

(2025) 06 SHI CK 0687
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 7185 Of 2020

Babli Devi

APPELLANT

Vs

State Of H.P. & Another

RESPONDENT

Date of Decision : 02-06-2025

Acts Referred:

Constitution of India, 1950 — Article 21
Indian Penal Code, 1860 — Section 302
Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 22

Citation : (2025) 06 SHI CK 0687

Hon'ble Judges : Rakesh Kainthla, J

Bench : Division Bench

Advocate : Karan Kapoor, Ajeet Sharma

Final Decision : Allowed

Judgement

Vivek Singh Thakur, J

1. Petitioner had approached H.P. State Administrative Tribunal by filing Original Application No. 2808 of 2019 on 8.7.2019 for redressal of her grievance seeking directions to respondents to allow monetary benefits of higher pay band of ₹ 10,300-34,800/-+3200 grade pay w.e.f. 12.5.2019 on completion of two years regular service as a Clerk and to pay arrears from the said date alongwith interest @ 9% per annum.
2. After abolition of H.P. State Administrative Tribunal, Original Application was transferred to this High Court and Registered as CWPOA No. 7185 of 2020 (present petition).
3. Petitioner was initially appointed as Clerk on contract basis at ₹ 7810/- per month fixed (i.e. ₹ 5910/- basic pay plus ₹ 1900/- grade pay) vide letter No. 1465, dated 15.9.2012 issued by the competent Authority.
4. On completion of 7 years contractual service, petitioner alongwith others including one Sharmila Devi were regularized vide Office Order No. 618,

(Annexure A-2) dated 11.5.2017, on the basis of recommendations of competent Authority in the pay band of ₹ 5910+20200+1900 grade pay.

5. On completion of 2 years of regular service as a Clerk, petitioner in terms of Finance Department Notification No. Fin.(P.R.)-B(7)-64/2019, dated 27.9.2012 (Annexure A-3) issued by Principal Secretary (Finance) to the Government of Himachal Pradesh, was entitled for higher pay band of ₹ 10,300-34,800+3200/- grade pay.

6. In pursuance to aforesaid Notification Sharmila Devi Clerk was allowed benefit of higher pay band w.e.f. 12.5.2019 after completion of 2 years regular service as Clerk. However, such benefit was not extended to the petitioner and this fact came in the notice of petitioner on 1.6.2019 when salary for the month of May, 2019 was credited in her bank account.

7. Petitioner submitted a detailed representation on 1.6.2019 to the Director, Technical Education, Vocational and Industrial Training, H.P. with request to extend the benefit of higher pay band to the petitioner for completion of 2 years regular service on 11.5.2017, like Sharmila Devi Clerk.

8. Representation of the petitioner was rejected and communicated to the petitioner vide letter dated 1.7.2019 (Annexure A-1) issued by respondent No. 2-Director, on the ground that before completion of 2 years regular service on 12.5.2019, petitioner had proceeded on maternity leave w.e.f. 8.4.2019 to 4.10.2019 and as per Rule 43(2) of CCS (Leave) Rules, 1972, the employee shall be paid leave salary equal to the pay drawn immediately before proceeding on leave. It was further communicated that band of higher pay shall be given from the due date, but on notional basis and monetary benefits shall be given after re-joining after maternity leave.

9. Claim of the petitioner was opposed by the respondents on the ground that petitioner was entitled for higher pay band on actual basis on completion of 2 years regular service as Clerk, but as she proceeded on maternity leave on 8.4.2019, therefore, she was not granted higher pay band on completion of 2 years service on 12.5.2019. Further that when it came in the notice of respondents that one Manju Thakur, Clerk had been extended such benefit erroneously, the amount disbursed was recovered from said Manju Thakur and further that Sharmila Devi, who was appointed with petitioner, was given higher scale because she had completed 2 years regular service without maternity leave and, therefore, petitioner is not entitled for higher pay scale on actual basis from the date of completion of 2 years, but she is entitled for higher grade pay on actual basis after joining after availing maternity leave on 4.10.2019. For denying benefit of higher pay scale, respondents have placed reliance upon Rule 43(2) of the CCS (Leave) Rules, 1972.

10. Rule 43 (1) and (2) of CCS (Leave) Rules, 1972 reads as under:-

"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.”

11. It was further stand of the respondents that in matter related to grant of annual increment during period of maternity leave, date of grant of annual increment is extended till the joining by the employee, after availing maternity leave and, therefore, petitioner has been granted higher pay scale from 12.5.2019, but on notional basis and she is entitled for actual benefit of higher pay scale after joining service after availing maternity leave on 4.10.2019.

12. Section 5 of Maternity Benefit Act, 1961 provides right to payment of maternity benefits.

13. The Supreme Court in *Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) and Another*, reported in (2000) 3 SCC 224 , has observed as under:-

“27. 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 or on muster roll on daily wage basis.”

14. The Supreme Court in *Deepika Singh Vs. Central Administrative Tribunal and others*, reported in (2023) 13 SCC 681 has observed as under:-

“25. According to a “time-use” survey conducted by the Organisation for Economic Co-operation and Development (OECD), women in India currently spend upto 352 minutes per day on unpaid work, 577% more than the time spent by men. Time spent in unpaid work includes childcare. In this context, the support of care work through benefits such as maternity leave, paternity leave, or child care leave (availed by both parents) by the state and other employers is essential. Although certain provisions of the Rules of 1972 have enabled women to enter the paid workforce, women continue to bear the primary responsibility for childcare. The grant of childcare leave to the appellant cannot be used to disentitle her to maternity leave under Rule 43 of the 1972 Rules.

25. 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.

26. 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."

15. Supreme Court in Dr. Kavita Yadav Vs. Secretary, Ministry of Health and Family Welfare Department and others, reported in (2024) 1 SCC 421, taking into consideration Deepika Singh and Female Workers' cases, has observed as under:-

"15. In our opinion, a combined reading of these provisions in the factual context of this case would lead to the conclusion that once the appellant fulfilled the entitlement criteria specified in Section 5(2) of the Act, she would be eligible for full maternity benefits even if such benefits exceed the duration of her contract. Any attempt to enforce the contract duration term within such period by the employer would constitute "discharge" and attract the embargo specified in Section 12(2)(a) of the 1961 Act. The law creates a fiction in such a case by treating her to be in employment for the sole purpose of availing maternity benefits under the 1961 Act."

16. Following paras of judgment of the Supreme Court in K.Umadevi Vs. Government of Tamil Nadu and others, 2025 SCC OnLine SC 1204 are also relevant to refer:-

"12. We need to examine the correctness or otherwise of the decision of the Division Bench in the light of constitutional and statutory framework as well as in the backdrop of international developments.

13. Article 21 of the Constitution of India though at first blush appears to be a colourless article, it is a potent provision pregnant with wide width and scope having received extensive and liberal construction at the hands of this Court. Article 21 reads thus:

21. Protection of life and personal liberty. – No person shall be deprived of his life or personal liberty except according to procedure established by law.

13.1. By judicial interpretation, it has been held that life under Article 21 means life in its fullest sense; all that which makes life more meaningful, worth living like a human being. Right to life includes all the finer graces of human civilization, thus rendering this fundamental right a repository of various human rights. Right to life also includes the right to health. Right to live with human dignity and the right to privacy are now acknowledged facets of Article 21.

14. Article 42 of the Constitution of India which is one of the directive principles of State policy mandates that the State shall make provisions for securing just and humane conditions of work and for maternity relief. Article 42 is as follows:

42. Provision for just and humane conditions of work and maternity relief. – The State shall make provision for securing just and humane conditions of work and for maternity relief.

15. Another directive principle is contained in Article 51 of the Constitution of India. Amongst others, it says through Article 51(c) that the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with one another.

16. We may now refer to FR 101(a) as applicable to the State of Tamil Nadu. For ready reference, the same is extracted hereunder:

Rule 101 (a) - maternity leave to female Government servants.

Instructions under Rule 101 (a) – Maternity leave.

1. (i) A competent authority may grant maternity leave on full pay to permanent married women Government servants and to non-permanent married women Government servants, who are appointed on regular capacity, for a period not exceeding 365 days, which may spread over from the pre-confinement rest to post confinement recuperation at the option of the Government servant. Non-permanent married women Government servants, who are appointed on regular capacity and join duty after delivery shall also be granted maternity leave for the remaining period of 365 days after deducting the number of days from the date of delivery to the date of joining in Government service (both days inclusive) for the post confinement recuperation.

(ii) Non-permanent married women Government servants, who are appointed under the emergency provisions of the relevant service rules should take for maternity purposes, the earned leave for which they may be eligible. If, however, such a Government servant is not eligible for earned leave or if the leave to her credit is less than 365 days, maternity leave may be granted for a period not exceeding 365 days or for the period that falls short of 365 days, as the case may be. Non-permanent married women Government servants employed under the emergency provisions should have completed one year of continuous service including leave periods, if any, to become eligible for the grant of maternity leave.

Provided that the maternity leave referred in (i) or (ii) above shall be granted to a married woman Government servant with less than two surviving children.

Provided further that in the case of a woman Government servant with two surviving children born as twins in the first delivery, maternity leave shall be granted for one more delivery.

17. As per the first proviso to clause (ii) of FR 101(a), maternity leave referred to clauses (i) or (ii) shall be granted to a married woman Government servant with less than two surviving children. The second proviso says that in the case of a woman Government servant with two surviving children born as twins in the first delivery, maternity leave shall be granted for one more delivery.

18. Though provisions of the Maternity Benefit Act per se are not applicable to the State Government employees, nonetheless, we may make a reference to certain relevant provisions thereof for useful guidance. Section 5 of the Maternity Benefit Act is as under:

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 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.

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21. The objective of maternity leave has been expounded by this Court in the case of B. Shah Vs. Presiding Officer, Labour Court, Coimbatore². This Court observed that maternity leave legislation is intended to achieve the object of doing social justice to women workers. It enables a woman worker not only to subsist but also to make up her dissipated energy, nurse her AIR 1978 SC 12 child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output.

22. We may now deal with relevant provisions contained in international treaties and conventions dealing with maternity benefits.

23. Universal Declaration of Human Rights was adopted by the United Nations in the year 1948. Article 25 thereof has got two sub-articles. Sub-article (1) says that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family. This includes food, clothing, housing, medical care etc. However, Article 25(2) is relevant which is as under:

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

23.1. Thus, Article 25(2) of the Universal Declaration of Human Rights recognizes that motherhood and childhood are entitled to special care and assistance. This principle acknowledges State intervention and support for maternity related entitlements.

24. International Covenant on Economic, Social and Cultural Rights was adopted by the General Assembly of the United Nations on 16th December, 1966. India ratified the said covenant in the year 1979. Article 10(2) recognizes that special protection should be accorded to mothers for a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits. Under Article 12 all the States who are signatories to the aforesaid covenant acknowledged the steps to be taken to achieve the full realization of the right to enjoy the highest attainable standard of physical and mental health. This would include provisions for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child.

25. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was held in 1979 under the aegis of the United Nations. As a matter of fact, CEDAW was adopted by the United Nations General Assembly on 18th December, 1979. This convention was the culmination of more than 30 years of work by the United Nations Commission on the Status of Women, established in the year 1946, monitoring the situation of women around the world and to promote women's rights. Thrust of CEDAW is maximum participation of women on equal terms with men in all fields of life to ensure full and complete development of a country. CEDAW is the most comprehensive international convention focused on eliminating discrimination against women. India ratified CEDAW in 1993.

25.1. Article 11 emphasizes that appropriate measures should be taken by all nations to eliminate discrimination against women in the field of employment. Article 11(2) says that in order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, the States shall take appropriate measures. As per clause (b), signatory States are under an obligation to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances. Article 12(1) obligates States to take all appropriate measures to eliminate

discrimination against women in the field of healthcare including access to healthcare services particularly those related to family planning. On the other hand, Article 12(2) says that notwithstanding the provisions of Article 12(1), signatory States shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

25.2. Article 16(1)(e) affirms the right of a woman to decide freely and responsibly on the number and spacing of children and to have access to the information, education and means to do so. Article 16(1)(e) reads thus:

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

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(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.

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26. In its 20th session held in 1999, CEDAW adopted several recommendations. General recommendation No.24 pertains to women and health. Such recommendation emphasized on the need to ensure access to adequate healthcare facilities particularly in respect of family planning, protection of women's health and safety in working conditions, including safeguarding of the reproductive function, special protection from harmful types of work during pregnancy and with the provision for paid maternity leave. It was also emphasized that women should have the same rights as men to decide freely and responsibly on the number and spacing of their children.

27. A Maternity Protection Convention was held on 30th May, 2000 at Geneva under the aegis of the International Labour Organization. General Conference of the International Labour Organization adopted the proposals of the said Convention on 15th June, 2000. International labour standards have long recognized maternity protection as essential for promoting workplace equality and safeguarding maternal and child health. This Convention applies to all employed women including those in atypical forms of dependent work. Article 4 of this convention deals with maternity leave. As per clause (1), a woman to whom the said convention applied shall be entitled to a period of maternity leave of not less than 14 weeks. As per clause (4), maternity leave shall include a period of 6 weeks compulsory leave after childbirth for the protection of the health of the mother and that of the child. Clause (5) clarifies that the prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reduction in

any compulsory portion of postnatal leave.

27.1. Under Article 8(1), it shall be unlawful for an employer to terminate the employment of a woman during her pregnancy. As per clause (2), a woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

28. Thus, as can be seen from the above, through various international conventions, the world community has recognized the broad spectrum of reproductive rights which includes maternity benefits. Maternity leave is integral to maternity benefits. Reproductive rights are now recognized 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.

29. Such international developments had its impact on Indian law. In *Suchita Srivastava Vs. Chandigarh Administration*³, a three-Judge Bench of this Court in the context of the Medical Termination of Pregnancy Act, 1971 acknowledged the right of a woman to make reproductive choices and held that such a right is a facet of Article 21 of the Constitution. This Court held thus:

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.

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30. This Court in *Devika Biswas Vs. Union of India* observed that the need to respect and protect reproductive rights and reproductive health of a person has been recognized. 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. In *Devika Biswas (supra)*, this court observed as under:

106. The manner in which sterilisation procedures have reportedly been carried out endanger two important components of the right to life under Article 21 of the Constitution—the right to health and the reproductive rights of a person.

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109. That the right to health is an integral part of the right to life does not need

any repetition.

110. Over time, there has been recognition of the need to respect and protect the reproductive rights and reproductive health of a person. Reproductive health has been defined as “the capability to reproduce and the freedom to make informed, free and responsible decisions. It also includes access to a range of reproductive health information, goods, facilities and services to enable individuals to make informed, free and responsible decisions about their reproductive behaviour”. The Committee on Economic, Social and Cultural Rights in General Comment No. 22 on the Right to Sexual and Reproductive Health under Article

12 of the International Covenant on Economic, Social and Cultural Rights observed that “The right to sexual and reproductive health is an integral part of the right of everyone to the highest attainable physical and mental health.”

111. This Court recognised reproductive rights as an aspect of personal liberty under Article 21 of the Constitution in *Suchita Srivastava v. Chandigarh Admn.* The freedom to exercise these reproductive rights would include the right to make a choice regarding sterilisation on the basis of informed consent and free from any form of coercion.

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31. Elaborating on the contours of reproductive rights, this Court in *X Vs. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi* observed that the ambit of reproductive rights is not restricted to the right of women to have or not to have children. It also includes the constellation of freedoms and entitlements that enable a woman to decide freely on all matters relating to her sexual and reproductive health. This Court observed that although human dignity inheres in every individual, it is susceptible to violation by external conditions and treatment imposed by the State. The right of every woman to make reproductive choices without undue interference from the State is central to the idea of human dignity. Deprivation of access to reproductive healthcare or emotional and physical well-being also injures the dignity of women. This Court referred to Article 51 of the Constitution which urges the State to foster respect for international law and treaty obligations. Relevant extract of the said decision reads thus:

101. The ambit of reproductive rights is not restricted to the right of women to have or not have children. It also includes the constellation of freedoms and entitlements that enable a woman to decide freely on all matters relating to her sexual and reproductive health. Reproductive rights include the right to access education and information about contraception and sexual health, the right to decide whether and what type of contraceptives to use, the right to choose whether and when to have children, the right to choose the number of children, the right to access safe and legal abortions, and the right to reproductive healthcare. Women must also have the autonomy to make decisions concerning

these rights, free from coercion or violence.

32. In a recent decision, Delhi High Court in Commissioner of Police Vs. Raveena Yadav⁶ explained the purpose of maternity benefit. It is to ensure that a working lady may overcome the state of motherhood honourably, peaceably and undeterred by the fear of being victimized for forced absence from work during pre and post natal periods. Women now constituting a sizable portion of the work force in our country, must be treated with honour and dignity at places where they work to earn their livelihood. The High Court went on to explain the impact of pregnancy on the physiological and psychological state of a woman employee undergoing pregnancy. It is not just motherhood but also childhood that require special attention. Health issues of both mother as well as that of the child are to be kept in consideration while providing maternity leave. Concept of maternity leave is a matter of not just fair play and social justice but is also a constitutional guarantee to the women employees of this country towards fulfillment whereof the State is bound to act.

33. In Deepika Singh (supra), appellant at the material time was working as a nursing officer in the Post Graduate Institute of Medical Education and Research, Chandigarh (PGIMER). Her spouse had two children from his first marriage. After his first wife passed away he married the appellant. In official record she declared the two children of her spouse from the first marriage as her children. On 04.06.2019 she had her first biological child from her marriage. She applied for maternity leave in terms of Rule 43 of the Central Services (Leave) Rules, 1972 ('1972 Rules' hereinafter) which rules are applicable to PGIMER. Request of the appellant for grant of maternity leave was rejected on the ground that she had two surviving children and had availed of child care leave earlier for the two children born from the first marriage of her spouse. Her first biological child was considered as the third child. Therefore her request for grant of maternity leave was found to be inadmissible in terms of the 1972 Rules."

17. In present case denial of actual benefit of higher pay scale from the due date on account of proceeding on maternity leave, prior to completion of 2 years, is amounting to denial to maternity benefit to the petitioner. As observed by the Supreme Court, motherhood is Fundamental Constitutional right covered under Article 21 of the Constitution of India and is also an essential 'human right' to perform the duty assigned to a women by nature, without which existence of human race is not possible. Such denial definitely, shall be a reason for compelling a female employee to continue on duty during pregnancy forcibly, if she wants to avail monetary benefits, despite the fact that for that she will be otherwise entitled.

18. Denial of monetary benefits during maternity leave shall be amounting to exclusion of period of maternity leave from service tenure and it will be an act against social justice being discriminative in character as cruel on the part of Employer amounting to punishing a women for her women-hood by depriving her from motherhood or compelling her to join duty during such period when she is

entitled for maternity benefits.

19. Meaning of Section 43(2) of CCS (Leave) Rules as interpreted by the respondents, would be amounting to abuse the provision, which has been framed for benefit of a women availing maternity leave. Maternity Benefit Act as well as provisions of maternity leave are beneficial legislation. Therefore, real intention of provisions of Rule 43 of CCS (Leave) Rules, especially sub-rule 2 thereof, is that it has been provided in it to ensure that during maternity leave a women is not deprived from the payment of salary. In fact, this provision has been made to ensure payment of salary to women equal to the pay drawn monthly before proceeding on leave so that she is not pushed to a disadvantageous position by providing less salary during her maternity leave.

20. No Rule provides that during maternity leave no increment shall be granted to the women employee who is on maternity leave. Petitioner otherwise would have been entitled for higher pay scale if she would not have availed maternity leave.

21. It is also apt to notice a situation where a female employee like petitioner, proceeded on maternity leave immediately after her regularisation and joined her duty before completion of 2 years. In such a situation on due date of completion of 2 years, such female employee would be on duty. There is no provision for exclusion of maternity leave period from the service, such female employee would have been granted higher pay scale from the due date on actual basis. Therefore, interpretation of Rule 43 of CCS (Leave) Rules by the respondents is erroneous and contrary to the purpose of incorporation of such Rules in CCS (Leave) Rules and is also in conflict not only with provisions of Maternity Benefit Act, but also the Constitution of India, Universal Declarations, Conventions and Treaties, to which India is also signatory.

22. For the beneficial nature of provisions related to maternity leave and Maternity Benefit Act, during the maternity leave period, a female employee shall have to be considered on duty for all purposes. It shall be taken into consideration by counting such period, for completing period of regular service. Benefit of maternity leave period of service has to be counted as a regular service. Motherhood should not be a curse. Maternity leave is not a leave availed for ailment or enjoyment holidays or leave taken for other purpose which can be managed otherwise without going on leave. Duty of giving birth can only be performed by female only, that too after undergoing a difficult time with due care and caution. Post birth duty is also not easy or less cumbersome. Depriving or denying female employee from any benefit of service during the period of maternity leave, is irrational, unreasonable, discriminatory and arbitrary and also violative of not only Constitution of India, but also violates essence of Universal Declaration, Conventions and Treaties.

23. Female employee avails maternity leave under compulsion to perform her duty as a women which is equivalent to Creator. It is not a leave availed by her

for her pleasure or to do any other work which could have been performed by anybody else in her place. Therefore, general principle of depriving grant of increment till joining of an employee after availing any kind of leave, is not to be applied in case of maternity leave. Such act on the part of employer is definitely in conflict with the fundamental Constitutional right, human right and right of motherhood promised under the Constitution, Maternity Benefit Act, Universal Declaration, Conventions and Treaties.

24. Omission and commission on the part of respondents denying the maternity benefits, by refusing to grant higher pay scale to the petitioner from the due date during her maternity leave period, is not sustainable. Female employee carrying a child, during crucial period, cannot manage or adjust to remain on duty on due date of annual increment or for getting any other service benefits. Relevant period of maternity leave cannot be preponed or postponed by female employee, rather female employee is compelled to avail maternity leave at relevant point when such leave is warranted to perform her duty for which, because of natural biological human anatomy she only is capable.

25. In view of ratio of law laid down in pronouncements of the Supreme Court and discussion recorded herein before, we are of the considered opinion that omission and commission on the part of respondents denying the actual monetary benefits from the due date on completion of 2 years service by the petitioner on 12.5.2019, is illegal, unjust, irrational, unreasonable, discriminatory and arbitrary and thus deserves to be interfered with by exercising jurisdiction under Article 226 of the Constitution of India. Therefore, decision of the respondents communicated to the petitioner vide letter dated 1.7.2019 (Annexure A-1) is quashed and set aside.

26. Accordingly, respondents are directed to pay actual monetary benefits of higher pay band to the petitioner from the due date, i.e. 12.5.2019 alongwith all other consequential service benefits by taking necessary action for extending such benefits to the petitioner on or before 15th July, 2025. Petitioner shall be entitled for arrears from the due date alongwith interest @ 6% per annum till payment thereof.

The petition stand disposed of along with pending applications.