

(2025) 12 BOM CK 1695

In the Bombay High Court, Kolhapur Bench

Case No : Writ Petition No. 15521 Of 2024

Vrushali Vasant Yadav

APPELLANT

Vs

Assistant Professor

RESPONDENT

Date of Decision : 16-12-2025

Acts Referred:

Maternity Beneit Act, 1981 — Section 5, 5(1)

Citation : (2025) 12 BOM CK 1695

Hon'ble Judges : M.S. Karnik, J;Ajit B. Kadethankar, J

Bench : Division Bench

Advocate : Kedar Lad, T.J. Kapre

Final Decision : Disposed Of

Judgement

M.S. Karnik, J

1. Heard learned counsel for the petitioner.

2. By this petition, the petitioner prays for direction to the respondents to grant / extend the maternity leave beneits to the petitioner as demanded by the petitioner vide Demand Application dated 28th May 2021 which is at Exh.C to the petition.

3. At the outset, we must note that the learned AGP made an attempt to adjourn the matter so as to enable her to ile aidavit-in-reply on behalf of the respondents. In this context, we must reproduce the order dated 14th November 2025 passed by this Court. The relevant portion of the order reads thus :-

"2. By order dated 20th August, 2025, the respondents were granted two weeks time to ile aidavit in reply. In fact, it was speciically stated that if the aidavit-in-reply is not filed within a period of two weeks, considering the nature of the controversy involved in the present petition, this Court may be inclined to hear the petitioner on the basis of uncontroverted averments made in the present petition and pass appropriate orders.

3. We enquired with the learned AGP as to why the affidavit in reply is not filed. Learned AGP submitted that the order was communicated along with the draft of the affidavit in reply to the concerned, however there is no response.

4. In this view of the matter, we have no option but to proceed with the hearing of the petition on its own merits."

4. Even to this date, no affidavit-in-reply has been filed. Learned AGP submitted that the draft of the affidavit-in-reply was already forwarded to the concerned and the same is pending for approval till date. We now, therefore, have no other option but to proceed to hear the petition on merits, considering the nature of reliefs prayed for in the petition. The last follow-up by the learned AGP is stated to be on 17th November 2025. Thus, ample opportunities have been given to the respondents to file the reply.

5. The facts of the case in brief are that the petitioner is working with respondent No.3 – The Dean, Rajarshree Chhatrapati Shahu Maharaj Government Medical College, Kolhapur as Assistant Professor on temporary basis since 21st September 2018 on a temporary post of Assistant Professor in Obstetrics and Gynaecology Department. Since 21st September 2018 the petitioner has been working continuously and uninterruptedly. In May 2021, the petitioner was 8 and ½ months pregnant and, therefore, was entitled to get the benefits of maternity leave.

6. On 7th May 2021, the petitioner made an application to the Department of Obstetrics and Gynaecology of the respondent No.3 and requested to extend the benefits of maternity leave to the petitioner. The said application was forwarded to the respondent No.3 vide letter dated 10th June 2021 for necessary action. The petitioner made similar application on 28th May 2021 and requested the respondent No.3 to extend the benefits of maternity leave. The petitioner in the application, relied upon the decision of the Hon'ble Supreme Court in Municipal Corporation of Delhi Vs. Female Workers (Muster roll) and Anr. (Special Leave Petition (Civil) No.12797 of 1998) dated 8th March 2000, and several other cases.

7. The respondent No.3 forwarded the said proposal to the respondent No.2 – The Director, Medical Education and Research, Mumbai, vide letter dated 16th June 2021 and requested respondent No.2 to issue necessary guidance for issuance of maternity leave benefit to the petitioner.

8. The period of maternity leave, which the petitioner sought was from 8th May 2021 to 16th September 2021 i.e. for total a 131 days. According to the petitioner, the benefit of maternity leave comes to Rs. 4,36,666/-, which has not been paid to her. The said period was treated as leave without pay. The petitioner has produced on record an Experience Certificate dated 6th March 2025 issued by the Dean of the respondent No.3 – Government Medical College certifying that the petitioner is working in the respondent No.3 college as Assistant Professor in the Department of Obstetrics and Gynaecology since 21st September 2018 till this date, without break. In the said certificate, it is mentioned that the maternity

leave period is from 8th May 2021 to 16th September 2021 for 131 days.

9. We have perused the communication dated 16th June 2021 addressed by the respondent No.3 to the respondent No.2, which indicates that in respect of those women Professors, who are working on temporary basis (for 120/360 days) and whose services are continued by giving technical break, the benefits of maternity leave to such Assistant Professors / Professors is not granted.

10. Admittedly, the petitioner has been working continuously as an Assistant Professor from 21st June 2018 till date having been given a technical break of 1 day or 2 days after 120 days of service. To deny the benefits of the maternity leave on such a ground is completely arbitrary and unjust. The break in service is technical in nature and for all practical purpose, the petitioner has been discharging her duties as an Assistant Professor in the respondent No.3 – Government Medical College continuously since 21st September 2018 till date.

11. Section 5 of the Maternity Benefit Act, 1981 is relevant, which needs to be looked into and reads thus :-

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, 3[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 4[eighty days] in the twelve months immediately preceding the date of her expected delivery:

Provided that the qualifying period of 1[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, 2[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 4 4[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.]”

12. We thus find that in terms of sub-section (1), every woman shall be entitled to, and 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. The other conditions as laid down in Section 5 of the said Act have been fulfilled by the petitioner. It is thus clear that even if a woman is working on temporary basis on daily wages, she is entitled to the benefits of the maternity leave and merely because the petitioner is granted the technical break in service is no ground to deprive her of the benefit. Such interpretation would be in the teeth of the benevolent object for which the Maternity Benefit Act, 1961 has been enacted.

13. We, therefore, have no hesitation in holding that denial of the benefit of maternity leave to the petitioner only on the ground that the petitioner was granted a technical break of 1 or 2 days in service is unjustifiable and untenable. The petitioner is held entitled to the said benefits.

14. We make a profitable reference to the decision of the Hon'ble Supreme Court in *Municipal Corporation of Delhi Vs. Female Workers (Muster roll)* and *Anr.* AIR 2000 SC 1274 and *J.K. Cotton Spinning & Weaving Mills Co. Ltd. Vs. Badri Mali* (1964) 3 SCR 724. These decisions were subject matter of consideration of this

Court in Archana D/o Nanabhau Dahifale Vs. The State of Maharashtra & Anr. (Writ Petition No. 3491 of 2018) decided on 19th October 2018. Paragraph Nos. 17, 18, 19 and 20 of the said judgment read thus :-

"18. As indicated earlier, the benefits contemplated by the Maternity Benefit Act, 1961 have been extended by the Hon'ble Supreme Court not only to work women in an 'industry' but to the muster roll women employees of the Municipal Corporation working on daily wages also.

19. Identical issue of granting maternity benefit to woman employee on contract or on adhoc basis has been considered by various High Courts wherein petitions have been allowed and directions issued to grant maternity benefits to the woman employees.

20. The High Court of Kerala in the case of Rakhi P.V. Vs. The State of Kerala (supra) while dealing with the case of a Programme Manager appointed on contract basis considered the case visavis women employees directly employed by the Government held that they would be entitled for 180 days of maternity leave, going by the provisions of the Kerala Service Rules. It would be material to reproduce para 9 and 10 of the said decision which reads thus :-

"9. The petitioners are also admittedly women employees working on a contractual basis under state funded projects. The benefits of enhanced maternity leave to woman employees is undoubtedly a piece of welfare legislation which is intended to give women equal opportunities in public employment. In the above view of the matter, the contention raised to the effect that the contract employees under the projects are entitled only to 90 days of maternity leave, according to me, cannot be countenanced, since it would amount to discrimination against woman employees only for the reason that they are engaged in projects in contractual capacities. The inalienable obligations of maternity should not and cannot be a reason to deny equal opportunities to woman employees. This precisely would be the result of limiting maternity leave to women employees, irrespective of the nature of their employment. The further contention to the effect that the contractual appointment of the petitioners have a duration of only one year and the grant of six months paid leave would obliterate the benefit to the project of the engagement is also not tenable because the petitioners are persons who are continuing in service on the basis of successive extension of contract. The contention therefore can have no application in the instant cases.

10. In the above view of the matter, I am of the opinion that in the light of the principles laid down by this Court in Mini's case (supra) the contention raised that the petitioners herein are entitled only to 90 days of maternity leave cannot be countenanced. The petitioners herein will also be entitled to maternity leave as is due to women employees under the Service Rules applicable to State and Central Government servants and to women employees under the Maternity Benefit Act, 1961. In the above view of the matter, the impugned orders are set aside. There will be a direction to the respondents to grant 26 weeks of maternity leave to the

petitioners. Orders shall be passed within a period of two weeks from the date of receipt of a copy of this judgment. These writ petitions are ordered accordingly.”

15. The aforesaid observations support the petitioner’s case. In such view of the matter, the petition is allowed in terms of prayer clause (a). If the amount as demanded in the application dated 28th May 2021 is not paid within a period of 4 weeks from today, the same shall carry interest @ 9% p.a. till actual disbursement.

16. The Writ Petition is disposed of.

17. List on 19th January 2026 for reporting compliance.