

(2026) 08 SHI CK 1290
In the High Court Of Himachal Pradesh
Case No : CWP No. 14883 of 2025.

Dr. Juhi Manhas

APPELLANT

Vs

State of H.P. & Ors.

RESPONDENT

Date of Decision : 03-08-2026

Acts Referred:

Central Civil Services (Leave) Rules, 1972 — Rule 43, sub-rule (6) in Rule 43, sub-rule (4) of Rule 43, sub-rule 43(4)(a), 43(4) (b), sub-rule (1), 43(1), 43-B, 43-AA
Maharashtra Civil Services (Leave) Rules, 1961 — Rule 74
Constitution of India — Article 21, 14 and 21, 38, 39, 42 and 43, 42
Maternity Benefit Act, 1961 — Sections 2 and 5, sub- section (1) of Section 2

Citation : (2026) 08 SHI CK 1290

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : For the Petitioner: Mr. Ajay Sharma, Senior Advocate with Mr. Tarun Bragta, Advocate. For the respondents: Mr. Raj Pal Thakur, Additional Advocate General.

Final Decision : Allowed

Judgement

Ajay Mohan Goel, Judge (Oral).

By way of present petition, the petitioner has, inter alia, prayed for following reliefs:-

“(i) That the impugned communications Annexure P-22 **High Court of H.P.** dated 31.7.2025 and Annexure P-23 dated 22.8.2023, being in violation of CCS (Leave) Rules, particularly Rule 43, may very kindly be quashed and set aside with directions to the respondents to immediately and forthwith grant/sanction the maternity leave to the petitioner and so also commuted and earned leave as has been prayed by the petitioner by filing submitting application on prescribed proforma vide Annexures P-6 and P-18.

(ii) That directions may be issued to the respondents to release illegally withheld salary of the petitioner of two months, i.e. July and August, 2021 and 08 days of September, 2021 as the same has not been released till date despite issuance of order dated 2.7.2024, Annexure P-18 and the same may be ordered to be paid to the petitioner along with

interest @9% p.a."

2. The moot issue is as to whether a commissioning mother is entitled for maternity leave and other leave benefits which flow from CCS (Leave) Rules, 1972 in the State of Himachal Pradesh or not?

3. Brief facts necessary for the adjudication of this petition are that the petitioner herein availed maternity leave in terms of Annexure P-6, from 17/9/2020 to 15/3/2021 (180 days maternity leave) and thereafter, from 16/3/2021 to 8/9/2021 (177 days leave i.e. 60 days as commuted leave and 117 days as earned leave) as a commissioning mother and vide Annexure P-15, she again availed maternity leave from 27/9/2022 for second child. Her grievance is that in terms of impugned Annexure P-22, dated 31/7/2025 and Annexure P-23, dated 22.08.2023, the respondent department has refused to grant maternity leave to her on adoption of surrogacy procedure, on the ground that the department has not adopted Notification of the DoPT dated 18/6/2024.

4. Learned Senior Counsel for the petitioner submitted that Chapter V of the CCS (Leave) Rules deals with special kinds of leave other than study leave. He submitted that Rule 43 thereof deals with maternity leave and the same, *inter alia*, provides that a female Government servant 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. He submitted that vide DoPT Notification dated 18/6/2024, an amendment was carried out in these CCS (Leave) Rules by incorporating sub-rule (6) in Rule 43, which provides that in case of surrogacy, the surrogate as well as 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. Thereafter, learned Senior Counsel referred to sub-rule (4) of Rule 43 and submitted that in terms of sub-rule 43(4)(a), maternity leave may be combined with leave of any other kind and in terms of Rule 43(4) (b), notwithstanding the requirement of production of medical certificate etc., 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 be applied for, be granted in continuation of maternity leave granted under sub-rule (1).

5. Learned Senior Counsel further submitted that it is apparent and evident from the said provisions that a female government servant who has less than two surviving children is entitled for maternity leave for a period of 180 days and this maternity leave may be combined with leave of any other kind, including commuted leave for a period not exceeding 60 days and leave not due up to a maximum of two years. He submitted that both a surrogate mother as well as commissioning mother are entitled for all these benefits.

6. Learned Senior Counsel submitted that the contention of the State that the petitioner is not entitled for maternity leave as the DoPT notification dated 18/6/2024 has not been adopted by the State Government, does not hold any

water now, as the Hon'ble Division Bench of this Court in **CWP No. 4509 of 2020, titled Sushma Devi vs. State of HP & Others**, decided on 04/03/2021, has been pleased to hold that the distinction between a mother who begets a child through surrogacy and a natural mother who gives birth to a child would result in insulting womanhood and the intention of a woman to bring up a child begotten through surrogacy. He submitted that Hon'ble Division Bench has further held in this judgment that motherhood never ends on the birth of a child and a commissioning mother cannot be refused paid maternity leave. A woman cannot be discriminated as far as maternity benefits are concerned only on the ground that she has obtained the baby through surrogacy, as a newly born child cannot be left at the mercy of others, as it needs rearing and that is the most crucial period during which the child requires care and attention of its mother. He submitted that Hon'ble Division Bench has further held that the tremendous amount of learning that takes place in the first year of the baby's life, the baby learns a lot and a bond of affection has also to be developed. He accordingly submitted that as the refusal on the part of the State to grant maternity leave to the petitioner and that too vide communications dated 31st July 2025 (Annexure P-22) and 22.08.2025 (Annexure P-23), was ignoring the fact that the Hon'ble Division Bench of this Court had negated such a plea of the State almost four years ago and, therefore, the same was not sustainable in law. He submitted that the judgment of the Hon'ble Division Bench has attained finality and it has also been implemented.

7. Learned Additional Advocate General, on the other hand, submitted that as the Notification issued by DoPT, which culminated in sub-rule (6) being added to Rule 43 of the CCS (Leave) Rules, has not been adopted by the State of Himachal Pradesh, therefore, the case of the petitioner was rightly rejected by the department. He also submitted that the conduct of the petitioner in the present case is also such that she does not deserve any relief from the Court. By referring to the reply, he submitted that the petitioner went on leave second time on pretext of the delivery of second child, just followed by a departure through email, and the directions issued by the department to follow the procedure were ignored by her with impunity. He submitted that this also led to the initiation of departmental proceedings against the petitioner, which is evident from the documents on record. He reiterated that in light of the fact that there is no provision, as far as the State of Himachal Pradesh is concerned, to give any maternity leave either to a surrogate mother or a commissioning mother, the case of the petitioner has been rightly rejected.

8. In rebuttal, learned Senior Counsel for the petitioner submitted that the factum of a departmental inquiry having been initiated against the petitioner, though is a matter of record, but in terms of Annexure P-19, order dated 2nd July, 2024, the Competent Authority closed the proceedings and exonerated her of the charges as were levelled against her. He further submitted that all these facts have been disclosed by the petitioner in the writ petition itself and there is no concealment of any fact from this Court. With regard to the contention of the

learned Additional Advocate General that the State Government has not adopted the DoPT instructions, learned Senior Counsel reiterated that this stand cannot be taken by the State in the light of the judgment of the Hon'able Division Bench in *Sushma Devi vs. State of HP & Others* (supra).

9. I have heard learned Senior Counsel for the petitioner as also the learned Additional Advocate General and have also gone through the pleadings as well the documents placed on record carefully.

10. The petitioner herein has been blessed with two children, though through surrogacy and she is a commissioning mother. However, the fact of the matter remains that a mother is a mother, be it by giving birth to a child naturally or being a commissioning mother. The maternity leave, as is provided in the CCS (Leave) Rules is obviously both for the benefit of the mother as well as the newly born child. Though initially, the maternity leave was not expressly for a surrogate mother or a commissioning mother, but in terms of DoPT notification dated 18/6/2024, in case of surrogacy, the surrogate as well as commissioning mother have been granted the same status as that of a female government servant, who gives birth to a child. Now, incidentally, the maternity leave is not only given to the commissioning mother, that is the mother with whom the child stays after being given birth through surrogacy, but also to the surrogate mother, who obviously parts with the child after the birth of the child.

11. The above demonstrates that maternity leave is recognized both for the well-being of the mother, who in the present case is the surrogate mother, as well as the child, who in the present case is the child though given birth by the surrogate mother, but for the commissioning mother.

12. The issue as to whether in the State of Himachal Pradesh, a government female servant can be denied maternity leave on the ground that the child is a surrogate child is no more *res integra*. As pointed out by the learned Senior Counsel for the petitioner, the Hon'ble Division Bench of this Court in ***Sushma Devi vs. State of HP & Others, CWP No. 4509 of 2020***, decided on 04/03/2021, has put at rest this issue once and for all. Honorable Division Bench of this Court, after giving reference to various judgments of the Hon'ble High Courts on the issue, has been pleased to hold as under:

9. *This issue has been considered in detail by the learned Single Judge of the Delhi High Court in **Rama Pandey versus Union of India and others 2015 Labour Industrial Cases 3921** wherein it was held that the commissioning mother's entitlement to maternity leave cannot be denied only on the ground that she did not bear the child. 10. A Division Bench of the Bombay High Court in *Dr. Mrs. Hema Vijay Menon versus State of Maharashtra and others AIR 2015 Bombay 231* while following the aforesaid judgment observed as under:*

7. *On hearing the learned counsel for the parties, it appears that the Joint Director of Higher Education, Nagpur, was not justified in refusing maternity leave to the petitioner. According to Oxford English Dictionary, maternity means- motherhood. Maternity means the period during pregnancy and shortly after the child's birth. If Maternity means*

motherhood, it would not be proper to distinguish between a natural and biological mother and a mother who has begotten a child through surrogacy or has adopted a child from the date of his/ her birth. The object of maternity leave is to protect the dignity of motherhood by providing for full and healthy maintenance of the woman and her child. Maternity leave is intended to achieve the object of ensuring social justice to women. Motherhood and childhood both require special attention. Not only are the health issues of the mother and the child considered while providing for maternity leave but the leave is provided for creating a bond of affection between the two. It is said that being a mother is one of the most rewarding jobs on the earth and also one of the most challenging. To distinguish between a mother who begets a child through surrogacy and a natural mother who gives birth to a child, would result in insulting womanhood and the intention of a woman to bring up a child begotten through surrogacy, as her own. A commissioning mother like the petitioner would have the same rights and obligations towards the child as the natural mother. Motherhood never ends on the birth of the child and a commissioning mother like the petitioner cannot be refused paid maternity leave. A woman cannot be discriminated, as far as maternity benefits are concerned, only on the ground that she has obtained the baby through surrogacy. Though the petitioner did not give birth to the child, the child was placed in the secured hands of the petitioner as soon as it was born. A newly born child cannot be left at the mercy of others. A maternity leave to the commissioning mother like the petitioner would be necessary. A newly born child needs rearing and that is the most crucial period during which the child requires the care and attention of his mother. There is a tremendous amount of learning that takes place in the first year of the baby's life, the baby learns a lot too. Also, the bond of affection has to be developed. A mother, as already stated hereinabove, would include a commissioning mother or a mother securing a child through surrogacy. Any other interpretation would result in frustrating the object of providing maternity leave to a mother, who has begotten the child.

8. As rightly pointed out on behalf of the petitioner, there is nothing in Rule 74 of the Maharashtra Civil Services (Leave) Rules, 1961, which would disentitle a woman, who has attained motherhood through the surrogacy procedure to maternity leave. Rule 74 provides for maternity leave to a female government employee. We do not find anything in Rule 74 which disentitles the petitioner to maternity leave, like any other female government servant, only because she has attained motherhood through the route of surrogacy procedure. It is worthwhile to note that by the Government Resolution dated 28.07.1995, maternity leave is not only provided to a natural mother but is also provided to an adoptive mother, who adopts a child on its birth. The only reason for refusing maternity leave to the petitioner is that there is nothing in the Government Resolution, dated 28.07.1995 for providing maternity leave to the mother who begets the child through surrogacy. If the Government Resolution, dated 28.07.1995 provides maternity leave to an adoptive mother, it is difficult to gauge why maternity leave should be refused to the mother, who secures the child through surrogacy. In our view, there cannot be any distinction whatsoever between an adoptive mother that adopts a child and a mother that begets a child through a surrogate mother, after implanting an embryo in the womb of the surrogate mother. In our view, the case of the mother who begets a child through surrogacy procedure, by implanting an embryo created by using either the eggs or sperm of the intended parents in the womb of the surrogate mother, would stand on a better footing than the case of an adoptive mother. At least, there cannot be any distinction between the two. Right to life under Article 21 of the Constitution of India includes the right to motherhood and also the right of every child to full development. If the government can provide maternity leave to an adoptive mother, it is difficult to digest

the refusal on the part of the Government to provide maternity leave to a mother who begets a child through the surrogacy procedure. We do not find any propriety in the action on the part of the Joint Director of Higher Education, Nagpur, of rejecting the claim of the petitioner for maternity leave. The action of the respondent Nos. 1 to 3 is clearly arbitrary, discriminatory and violative of the provisions of Articles 14 and 21 of the Constitution of India. It is useful to refer to the unreported judgment of the Delhi High Court in the case of *Rama Pande vs. Union of India*, and relied on by the learned counsel for the petitioner, in this regard."

11. Similar reiteration of law can be found in the judgment rendered by the learned Single Judge of the **Chhattisgarh High Court in *Devshree Bandhe versus Chhattisgarh State Power Holding Company Limited and others* 2017 Labour Industrial Cases 1506** wherein it was held as under:

"22. According to Shorter Oxford English Dictionary (Fifth Edition), "maternity" means (1) the quality or condition of being a mother; motherhood and (2) the qualities or conduct characteristic of a mother; motherliness. According to other Oxford English Dictionaries, "maternity" means motherhood.

23. According to Black's Law Dictionary (Eighth Edition), "maternity" means the state or condition of being a mother, especially a biological one; motherhood.

24. Maternity means the period during pregnancy and shortly after the child's birth. If maternity means motherhood, it would not be proper to distinguish between a natural and biological mother and a mother who has begotten a child through surrogacy. The object of maternity leave is to protect the dignity of motherhood by providing for full and healthy maintenance of the woman and her child. Maternity leave is intended to achieve the object of ensuring social justice to women. Motherhood and childhood both require special attention. Not only are the health issues of the mother and the child considered while providing for maternity leave but the leave is provided for creating a bond of affection between the two.

25. Right to life under Article 21 of the Constitution of India includes the right to motherhood and also the right of every child to full development.

26. The Supreme Court in *Lakshmi Kant Pandey* (AIR 1984 SC 469) (*supra*) while expanding the scope of right to life held that right to life includes the right to motherhood and also the right of every child to full development, and observed as under: -

"6. ... Children are a "supremely important national asset" and the future well-being of the nation depends on how its children grow and develop. The great poet Milton put it admirably when he said: "Child shows the man as morning shows the day" and the Study Team on Social Welfare said much to the same effect when it observed that "the physical and mental health of the nation is determined largely by the manner in which it is shaped in the early stages". The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into fulness of physical and vital energy and the utmost breadth, depth and height of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation. ..."

27. In *Municipal Corporation of Delhi* (AIR 2000 SC 1274, paras 30 and 35) (*supra*), the question before the Supreme Court was whether female workers working in muster roll in the Corporation are entitled for maternity benefit at par with regular employees under the provisions of the Maternity Benefit Act, 1961. The Supreme Court noticed the constitutional provisions contained in Articles 38, 39, 42 and 43 of the Constitution of India and Sections 2 and 5 of the Maternity Benefit Act, 1961 as well as Article 11 of the "Convention on the Elimination of all Forms of Discrimination against Women" adopted by

the United Nations on 18-12-1979 and held that female workers working in muster roll are entitled to all benefits conceived under the Maternity Benefit Act, 1961. It was observed as under: -

"33. ... To become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. ..."

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

12. Article 42 of the Constitution of India reads as under:

"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."

13. It was long felt that the working women were unable to depute their time towards their children due to exigencies of service. Hence, the concept of grant of child care leave was introduced to ensure the welfare of the child so as to enable the mother to avail child care leave whenever she feels that the child needs the care. This is in tune with the international covenants and treaties to which India is a signatory.

14. As rightly held by the Bombay High Court, the object of the maternity leave is to protect the dignity of motherhood by providing for full and healthy maintenance to the woman and her child. Maternity leave is intended to achieve the object of ensuring social justice to women. Motherhood and childhood both require special attention.

15. Not only are the health issues of the mother and the child considered while providing for maternity 24 leave, but the leave is provided for creating a bond of affection between the two. To distinguish between a mother who begets a child through surrogacy and a natural mother, who gives birth to a child, would result in insulting womanhood and the intention of a woman to bring up a child begotten through surrogacy. Motherhood never ends on the birth of the child and a commissioning mother cannot be refused paid maternity leave. A woman cannot be discriminated, as far as maternity benefits are concerned, only on the ground that she has obtained the baby through surrogacy. A newly born child cannot be left at the mercy of others as it needs rearing and that is the most crucial period during which the child requires care and attention of his mother. The tremendous amount of learning that takes place in the first year of the baby's life, the baby learns a lot too. A bond of affection has also to be developed.

13. Therefore, it is apparent and evident from the said judgment of the Hon'ble Division Bench that a commissioning mother is also entitled to maternity leave in terms of the provisions of Rule 43(1) of the CCS (Leave) Rules, 1972, as far as the State of Himachal Pradesh is concerned, even if it is to be construed, as has

been argued on behalf of the State that the DoPT notification dated 18/6/2024 has not been adopted by the Government of Himachal Pradesh.

14. In light of the fact that judgment of the Hon'ble Division Bench of this Court has attained finality, as this Court has been informed, there is no need even to adopt the DoPT notification dated 18/6/2024, as in terms of the law declared by this Court, which is binding on the State of Himachal Pradesh, a female government employee of the State of Himachal Pradesh, who is a commissioning mother or a surrogate mother is entitled for maternity leave at par with any other female government servant as per Rule 43(1) of the CCS (Leave) Rules, 1972.

15. It is relevant to mention that the respondent-State, which is denying Maternity Leave to the petitioner, who is a commissioning mother, in terms of Notification dated 10th October, 2022, issued by the Government of Himachal Pradesh, Finance (Regulations) Department, has inserted Rule 43-B after Rule 43-AA in the Central Civil Services (Leave) Rules, 1972, in their application to the State of Himachal Pradesh, to the effect that a female Government servant, with fewer than two surviving children, on valid adoption of a child below the age of one year may be granted child adoption leave, by an authority competent to grant leave, for a period of 180 days immediately after the date of valid adoption. When the respondent-State has been considerate enough to grant child adoption leave in the case of adoption of a child, it is not understood as to why it is objecting to grant Maternity Leave to a surrogate mother and/or a commissioning mother.

16. Therefore, in the light of the said settled legal position, the act of the respondents of denying the maternity leave to the petitioner is not sustainable in law and held so. The petitioner, having become a commissioning mother on two occasions, has a right to be granted maternity leave on both the occasions and the act of the respondents of denying maternity leave to her vide Annexures P-22 and P-23 is completely unsustainable in law. This is more so, as the Authority has passed the impugned orders after four years of the judgment of the Hon'ble Division Bench of this Court, in terms whereof, it has been held that a commissioning mother is entitled to maternity leave at par with a female government employee under Rule 43(1) of the CCS (Leave) Rules in the State of Himachal Pradesh.

17. Accordingly, in light of above discussion, this writ petition is allowed and Annexures P-22 and P-23 are quashed and set aside. Respondents are directed to treat the period of 180 days spent by the petitioner after the birth of both the children, i.e., as from the date the petitioner went on leave, in her capacity as a commissioning mother, as maternity leave. Further leave availed by her immediately after the completion of 180 days of maternity leave shall be treated as leave which was due to her in terms of Rule 43(4)(a) and (b) of the CCS (Leave) Rules, 1972. As far as the period of 32 days earned leave, which was availed by the petitioner as between 4th May 2022 to 4th June 2022 is

concerned, respondents are directed to adjust the same against the earned leave of the petitioner if the same was due to her, at the relevant time. Needful be done within two months from today. Further, the withheld salary of the petitioner be also released to her, preferably within two months from today.

18. Pending applications, if any, also stand disposed of.