

(2026) 01 KL CK 1686

In the High Court Of Kerala

Case No : Writ Petition (C) No. 48652 Of 2025

Susan K. John

APPELLANT

Vs

National Board Of Examinations In Medical Sciences, (NBEMS)

RESPONDENT

Date of Decision : 20-01-2026

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2026) 01 KL CK 1686

Hon'ble Judges : Bechu Kurian Thomas, J

Bench : Single Bench

Advocate : George Jacob (Jose), Roshan Jacob Mundackal, T.Sanjay, O.M.Shalina, M.Gopikrishnan Nambiar, Karthik S. Acharya, K.John Mathai, Joson Manavalan, Kuryan Thomas, Paulose C. Abraham, Raja Kannan, Pranoy Harilal

Final Decision : Disposed Of

Judgement

Bechu Kurian Thomas, J

1. Petitioner seeks for a direction to grant special leave of 47 days and corresponding extension of her training period to enable the completion of her super specialty course. Petitioner also seeks for a declaration that Clause 7(c) of Ext.P4 Rules will not apply to her since she was admitted to the super specialty course on 14.12.2022 while Ext.P3 Rules were in force. A further direction is sought to quash Ext.P8 and Ext.P10 communications refusing to sanction her leave as sought for by her and further to quash Ext.P6 communication.

2. Petitioner completed her MBBS course as well as her MD in General Medicine. She was selected in the NEET Super Speciality Examination of 2022 (NEET-SS) and allotted the DrNB course in Nephrology with the 4th respondent Medical institution where she joined on 14.12.2022. While the petitioner was undergoing her Super Speciality Course, she availed a maternity leave from 23.05.2023 to 22.11.2023 i.e., 184 days, when she gave birth to her second child and a few other days of leave, thereby totalling to 207 days of leave in the year. While so,

petitioner contracted 'Stage IV High Grade B-Cell Lymphoma' which was a serious and aggressive form of blood cancer. Petitioner's treatment commenced on 28.08.2025 and as per Ext.P2 certificate dated 13.10.2025, her treatment plan is expected to be completed by January 2026 and with the required rest, she expects to resume her training by March 2026.

3. According to the petitioner, she would be able to resume her training from 01.03.2026, but by then, the total leave availed by her would exceed the permitted leave by 37 days. Though the petitioner submitted Ext.P5 leave application for the period from 18.08.2025 to 18.02.2026, her request was declined, referring to Clause 7(c) with a direction to re-submit the leave application. Petitioner again submitted Ext.P7 leave application pointing out her ailment, which was also not accepted as per Ext.P8 communication resulting in her submitting Ext.P9 application which too was declined by Ext.P10 communication.

4. In the communications mentioned above i.e. Ext.P8 and Ext.P10, it was informed that the petitioner has, by virtue of the maternity leave already taken, the total leave availed by her would be 402 days and as per Clause 7(c) of the Comprehensive Leave Rules for NBEMS trainees, it is specifically stipulated that if the total leave availed during the training programme is more than a year, it shall lead to the cancellation of the candidature of the trainee and shall disentitle her from pursuing the NBEMS programme. It was also informed that the candidate must ensure that the leave taken by her should not under any circumstances exceed one year. In all these communications, the petitioner has been directed to re-submit the leave application form in the light of the Comprehensive Leave Rule, without exceeding one year as otherwise the candidature was informed as liable to be cancelled. It is in such circumstances that the petitioner has approached this Court through this writ petition.

5. A statement has been filed on behalf of the 1st respondent pointing out that, though the petitioner had joined the course on 14.12.2022 and she has to complete the same on time. It is also stated that as per the Leave Rules published on 20.03.2018, in exceptional cases like prolonged illness, the leave across the DNB/FNB training programme can be clubbed together with prior approval of the NBE, who can consider such request on merit. It is however stated that candidature of a trainee who has taken leave for more than a year is liable to be cancelled as per the Comprehensive Leave Rules for NBEMS issued on 22-11-2024 which was produced as Annexure R1(d). The respondents stated that the total leave sought for by the petitioner if approved would extend beyond the permissible limit as it would add upto 402 days which exceeds the prescribed limit. It was admitted that the petitioner had initially taken 184 days of maternity leave in the year 2023 which was granted post facto approval, after a belated request was made. Petitioner had also availed 23 days of permissible leave during her training and later, on being diagnosed with Cell Lymphoma requiring chemotherapy, she submitted leave application for the period from 18-08-2025

to 28-02-2026 i.e. a further 195 days. The first respondent on scrutiny observed that since the requested medical leave, when added with the maternity leave already availed, would exceed the maximum permissible leave limit of 365 days, petitioner was advised to re-submit the leave application strictly in accordance with the Comprehensive Leave Guidelines. The first respondent further stated that the total leave sight to be availed by the petitioner during training would be approximately 402 days which exceeds the prescribed limit. As per para 7(c) of NBEMS Comprehensive Leave Guidelines, if the leave exceeds one year, it would lead to cancellation of the candidature and dis-entitle the trainee from pursuing the NBEMS programme. Relying upon the decisions of various courts including the Supreme Court that the court should be reluctant to substitute its views while exercising the discretionary remedies under Article 226, it was stated that the court should not interfere.

6. Relying upon the decision of the Delhi High Court in Dr. Neha Parashar v. National Board of Examination and Another [W.P.(C) No. 12392 of 2021], wherein the said court while considering a similar matter, observed that the candidate who has taken leave exceeding the approved limit is not entitled to continue the course conducted by NBEMS.

7. I have heard Sri. George Jacob (Jose), the learned counsel for the petitioner, Sri. T. Sanjay, the learned Standing Counsel on behalf of the respondent 1 and 2 as well as Sri. Gopikrishnan Nambiar, the learned Standing Counsel on behalf of the 4th respondent and Smt.O.M.Shaline, the learned Deputy Solicitor General of India.

8. DrNB course is a Doctoral level Super Specialty Programme which a candidate can join after qualifying the NEET-SS. There are two types of courses with duration of three years and six years. As per the information furnished to the trainees, excess leave availed by them over and above the prescribed leave will lead to extension of their training and can even affect the eligibility of the trainee for DrNB Final Examination in case the the extended training goes beyond the cut off date for completion of training and even cancellation of registration. The trainees are also paid a stipend as per the guidelines prescribed which shall not beyond the period of their training.

9. While petitioner has been undergoing her training, she availed leave of 205 days including a maternity leave of 184 days. Subsequently, she contracted the dreaded cancer, and hence she sought for further leave. Petitioner's request for leave has been declined stating that she had already availed maternity leave and other leave totalling to 205 days and if the present leave as sought for is granted, it would exceed the permissible limits of leave by 37 days, the consequence of which is to terminate her candidature for the course. The respondents have relied upon the Comprehensive Leave Rules for NBEMS Trainees dated 22.11.2024 which was issued in supersession of the earlier leave rules. As per paragraph 7(c) of the new rules, it is stipulated that if the total leave availed by the trainee during the training programme is more than a year,

it shall lead to the cancellation of the candidature of the NBEMS and shall disentitle her from pursuing the NBEMS programme. It is also stipulated that leave taken by them must not, under any circumstances, exceed a year.

10. True that DrNB is a speciality course requiring a candidate to undergo continuous training without a long break. However, it needs to be mentioned that, at the time when the petitioner joined for the course, the relevant rules in force was Exhibit P3 which stipulated, in paragraph 7.8, that any extension of DrNB training, beyond the scheduled completion date is permissible only as stipulated in clause 7.5, The latter clause provided that under normal circumstances leave of one year should not be carried forward to the next year, but in exceptional cases such as prolonged illness, the leave across DrNB training may be clubbed together with prior approval of the NBEMS.

11. On a comparison between the rules that were in force at the time the petitioner joined the DrNB course and the present rules, it is discernible that the erstwhile rules took into consideration exceptional situations such as prolonged illness which could be considered by the NBEMS for grant of leave. The present rules however, do not take into consideration any exceptional cases like prolonged illness. The petitioner having joined the DrNB course at the time when such exceptional circumstances were made a reason for grant of an extension, she has been put to serious prejudice by virtue of the change of rules. There is no dispute that petitioner is suffering from a serious illness in the nature of a lymphoma, which she contracted while undergoing the course. The reason for seeking leave beyond the period of one year is not attributable to any wilful conduct of the petitioner but as something that is attributable to an act which is beyond the petitioner's control. The respondent cannot ignore the circumstance that petitioner, after obtaining admission through a competitive examination, had to, due to a prolonged serious illness, take leave which was beyond her control. The serious illness contracted by her was not her mistake.

12. There is yet another aspect in this case, which needs to be highlighted. Petitioner had availed 184 days of maternity leave. Of course the said leave was approved post facto. However the fact remains, her maternity leave was approved. The Comprehensive Leave Rules for NBEMS Trainees stipulates in clause 3(d) that female post graduate students are entitled for maternity benefits which includes maternity leave. Reproductive rights of a woman have been recognized as a part of fundamental rights and maternity leave has to be regarded as an aspect of reproductive right. The right of a woman which no doubt will include a female post graduate trainee, to avail maternity leave cannot be denied. De hors the Maternity Benefit Act, 1961, a woman must be deemed to possess a right to be granted leave during a reasonable period of her pregnancy. This period must also include the time to recuperate. Reference to the decision in *K. Umadevi v. Government of Tamil Nadu and Others* [(2025) 8 SCC 263] is appropriate in this regard. In the above decision it has been observed that "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.” Reference to the decision in *Devika Biswas v. Union of India and Others* (2016) 10 SCC 726 is also relevant in this regard.

13. In another decision of the High Court of Delhi in *Commissioner of Police and Others v. Ravina Yadav and Others*, MANU/DE/4823/2024 (which has been referred to in *Umadevi* (supra) as well), the Court explained the purpose of maternity leave and observed that it was 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. The Delhi High Court went on to note that women has to be treated with honour and dignity at places where they work to earn their livelihood and the physiological and psychological state of a woman employee undergoing pregnancy cannot be sidelined. The Court held that it was not just motherhood but also childhood that require special attention and the health issues of both mother and child are to be kept in consideration while providing maternity leave. It was further held that the concept of maternity leave was not a matter of just fair play and social justice but a constitutional guarantee to the women employees of this country. I am in complete agreement with the above noted observations. The said principle has to be extended even to persons like the petitioner as well.

14. Maternity leave being a right and other leaves being a discretion, this Court is of the view that the maternity leave availed by a trainee like the petitioner cannot be clubbed with the other regular leaves that can be availed by such a trainee.

15. Though normally in academic matters, this Court would abide by the decision of the academic bodies, it is not an inflexible rule. In appropriate cases, this court would be justified in exercising the power of judicial review. Extraordinary situations require an extraordinary approach. There is no doubt that the situation that arises in the instant case is unique. Petitioner’ maternity leave and her medical leave both had to be availed in the same year. The general principle that a person shall not avail a leave beyond one year, and if done so, would result in termination of the candidature, cannot be applied to such rare instances like the present. Therefore, I am of the view that, the restriction in the Comprehensive Leave Rules for NBEMS trainees 2024 ought not be applied pedantically, to the petitioner.

16. Since the National Board of Examinations in Medical Sciences ought to be vested with the power of deciding, in appropriate cases, the grant of leave, even beyond the period of one year, taking into account the circumstances arising, this Court is of the view that, such a consideration is essential in the background of

facts narrated in this judgment. Moreover, as observed in the preceding paragraphs petitioner's maternity leave cannot be counted for calculating the total leave to apply the principle of 'no leave beyond one year'.

17. Though in the decision in Dr. Neha Parashar (supra) it has been observed that the candidates who have taken more than the approved leave are not entitled to continue the course, the factual situation in the instant case is different and such rigorous application of the said principle would lead to serious injustice to the petitioner. In Dr. Neha Parashar (supra) the candidate had taken a total of 822 days leave with a break for two and a half years and opportunities were granted on two occasions to rejoin the course on her request itself. Moreover, the leave did not include maternity leave as well. Hence the principles laid down therein cannot be applied to the instant case.

18. Taking note of the above circumstances, this Court is of the view that the petitioner ought to be permitted to submit a fresh application in a time bound manner to the first respondent seeking leave and appropriate orders ought to be passed by the said respondent taking note of the peculiar circumstances.

Accordingly, if the petitioner submits a fresh application for leave through the institution, within ten days from the date of receipt of this judgment, the first respondent Board shall consider the same and pass appropriate orders within a period of two weeks from the date of receipt of the said request without regard to Exhibit P8 and P10 and considering the peculiar circumstances arising in the instant case and in the light of the observations made in this judgment. The grant of leave, if any, by the first respondent, based on the leave application submitted by the petitioner shall be specifically observed as being on account of the extraordinary circumstances arising in the instant case. Needless to mention, in the meantime, petitioner shall not be terminated from the Dr NB programme.

Writ petition is disposed as above.