



2025:CGHC:11902

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 1648 of 2025

1 - Smt. Rakhi Verma W/o Shri Mahendra Kumar Verma Aged About 28 Years Posted As Staff Nurse At District Hospital, Kabirdham, R/o Village- Sheetla Marg, Ward No. 21, Kawardha, District- Kabirdham Chhattisgarh.

... **Petitioner**

versus

1 - The State Of Chhattisgarh Through The Principal Secretary, Department Of Health And Family Welfare, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, Raipur, District Raipur, Chhattisgarh.

2 - Director, Directorate Of Health Service, Indravati Bhawan, Nawa Raipur, Atal Nagar, Raipur, District Raipur, Chhattisgarh.

3 - Chief Medical And Health Officer, Kabirdham, District- Kabirdham, (C.G.)

4 - Civil Surgeon Cum Chief Hospital Superintendence, District Hospital, Kabirdham, District- Kabirdham, (C.G.)

... **Respondent(s)**

(Cause-title taken from Case Information System)

For Petitioner	: Mr. Shrikant Kaushik, Advocate
For State/Respondent(s)	: Mr. Prafull Bharat, Advocate General with Mr. Vivek Sharma, Additional Advocate General, and Mrs. Shailja Shukla, Dy. Government Advocate

Hon'ble Shri Justice Amitendra Kishore Prasad

Order on Board**10/03/2025**

1. Heard Mr. Shrikant Kaushik, learned counsel petitioner as well as Mr. Prafull Bharat, Advocate General with Mr. Vivek Sharma, Additional Advocate General and Mrs. Shailja Shukla, Dy. Government Advocate for State/respondent/s.
2. By way of this writ petition, the petitioner has prayed for following reliefs:

“10.1. That, this Hon'ble Court may kindly be pleased to direct the respondent No.3 and 4 to pay salary of maternity leave granted to the petitioner from the period 17.03.2024 to 03.07.2024, total 4 months.

10.2. That, this Hon'ble Court may kindly be pleased to direct the respondent No.3 and 4 to consider and decide the application of the petitioner filed on 25.02.2025, seeking grant of salary of maternity leave.

10.3. That, any other relief, which this Hon'ble Court deems fit under the facts and circumstances of the case may kindly be granted to the petitioner.”

3. Brief of the case is that the petitioner is currently working as a Staff Nurse at the District Hospital, Kabirdham, District Kabirdham. She had applied for maternity leave for the period from 16.01.2024 to 16.07.2024 due to her pregnancy, which was duly sanctioned by the competent authority. The petitioner gave birth to a girl child on 21.01.2024. Upon completion of her maternity leave, she resumed her duties on 14.07.2024. After rejoining, the petitioner submitted a request for the release of her

salary for the period of maternity leave. However, despite her entitlement and repeated representations, the said salary has not been disbursed to date. As a result, the petitioner and her minor child are facing severe financial hardship. The petitioner has also filed an application before the Chief Health and Medical Officer, Kabirdham (Respondent No.3), seeking necessary action regarding the pending salary. However, despite her request, no action has been taken, and the matter remains unresolved.

4. The petitioner is aggrieved by the inaction on the part of the respondent authorities specially respondents No.3 and 4 by which even after the petitioner is entitled to get salary for the period when the petitioner was on maternity leave, it is not given. The respondents No.3 and 4 are not disbursing salary for that period due to which the petitioner is facing great hardship she is unable to take special care of her newly born child. The grievance of the petitioner is that after due permission she went on maternity leave for the period 16.01.2024 to 16.07.2024, however the salary for the aforesaid period has not been given to her without there being any reason and due to apathetic behaviour of the respondent authorities. She has to take special care to her newly born child and for that she has to go on excess expenses so that she may give special nourishment to the newly born baby. Hence, filed this petition.
5. Learned counsel for the petitioner submits that according to Clause 38 of the Chhattisgarh Civil Service Leave Rules, 2010,

she is required to be given maternity leave for a period of 135 days from its commencement and such leave shall not be debited against the leave account. In an identical petition bearing WPS No. 5696 of 2025, the coordinate Bench of this Court has held that even if in the case of contract appointment, the employee appointment basis is also entitled to get benefit of maternity leave as per Leave Rules, 2010.

6. Learned counsel for the petitioner submits that the acts of the respondents are not else but illegal and arbitrary, they are bound to give salary for the period for which the petitioner had gone to maternity leave. While not giving salary for the maternity leave, the respondents are committing an act which is condemnable and against article 14 & 16 of the Constitution of India. No distinction in respect of temporary and permanent employee can be made in the case of maternity leave. The temporary employee is also entitled to get maternity leave which has already been decided by this Court in WPS No.5696 of 2025.
7. On the other hand, learned counsel for the respondents submits that since the petitioner is a temporary employee and appointed on contract basis as a Staff Nurse, as such, she is not entitled to get any relief.
8. I have heard learned counsel for the parties, consider their rival submissions and perused the material available on record along with the order passed by Coordinate Bench of this Court in **WPS**

No.101 of 2017 (Devshree Bandhe vs. Chhattisgarh State Power Holding Company Limited and others). The relevant paras No.20, 21, 22, 23, 24, 25 & 26 is as under :

20. Rule 38 of the Rules, 2010 provides as under: -

"38. Maternity leave.-(1) Maternity leave may be granted to a female Government servant with less than two surviving children up to a period of 135 days from the date of its commencement. During such period, she will be entitled to leave salary equal to pay drawn immediately before proceeding on leave.

(2) Such leave shall not be debited against the leave account.

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

(4) Maternity leave may also be granted to a female Government servant (irrespective of the number of surviving children) in cases of miscarriage including abortion, subject to the condition that the leave shall be limited to the period recommended by the appropriate medical authority subject to a maximum of forty five days during the entire service.

Note-An abortion induced under the Medical Termination of Pregnancy Act, 1971 shall also be considered a case of 'abortion' for the purpose of this rule, but however no leave shall be granted under this rule in cases of 'threatened abortion'."

21. The above-stated provisions relating to grant of maternity benefit is benevolent and beneficial provision contained in the said Rule. It is well settled law of construction that in interpreting provisions of beneficial pieces of legislation, which is intended to achieve the social justice, must be construed beneficially. The Supreme Court in the matter of **B. Shah v. Presiding Officer, Labour Court, Coimbatore and others** has held that beneficial construction to be extended to beneficial legislation like the Maternity Benefits Act which effectuates directive principles of state policy and observed as under: -

"18. ... It has also to be borne in mind in this connection that in interpreting provisions of beneficial pieces of legislation like the one in hand which is intended to achieve the object of doing social justice to women workers employed in the plantations and which squarely fall within the purview of Article 42 of the Constitution, the beneficent rule of construction which would enable the woman worker not only to subsist but also to make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output has to be adopted by the Court."

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, respecially 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** (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. ...”

9. Relying upon the judgment of the Hon'ble Supreme Court in the matter of ***Dr. Kavita Yadav vs. Secretary, Ministry of Health and Family Welfare Department and others*** reported in **(2024) 1 SCC 421** in which it has been held in paras 6, 7, 8, 9, 10, 11, 14 and 15 as under :

“6. The main question which falls for determination in this appeal is as to whether the maternity benefits, as contemplated in the 1961 Act, would apply to a lady employee appointed on contract if the period for which she claims such benefits overshoots the contractual period.

7. Ms. Rachita Garg, learned counsel appearing for the respondent employer, sought to defend the reasoning given in the judgment under appeal. Her main argument is that once the term or tenure of the contract ends, there cannot be a notional extension of the same by giving the employee the benefits of the 1961 Act in full, as contemplated in [Section 5\(2\)](#) thereof. It is her submission that any benefits that the appellant would be entitled to ought to be within the contractual period.

8. We have reproduced earlier in this judgment the provisions of [Section 12\(2\)\(a\)](#) of the 1961 Act. The aforesaid provision contemplates entitlement to the benefits under the 1961 Act even for an employee who is dismissed or discharged at any time during her pregnancy if the woman, but for such discharge or dismissal, would have been entitled to maternity benefits or medical bonus. Thus, continuation of maternity benefits is built in the statute itself, where the benefits would survive and continue despite the cessation of employment. In our opinion, what this legislation envisages is entitlement to maternity benefits, which accrues on fulfillment of the conditions specified in [Section 5\(2\)](#) thereof, and such benefits can travel beyond the term of employment also. It is not co-terminus with the employment tenure.

9. A two Judge Bench of this Court in the case of *Municipal Corporation of Delhi vs Female Workers (Muster Roll) & Anr.* [(2000) 3 SCC 224], while dealing with a similar claim by female muster roll workers who were employed on daily wages, opined that the provisions relating to maternity benefits in the 1961 Act would be applicable in their cases as well. That dispute had reached this Court through the Industrial Tribunal and the High Court. Before both these fora, the Union espousing the cause of the female workers was successful. In that case, point of discrimination was highlighted as regular women employees were extended the benefits of the said Act but not those who were employed on casual basis or on muster roll on daily wage basis. This Court observed, in paragraph 27 of the said judgment:

“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 dailywage basis.”

10. Broadly, a similar view is reflected in a more recent judgment of this Court in the case of *Deepika Singh - vs Central Administrative Tribunal And Others* [(2022) 7 SCR 557]. Though this decision dealt with Central Civil Services (Leave) Rules, 1972, in relation to maternity leave and the 1961 Act was not directly applicable in that case, this Court analysed certain provisions of this Act to derive some guidance on a cognate legislation.

11. This Court observed in the case of *Deepika Singh* (supra):

“19. Subsection (1) of [Section 5](#) confers an entitlement on a woman to the payment of maternity benefits at a stipulated rate for the period of her actual absence beginning from the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day. Subsection (3) specifies the maximum period for which any woman shall be entitled to maternity benefit. These provisions have been made by Parliament to ensure that the absence of a woman away from the place of work occasioned by the delivery of a child does not hinder her

entitlement to receive wages for that period or for that matter for the period during which she should be granted leave in order to look after her child after the birth takes place.

20. [The Act](#) of 1961 was enacted to secure women's right to pregnancy and maternity leave and to afford women with as much flexibility as possible to live an autonomous life, both as a mother and as a worker, if they so desire. In [Municipal Corporation of Delhi v. Female Workers \(Muster Roll\)](#), a twojudge Bench of this Court placed reliance on the obligations under [Articles 14, 15, 39, 42](#) and [43](#) of the Constitution, and India's international obligations under the Universal Declaration of Human Rights 1948 and [Article 11](#) of the Convention on the Elimination of All Forms of Discrimination Against Women to extend benefits under the Act of 1961 to workers engaged on a casual basis or on muster roll on daily wages by the Municipal Corporation of Delhi. The Central Civil Services (Leave) Rules 1972, it is well to bear in mind, are also formulated to entrench and enhance the objects of [Article 15](#) of the Constitution and other relevant constitutional rights and protections."

14. Our independent analysis of the provisions of the 1961 Act does not lead to an interpretation that the maternity benefits cannot survive or go beyond the duration of employment of the applicant thereof. The expression employed in the legislation is maternity benefits [in [Section 2\(h\)](#)] and not leave. [Section 5\(2\)](#) of the statute, which we have quoted above, stipulates the conditions on the fulfilment of which such benefits would accrue. [Section 5\(3\)](#) lays down the maximum period for which such benefits could be granted. The last proviso to [Section 5\(3\)](#) makes the benefits applicable even in a case where the applicant woman dies after delivery of the child, for the entire period she would have been otherwise entitled to. Further, there is an embargo on the employer from dismissing or discharging a woman who absents herself from work in accordance with the provisions of the Act during her

absence. This embargo has been imposed under [Section 12\(2\)\(a\)](#) of the Act. The expression “discharge” is of wide import, and it would include “discharge on conclusion of the contractual period”. Further, by virtue of operation of [Section 27](#), the Act overrides any agreement or contract of service found inconsistent with the 1961 Act.

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.”

10. Considering the aforesaid aspect of the matter in the light of orders passed by the Hon’ble Supreme Court and this Court in the aforesaid cases, it is abundantly clear that the salary for the period when the petitioner had gone to maternity leave cannot be denied on the ground that she was serving as contractual employee. Further considering the case that once the petitioner was granted maternity leave, the respondents are under obligation to release the salary of the petitioner forthwith in respect of the period when she had gone for maternity leave. The right of a new mother and newly born child cannot be curtailed on the whims and capricious of the officer. The dignity of women at

carse and the right to life of a newly born child is an important aspect, which cannot be deviated.

11. Accordingly, the respondents are directed that to take an appropriate decision in accordance with rules and guidelines as the petitioner is entitled for maternity leave as provided in Rule 38 of the Rules of 2010 and pass an appropriate orders in respect of petitioner's claim for unpaid salary for the period from 17.03.2024 to 13.07.2024 (total four months) during the maternity leave that she has availed between 16.01.2024 to 16.07.2024, at the earliest preferably within a period of three months from the date of receipt of copy of this order.
12. It is made clear that the petitioner's status, whether she is regular employee or contingent employee, has not been decided by this Court and it is left open. The petitioner has been referred as contingent employee in this order, only for the purpose of deciding this writ petition.
13. The writ petition is **allowed** to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Amitendra Kishore Prasad)
Judge