in *Deepika Singh*[(2023)13 SCC 681].

In *Deepika Singh* [(2023)13 SCC 681].the appellant had availed child care leave for her two step children (adopted by her). She was denied maternity leave by her employer-Post Graduate Institute of Medical Education and Research (PGIMER) Chandigarh invoking Rule 43 of the CCS (Leave) Rules. The ground for rejection was that she had two surviving children from first marriage of her spouse, consequently, maternity leave for the third child was impermissible. The

ground was not accepted by the Hon'ble Apex Court. The facts of the case were deliberated wherein the child was appellant's first biological child and she had not availed maternity leave for her two adopted children (biological children of her husband). Appellant having availed child care leave for the two adopted children was held to have no effect upon her right to get maternity leave for the birth of third child (her first) as she had not previously availed maternity leave. The dispute between the parties was noticed as under:-

"3. The appellant had her first biological child on 4-6-2019 from her marriage. On 6-6-2019, she applied for maternity leave for the period from 27-6-2019 to 23-12-2019 in terms of Rule 43 of the Central Civil Services (Leave) Rules, 1972 ("the 1972 Rules"). The authorities at PGIMER sought a clarification on 3-7-2019 regarding the fact that the spouse of the appellant had two surviving children from his first marriage. The appellant submitted a detailed reply on 24-7-2019.

4. The request of the appellant for the grant of maternity leave was rejected on 3-9-2019 on the ground that she had two surviving children and had availed of childcare leave earlier for the two children born from the first marriage of her spouse. Consequently, maternity leave for the child borne by her, considered as her third child, was found to be inadmissible in terms of the 1972 Rules. By an office order dated 21-1-2020, her leave for the period from 30-5-2019 to 3-6-2019; 4-6-2019 to 27-10-2019; 27-10-2019 to 6-11-2019; and 7-11-2019 to 31-11-2019 was treated as earned leave, medical leave, half pay leave, and extraordinary leave, respectively. The period of extraordinary leave was not counted towards increments in the scale of Rs 9300-34,800 under FR-26(ii) of the Fundamental Rules, Volume I."

The Central Administrative Tribunal declined to grant maternity leave to the appellant in view of her already having two children:-

"5. Aggrieved by the decisions dated 3-9- 2019 and 21-1-2020 of the administrative authorities at PGIMER, the appellant moved the Central Administrative Tribunal ("CAT") at its Chandigarh Bench in OA No 155 of 2020. By a judgment dated 29-1-2021, the Central Administrative Tribunal dismissed the OA, holding:

"11. It is, thus, clear that the maternity leave can be granted to a female government servant only if she has less than two surviving children. As per her own request, the applicant has already shown her two children from the first marriage of her husband as her children and she has been availing benefit in their respect on many occasions earlier and subsequent to her marriage. Therefore, for all practical purposes and as far as respondent department is concerned, she has already two surviving children and she is taking benefit for them from the respondent department by way of Childcare Leave and other benefits.

12. In view of the above, any child born to her now will be considered only as a third child and cannot be taken as the first child. It may be true that Viren Partap

Singh is first child born to her after her first pregnancy with her husband. But, of her own choice, the applicant has already got the names of other two children from her husband's first marriage entered in the record of the office as her children and is availing benefits on their behalf including Child Care Leave. The Rule position is clear and for all practical purposes, the applicant has two surviving children. As such, any child born to her now can only be considered as third child.

13. In view of the above, the decision of the respondents to reject her maternity leave is correct even though it may be first maternity for the applicant herself"

The High Court also declined to interfere with the decision of the Tribunal keeping in view the child care leave already availed by the appellant. She was considered to be having two surviving children:-

"8. The High Court opined that since the appellant had availed of childcare leave in respect of the biological children of her spouse born from his first marriage, she would be disentitled to the grant of maternity leave. After her marriage to Amar Singh, she was considered to have two surviving children. The High Court found that she therefore did not meet the requirement of sub-rule (1) of Rule 43 of having less than two surviving children for the purpose of being granted maternity leave.

Hon'ble Apex Court quoting its several precedents held that provisions of Rule 43 of the CCS (Leave) Rules must be imbued with purposive construction since a beneficial though the Act had no application to appellant's employer-the PGI:-

"17. For the purpose of adopting an approach which furthers legislative policy, it would be appropriate to derive some guidance from the provisions of the Maternity Benefit Act, 1961 ("the 1961 Act") though, it must be stated at the outset that the Act per se has no application to the PIMER as an establishment. Nonetheless, the provisions of the 1961 Act are indicative of the object and intent of Parliament in enacting a cognate legislation on the subject.

At this stage, it would be in place to extract Section 5 of the Maternity Benefit Act:-

"Section 5 Right to payment of maternity benefit.

(1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

Explanation.--For the purpose of this sub-section, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, the minimum rate

of wage fixed or revised under the Minimum Wages Act, 1948 (11 of 1948) or ten rupees, whichever is the highest.

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days] in the twelve months immediately preceding the date of her expected delivery:

Provided that the qualifying period of eighty days aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

Explanation.--For the purpose of calculating under this sub-section the days on which a woman has actually worked in the establishment, the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the date of her expected delivery.

Provided that the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery:

Provided further that] where a woman dies during this period, the maternity benefit shall be payable payable only for the days up to and including the day of her death.

Provided also that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the Child.

(4) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

(5) In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree."

Pertinently Section 5(3) provides maternity leave up to 12 weeks even to a woman having two or more than two surviving children. To women with less than two surviving children, maternity benefit up to 26 weeks are permissible.

Hon'ble Apex Court made pertinent observations in Deepika Singh² that Maternity Benefit Act was enacted to secure women's right to pregnancy, maternity leave and to afford women with as much flexibility as possible to live an autonomous life both as a mother and a worker. The Central Civil Service (Leave) Rules are also formulated to entrench and enhance the objects of Article 15 of the Constitution and other related constitutional rights and protections. The right to reproduce and child rearing has been recognized as an important facet of person's right to privacy, dignity and bodily integrity under Article 21. State is also enjoined by Article 42 to make provisions for securing just and humane conditions of work and for maternity relief. It is in alignment with Constitution as well as International Treaties (quoted in the judgment), Rule 43 of the CCS (Leave) Rules contemplates grant of maternity leave for a period of 180 days (around 26 weeks) and in addition child care leave for two eldest surviving children. It was further held that grant of child care leave to the appellant for her two adopted/step children cannot disentitle her to maternity leave under Rule 43 of the CCS (Leave) Rules:-

"24. The facts of the present case indicate that the spouse of the appellant had a prior marriage which had ended as a result of the death of his wife after which the appellant married him. The fact that the appellant's spouse had two biological children from his first marriage would not impinge upon the entitlement of the appellant to avail maternity leave for her sole biological child. The fact that she was granted child care leave in respect of the two biological children born to her spouse from an earlier marriage may be a matter on which a compassionate view was taken by the authorities at the relevant time. Gendered roles assigned to women and societal expectations mean that women are always pressed upon to take a disproportionate burden of childcare work."

The appeal was allowed. The appellant was held entitled to grant of maternity leave under the CCS (Leave) Rules for her third child, who was her first biological child and this was despite the fact that she had already availed child care leave for her two step/adopted children. While allowing the appeal, the Hon'ble Apex Court held that structure of appellant's family changed when she took on a parental role for her spouse's two biological children from his previous marriage; Hon'ble Apex Court cautioned the Courts as under to give effect to purpose of law in question rather than to prevent its applications where facts may not be envisaged or adequately accounted for by law:-

"28. The facts of the present case, too, indicate that the structure of the appellant's family changed when she took on a parental role with respect to her spouse's biological children from his previous marriage. When the appellant applied to PGIMER for maternity leave, PGIMER was faced with facts that the law may not have envisaged or adequately accounted for. When courts are confronted with such situations, they would do well to attempt to give effect to the purpose of the law in question rather than to prevent its application.

29. For the above reasons, we hold that the appellant was entitled to the grant of

maternity leave. The communication of the third respondent denying her the entitlement was contrary to the provisions of Rule 43. We accordingly set aside the impugned judgment of the High Court dated 16-3-2021 and the judgment of CAT dated 29-1-2021. The OA filed by the appellant shall in consequence stand allowed and the appellant shall be granted maternity leave under Rule 43 in terms of the present judgment. The benefits which are admissible to the appellant shall be released to her within a period of two months from the date of this order."

4(iii) The issue of grant of maternity leave to a woman for her third biological child again arose for consideration in K. Umadevi³. In the said case, the appellant had two children from her first marriage. Both the children were born prior to appellant's entering the government service. Appellant had not taken benefit of maternity leave for her two children. Appellant's marriage was dissolved and custody of the children was given to her husband. She married for the second time and had her third biological child, first from second marriage. Maternity leave was declined to her on the ground of her having two biological children and there being no provision for such grant for the third child on account of re-marriage in view of Rule 101 (a) of Tamil Nadu Fundamental Rules:-

"4. The appellant married A. Suresh in the year 2006. From the said wedlock, two children were born: first one in 2007 and the second one in 2011. She entered government service in December 2012 as English Teacher in Government Higher Secondary School, P. Collapatti, Dharmapuri District in the State of Tamil Nadu. Marriage between the two was dissolved in the year 2017. It is stated that the two children born from the said wedlock are in the custody of the former husband.

5. On 12-9-2018, the appellant married M. Rajkumar. Due to conception from her second marriage, the appellant applied for grant of maternity leave to the authorities for the period from 17-8-2021 to 13-5-2022 (nine months) which was inclusive of both pre- and post-natal periods.

6. The third respondent vide order dated 28-8-2021 rejected the prayer of the appellant. It was stated that as per Fundamental Rule (FR) 101(a), which is applicable to State Government employees of Tamil Nadu, maternity leave is available to women State Government employees having less than two surviving children. There is no provision for grant of maternity leave for the third child on account of the appellant's re-marriage."

Learned Single Judge allowed appellant's writ petition, relying upon the Maternity Benefit Act. It was held that Maternity Benefit Act had overriding effect on any other law inconsistent with it; The Rule providing cap on number of children for entitlement of maternity benefit was repugnant to the Maternity Benefit Act-a Central legislation. Additionally, it was also observed by the learned Single Judge that two surviving children must be in custody of the mother. The appellant did not have custody of her two children from the first wedlock. It was thus,

concluded that rejection of appellant's claim for maternity leave was unjustified. The Division Bench allowed State's appeal holding that as per State Rules, maternity benefits had been restricted to two children. Grant of maternity benefit was not a fundamental right. It is either a statutory right or a right flowing from conditions of service. Appellant was not held entitled to maternity leave:-

"23. When this was challenged before the High Court, the learned Single Judge referred to various case laws and also relied upon the Maternity Benefit Act and held that the provisions of the Maternity Benefit Act have overriding effect on any other law inconsistent therewith. It was held that the rule providing cap on the number of children for entitlement of maternity benefit is repugnant to the Maternity Benefit Act which is a Central enactment. Further, two surviving children must mean children in lawful custody of the mother. The appellant was not having the custody of children born from the first wedlock. A semantic construct of the expression "having surviving children" must mean that the woman government employee seeking maternity benefit should have custody of the children. The thrust should be on grant of the benefit by adopting a liberal interpretation. The learned Single Judge also noted that the State Government had issued GOMs No. 84 dated 23-8-2021 enhancing maternity leave from 9 months to 12 months underlying the importance of maternity leave. Therefore, the learned Single Judge concluded that rejection of the claim of the appellant for maternity leave was wholly unjustified.

24

25. When the aforesaid judgment and order of the learned Single Judge was assailed in intra-court appeal, the Division Bench noted that insofar as policy of the State is concerned, it restricts benefit of maternity leave to two children. Therefore, the appellant was not entitled to benefit of maternity leave for the third child. Grant of maternity leave is not a fundamental right. It is either a statutory right or a right which flows from the conditions of service. Insofar as the decision of this Court in Deepika Singh is concerned, the Division Bench observed' that the said decision supports the case of the State, particularly para 17 thereof. In the circumstances, the Division Bench vide the impugned judgment held' that the appellant was not entitled to the relief as claimed by her. Consequently, while allowing the writ appeal, judgment and order of the learned Single Judge has been set aside."

Hon'ble Apex Court in the background of Articles 21, 42, 51(c) of the Constitution deliberated FR 101 (a) of the State of Tamil Nadu, which provided maternity leave to a married woman with less than two surviving children and held that 'though provisions of Maternity Benefit Act per se are not applicable to State employees but they provide useful guidance.'

"34. Though provisions of the Maternity benefit Act per se are not applicable to the State Government employee, nonetheless, we may make reference to certain relevant provisions thereof for useful guidance."

It was observed that Maternity Benefit Act does not per-se decline benefits to a woman employee having more than two children, though some difference in period of leave had been made:-

"36. Following amendment in the year 2017, a restriction has been introduced in Section 5 by inserting a proviso under sub-section (3) as to the entitlement of the period of maternity leave. A woman employee having less than two surviving children is entitled to a maximum period of benefit i.e. 26 weeks and for a woman employee having two or more than two surviving children, the benefit is restricted to 12 weeks. Thus, there is no ceiling or cap on the number of children to claim maternity benefit. Only thing is that in case of a woman employee having two or more than two surviving children seeking maternity leave, period of the benefit is reduced: from a maximum period of 26 weeks to a maximum of 12 weeks."

Section 27 of the Maternity benefit Act "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:

(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." was also noticed in the judgment as under:-

"37. Section 27 of the Maternity Benefit Act is also relevant. It deals with effect of laws and agreements inconsistent with the Maternity Benefit Act and declares that provisions of the Maternity Benefit Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in terms of any award, agreement or contract of service, whether made before or after the coming into force of the Maternity Benefit Act."

Hon'ble Supreme Court discussed relevant provisions of International Treaties and Conventions dealing with maternity benefits and held that maternity leave is integral to maternity benefits. Reproductive rights are recognized as part of several intersecting domains of international human rights:-

"50. Thus, as can be seen from the above, through various international conventions, the world community has recognised the broad spectrum of reproductive rights which includes maternity benefits. Maternity leave is integral to maternity benefits. Reproductive rights are now recognised as part of several intersecting domains of international human rights law viz. the right to health, right to privacy, right to equality and non-discrimination and the right to dignity.

51. Such international developments had its impact on Indian law. In *Suchita Srivastava v. State (UT of Chandigarh)* , a three-Judge Bench of this

"22. There is no doubt that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children."

52. This Court in *Devika Biswas v. Union of India* observed that the need to respect and protect reproductive rights and reproductive health of a person has been recognised. Reproductive right is an aspect of personal liberty under Article 21 of the Constitution. This decision was rendered in the backdrop of the sterilisation campaign carried out by the State."

The apex Court reiterated *X Vs. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi, and Another*[(2023)9 SCC 433] that ambit of reproductive rights is not restricted to right of woman to have or not to have children. It also includes the constellations of freedoms and entitlements that enable a woman to decide freely on all matters relating to her sexual and reproductive health. Human dignity inheres in every individual, it is susceptible to violation by external conditions and treatment by the State. The right of every woman to make reproductive choices without undue interference from State is central to the idea of human dignity. Deprivation of access to reproductive health care or emotional and physical well being also injures the dignity of woman.

The Apex Court also noticed the caution given to the Courts in *Deepika Singh*² to decide such like matters for giving effect to purpose of law rather than to prevent its application.

In the facts of the said case, the Supreme Court held that though the appellant had two biological children but they were born to her before entering into service. Post her entry into service, it was her first child, her two children were in custody of their father. Hon'ble Apex Court set aside the order passed by the Division Bench, whereby relief was declined to the appellant. Hon'ble Apex Court also did not affirm the line of reasoning of learned Single Judge. The appeal was allowed. The appellant was held entitled to maternity leave under FR 101 (a) despite her having two biological children, born to her before entering the government service for whom she had not availed maternity leave and were in custody of her first husband.

4(iv) During hearing of the case, an argument was raised for the respondent-State that in order to curb the population, maximum cap on grant of maternity

leave only up to two children was imposed in the CCS (Leave) Rules, 1972.

This plea has no foundation. Provisions for maternity benefit exist in the CCS (Leave) Rules, 1972 not to curb population growth but to promote constitutional rights of woman to protect her dignity and bodily integrity while rearing her child. The provisions are aimed for fulfilling the welfare obligations of the Welfare State of course with reasonable restrictions. However, in a given situation, where such restrictions are found to be unreasonable and coming in way of effective implementation of a beneficial legislation, appropriate order can be passed to ensure purpose and beneficial percolation of the law. Here, it would be in place to extract following paras from Deepika Singh²:-

"26. Unless a purposive interpretation were to be adopted in the present case, the object and intent of the grant of maternity leave would simply be defeated. The grant of maternity leave under Rules of 1972 is intended to facilitate the continuance of women in the workplace. It is a harsh reality that but for such provisions, many women would be compelled by social circumstances to give up work on the birth of a child, if they are not granted leave and other facilitative measures. No employer can perceive child birth as detracting from the purpose of employment. Child birth has to be construed in the context of employment as a natural incident of life and hence, the provisions for maternity leave must be construed in that perspective.

27 The predominant understanding of the concept of a "family" both in the law and in society is that it consists of a single, unchanging unit with a mother and a father (who remain constant over time) and their children. This assumption ignores both, the many circumstances which may lead to a change in one's familial structure, and the fact that many families do not conform to this expectation to begin with. Familial relationships may take the form of domestic, unmarried partnerships or queer relationships. A household may be a single parent household for any number of reasons, including the death of a spouse, separation, or divorce. Similarly, the guardians and caretakers (who traditionally occupy the roles of the "mother" and the "father") of children may change with remarriage, adoption, or fostering. These manifestations of love and of families may not be typical but they are as real as their traditional counterparts. Such atypical manifestations of the family unit are equally deserving not only of protection under law but also of the benefits available under social welfare legislation. The black letter of the law must not be relied upon to disadvantage families which are different from traditional ones. The same undoubtedly holds true for women who take on the role of motherhood in ways that may not find a place in the popular imagination."

5. Conclusion

While adjudicating the cases filed for grant of maternity leave by women employees governed by the CCS (Leave) Rules, 1972 a paramount factor to be kept in view is that every presented fact situation may not be covered by the

straight jacket confines of the CCS (Leave) Rules 1972. Such cases are not merely to be adjudicated but need to be decided, inter-alia, in furtherance of Articles 15, 21, 42 & 51 of the Constitution of India, to protect the dignity & essence of a woman and duly conscious of the progressive march of the dynamic law over the years with societal advancement. The CCS (Leave) Rules of 1972 though do not allow maternity leave to a woman for her third biological child, but the Maternity Benefit Act, 1961 in terms of Proviso to Section 5(3) incorporated by way of amendment in the Act in the year 2017 does, though period of maternity leave for the third child is less than provided for the first two children. The Maternity Benefit Act is not applicable to the petitioner being a regular government employee and governed by the CCS (Leave) Rules, however, its beneficial provisions can be kept in mind while considering petitioner's prayer for grant of maternity leave. The Courts have already been cautioned in Deepika Singh² to endeavour to give effect to the purpose of law in question rather than to prevent its application. The petitioner has been victim of cruelty and desertion by her first husband- her first marriage ending in divorce leaving her to fend for herself and her two daughters. Her second child born from her first marriage statedly suffers from an incurable neurological disease. Petitioner solemnized second marriage with a man who had lost his first wife and the sole child from his first wedlock in a road accident. The child born to the appellant on 08.08.2025 is couple's first child, though third biological child of the appellant. Petitioner is an average woman who at the age of 43 years has been compelled by the circumstances to give birth to and nurture her second husband's sole biological child. In the given facts, I am inclined to grant the benefit of maternity leave to the petitioner, however, taking guidance from provisions of the Maternity Benefit Act, more particularly, proviso to Section 5(3) of the Act, the period of such leave shall be restricted to 12 weeks (84 days) and not 180 days admissible under Rule 43(1) of the CCS (Leave) Rules for the first two children.

For the foregoing discussion, this petition is allowed. Petitioner is held entitled to maternity leave for the birth of her third child, for a period of 12 weeks from the date of maternity leave applied for by her. Respondents are directed to sanction and grant this maternity leave to the petitioner forthwith. Consequences shall follow.

Pending miscellaneous application(s), if any, also to stand disposed of.