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HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 1561/2023
CNR: RJHC010064192023 | URN: CW / 3258U / 2023

Smt. Shivangi Khandelwal W/o Shri Gaurav Khandelwal, Aged About 28 Years, Resident Of House No. 29, Abhaygarh, Air Fore Road, Jodhpur (Rajasthan).

----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary, Department Of Environment And Climate Change, Government Of Rajasthan, Jaipur.
2. Member Secretary, Seac-I, Rajasthan State Pollution Control Board, Headquarter, 4, Institutional Area, Jhalana Dungari, Jaipur.

----Respondents

For Petitioner(s) : Mr. Shamboo Singh Rathore
Ms. Ayushi Rathore
Ms. Shivani Rathore

For Respondent(s) : Mr. Praveen Kumar Choudhary for
Mr. Sajjan Singh Rathore, AAG

HON'BLE MR. JUSTICE BIPIN GUPTA
Judgment / Order

Reportable

Date of hearing and conclusion of arguments	08.10.2026
Date on which the judgment was reserved	08.10.2026
Whether the full judgment or only the operative part is pronounced	Full Judgment
Date of pronouncement	16.10.2026

1. The present writ petition has been filed challenging the letter dated 16.12.2022 (Annexure 3), issued by respondent No. 2, the Member Secretary, SEAC-I, Rajasthan State Pollution Control Board, Headquarter, 4, Institutional Area, Jhalana Dungari, Jaipur, whereby the petitioner's request for maternity leave was rejected on the ground that, in terms of Condition No. 5 of the

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appointment order dated 25.07.2022, no leave other than the declared holidays of the State Government was permissible.

2. The facts in a narrow compass are, that the petitioner was engaged as a 'Consultant (AEE)' on a consolidated remuneration of Rs. 40,000/- per month, pursuant to her selection by the State Environment Appraisal Committee (SEAC)-I and II, Government of Rajasthan. Her engagement was for a period of one year from the date of joining, which, in the present case, was 04.08.2022, subject to the terms and conditions stipulated in the appointment order dated 25.07.2022 (Annexure 1).

2.1 During the course of her engagement, the petitioner submitted an application dated 07.12.2022 (Annexure 2), seeking maternity leave for a period of six months commencing from 26.12.2022, as advised by her doctor. However, vide letter dated 16.12.2022 (Annexure 3), respondent No. 2 rejected her request on the ground that Condition No. 5 of the appointment order dated 25.07.2022 permitted only the declared holidays of the State Government and prohibited the grant of any additional leave.

2.2 Aggrieved by the aforesaid rejection, the petitioner served a legal notice dated 22.12.2022 (Annexure 5) upon the respondents, seeking reconsideration of her request for maternity leave. In support of her claim, the petitioner relied upon the letter dated 12.04.2017 (Annexure 4), issued by the Government of India, Ministry of Labour and Employment, as well as the judgment rendered by this Court in ***Hemlata Saraswata v. State of Rajasthan***, *S.B. Civil Writ Petition No. 4237/2006,* (Decided on 29.01.2008). The petitioner requested that her claim

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be considered and decided accordingly. However, neither was maternity leave granted to her nor was any reply furnished to the legal notice. Hence, the petitioner preferred the present writ petition.

3. Learned counsel for the petitioner, at the outset, submitted that the action of respondent No. 2 in denying maternity leave to the petitioner with effect from 26.12.2022 is illegal, arbitrary and contrary to law. Learned counsel contended that Rule 103 of the Rajasthan Service Rules, 1951, provides for maternity leave to a female government employee for a period of 180 days, subject to the applicable conditions.

3.1 Learned counsel for the petitioner further submitted that the Government of India, Ministry of Labour and Employment, vide its letter dated 12.04.2017 (Annexure 4), clarified that women employed in any capacity, whether directly or through an agency, including on a contractual basis or as consultants, are entitled to maternity leave. Learned counsel, therefore, contended that the petitioner's contractual engagement could not, by itself, constitute a valid ground for denying her maternity benefits.

3.2 Learned counsel also relied upon the judgment of this Court in ***Hemlata Saraswata*** *(supra)*, wherein directions were issued for extending maternity leave benefits to employees receiving a consolidated salary. Learned counsel thus submitted that the denial of the same benefit to the petitioner, despite the settled legal position in the aforesaid judgment, was arbitrary and unjustified.

3.3 Learned counsel also relied upon the judgment of the Hon'ble Supreme Court in ***Municipal Corporation of Delhi v. Female***

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Workers (Muster Rolls)*; 2000 (3) SCC 224*, wherein the benefit of maternity leave was recognized even in respect of women employed on a casual basis or on a muster-roll basis. Learned counsel further submitted that the statutory scheme of maternity protection could not be defeated merely by classifying the engagement as contractual. Learned counsel contended that the denial of maternity leave to the petitioner, while such benefits are available to eligible women employees under the applicable law, violates Articles 14, 16 and 21 of the Constitution of India.

3.4 Learned counsel for the petitioner thus prayed that the present writ petition be allowed, the letter dated 16.12.2022 denying maternity leave to the petitioner with effect from 26.12.2022 be quashed and set aside, and respondent No. 2 be directed to sanction the maternity leave to the petitioner as applied for a period of 180 days with effect from 26.12.2022, along with payment of her consolidated salary on a month-to-month basis during the said period.

3.5 Learned counsel for the petitioner placed reliance upon the following judgments to buttress his argument that even the employee engaged on a contractual basis are entitled to maternity leave:

(i) ***Dr. Kavita Yadav Vs. The Secretary, Ministry of Health and Family Welfare Department & Ors.****; 2024 (1) SCC 421.*

(ii) ***State of Rajasthan & Ors. Vs. Smt. Neeraj*** *; D.B. Special Appeal Writ No. 376/2021 (Decided on 04.08.2021). {Rajasthan High Court}.*

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(iii) ***Shimla Meena Vs. State of Rajasthan & Ors.****; S.B. Civil Writ Petition No. 12011/2022 (Decided on 07.12.2022) {Rajasthan High Court}.*

4. *Per contra*, learned counsel for respondent No. 2 submitted that the petitioner had been appointed as a 'Consultant (AEE)' by the Rajasthan State Pollution Control Board vide order dated 25.07.2022 and not by respondent No. 2 in its individual capacity. It was contended that the petitioner's services, along with those of other consultants, were made available to respondent No. 2 after their appointment by the Rajasthan State Pollution Control Board.

4.1 Learned counsel further submitted that Condition No. 5 of the appointment order dated 25.07.2022 (Annexure 1) expressly stipulated that the consultants would be entitled only to the declared holidays of the State Government and that no additional leave would be admissible. The petitioner joined her duties on 04.08.2022 and subsequently sought maternity leave by submitting an application on 06.12.2022 w.e.f from 26.12.2022.

4.2 Learned counsel for the respondent further contended that the petitioner's appointment was contractual and for a period of one year, extendable by a further period of one year subject to satisfactory performance, with an express stipulation that the total tenure could not exceed two years. Such extension was neither automatic nor a matter of right. Since the petitioner's initial tenure expired on 03.08.2023 and her services were not extended, she had no enforceable right to claim continuation in service or remuneration beyond the period of her engagement. Accordingly, learned counsel for the respondent submitted that the present writ petition is devoid of merit and deserves to be dismissed.

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5. Heard learned counsel for the parties and perused the material available on record.

6. Before adverting to the facts of the present case, it would be appropriate to observe that maternity benefit is not merely a service-related concession or an ordinary leave facility available to a woman employee. It is a statutory protection intended to safeguard the health, dignity and well-being of a woman during pregnancy and after childbirth, while also ensuring that the birth of a child does not adversely affect her employment-related entitlements.

6.1 The object of maternity benefit legislation is to enable a woman to discharge her maternal responsibilities without being compelled to choose between motherhood and her livelihood. Such protection is rooted in the constitutional guarantees of equality and dignity and is further reflected in the mandate of Article 42 of the Constitution of India, which directs the State to make provision for just and humane conditions of work and maternity relief.

6.2 The principal question that arises for consideration is whether the petitioner's request for maternity leave could lawfully be rejected solely on the basis of Condition No. 5 of the appointment order dated 25.07.2022 (Annexure 1), which permitted only the declared holidays of the State Government and prohibited additional leave, even though the period of maternity leave sought by her fell within the period.

6.3 On a perusal of the record, it is undisputed that the petitioner was appointed as a 'Consultant (AEE)' on a consolidated remuneration of Rs. 40,000/- per month for a period of one year

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vide appointment order dated 25.07.2022 (Annexure 1). She joined her duties on 04.08.2022, and her initial contractual tenure was due to expire on 03.08.2023. It is also undisputed that she applied for maternity leave for a period of six months commencing from 26.12.2022, which would end on 25.06.2023. Thus, the entire period for which maternity leave was sought fell within her initial contractual tenure.

6.4 The petitioner's request was rejected solely on the basis of Condition No. 5 of the appointment order dated 25.07.2022 (Annexure 1), which restricted the admissible leave to the declared holidays of the State Government. The question, therefore, is whether such a contractual condition can override an entitlement to maternity benefits available under the applicable statutory framework.

6.5 It is pertinent to note that the Maternity Benefit Act, 1961 (hereinafter referred to as the 'Act of 1961'), was enacted to regulate the employment of women in certain establishments for specified periods before and after childbirth and to provide for maternity benefits and other related entitlements. Section 5 of the Act of 1961 provides for maternity benefits subject to the prescribed eligibility conditions, while Section 12 of the Act of 1961 affords protection against dismissal or discharge in the circumstances specified therein. Further, Section 27 of the Act of 1961 gives overriding effect to the Act over inconsistent provisions contained in any other law, award, agreement or contract of service, subject to the terms of the section. Moreover, Rule 103 of the Rajasthan Service Rules, 1951, which provides for maternity leave to women government servants, reads as follows:

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*"**103. Maternity Leave:** Maternity leave may be granted to a female Government servant with less than two surviving children upto a period of 180 days from the date of its commencement. However, if there is no surviving child even after availing it twice, Maternity Leave may be granted on one more occasion.*

During such period, she will be entitled to leave salary equal to pay drawn immediately before proceeding on leave. Such leave shall not be debited to the leave account but such entry should be made in the service book separately."

6.6 Thus, it is apposite to observe that maternity leave is not merely a general form of leave available to an employee; rather, it is a statutory entitlement intended to enable a woman to recover her physical strength and well-being following childbirth and to ensure that the child receives the requisite love, care, and affection during the crucial early stages of life. The grant of maternity leave cannot be made contingent solely upon the nature or tenure of employment. Whether a woman is employed on a regular, temporary, ad hoc, urgent temporary, or contractual basis, she cannot be denied maternity leave merely on the ground of the nature of her employment, provided that the applicable legal requirements are satisfied and the period of maternity leave falls within the subsistence of her employment.

6.7 In ***Female Workers (Muster Roll)*** *(supra)*, the Hon'ble Supreme Court considered the entitlement of women engaged on a casual basis or on a muster-roll basis for maternity benefits. The Court held that the benefits under the Maternity Benefit Act, 1961, could not be restricted only to women holding regular employment. The judgment emphasized the protective object of

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the legislation and the constitutional principles underlying maternity relief. The Hon'ble Supreme Court observed as follows:

> *"**32.** Learned counsel for the Corporation contended that since the provisions of the Act have not been applied to the Corporation, such a direction could not have been issued by the Tribunal. This is a narrow way of looking at the problem which essentially is human in nature and anyone acquainted with the working of the Constitution, which aims at providing social and economic justice to the citizens of this country, would outrightly reject the contention. The relevance and significance of the doctrine of social justice has, times out of number, been emphasised by this Court in several decisions. In Crown Aluminium Works v. Workmen [MANU/SC/0082/1957 : 1957:INSC:86 : AIR 1958 SC 30 : 1958 SCR 651 : (1958) 1 LL J 1] this Court observed that the Constitution of India seeks to create a democratic, welfare State and secure social and economic justice to the citizens. In J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. Labour Appellate Tribunal of India [MANU/SC/0161/1963 : 1963:INSC:143 : AIR 1964 SC 737 : (1964) 3 SCR 724 : (1963) 2 LL J 436] Gajendragadkar, J., (as his Lordship then was), speaking for the Court, said:*
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> > *"Indeed, the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claims of social justice in dealing with industrial disputes. The concept of social justice is not narrow, or one-sided, or pedantic, and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic ideal of socio-economic equality and its aim is to assist the removal of socio-economic disparities and inequalities; nevertheless, in dealing with industrial matters, it does not adopt a doctrinaire*

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approach and refuses to yield blindly to abstract notions, but adopts a realistic and pragmatic approach."

33. *A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work, they must be provided all the facilities to which they are entitled. 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 workplace while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre-or post-natal period."*

6.8 The issue was subsequently considered by the Hon'ble Supreme Court in the case of ***Dr. Kavita Yadav*** *(supra),* wherein the Court held that the entitlement to maternity benefits is not necessarily confined to the duration of the contractual employment and that the employer could not defeat the accrued entitlement merely by relying upon the expiry of the contract. The relevant portion of the said judgment is reproduced as under:

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*"**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 in-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 fulfilment of the conditions specified in Section 5(2) thereof, and such benefits can travel beyond the term of employment also. It is not coterminous with the employment tenure.

__9.__ A two-Judge Bench of this Court in MCD v. Female Workers (Muster Roll) [MCD v. Female Workers (Muster Roll), (2000) 3 SCC 224: 2000 SCC (L&S) 331], while dealing with a similar claim by female muster roll

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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 woman 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 para 27 of the said judgment : [Female Workers (Muster Roll) case [MCD v. Female Workers (Muster Roll), (2000) 3 SCC 224 : 2000 SCC (L&S) 331] , SCC pp. 234-35]

> *"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 woman 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."*

10. *Broadly, a similar view is reflected in a more recent judgment of this Court in Deepika Singh v. PGIMER, Chandigarh [Deepika Singh v. PGIMER, Chandigarh, (2023) 13 SCC 681 : 2022 SCC OnLine SC 1088 : (2022) 7 SCR*

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557] . Though this decision dealt with the 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 Deepika Singh [Deepika Singh v. PGIMER, Chandigarh, (2023) 13 SCC 681 : 2022 SCC OnLine SC 1088 : (2022) 7 SCR 557] : (SCC paras 19-20)*

> *"19. Sub-section (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. Sub-section (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 1961 Act 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 MCD v. Female Workers (Muster Roll) [MCD v. Female Workers (Muster Roll), (2000) 3 SCC 224 : 2000 SCC (L&S) 331] , a two-Judge 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*

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Declaration of Human Rights, 1948 ("UDHR") and Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") to extend benefits under the 1961 Act 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."

12. *In the light of the ratio laid down in the aforesaid two authorities and having regard to Section 27 of the 1961 Act, which gives overriding effect to the statute on any award, agreement or contract of service, in our opinion, the High Court erred in law in holding that the appellant was not entitled to maternity benefits beyond 11-6-2017.*

13. *The respondents sought to distinguish the present dispute from Female Workers (Muster Roll) [MCD v. Female Workers (Muster Roll), (2000) 3 SCC 224 : 2000 SCC (L&S) 331] on the ground that the said case arose from an award of the Industrial Tribunal and that there was a finding by the Tribunal that the muster roll lady workers were working for a long period of time. But the fact remains that in law, daily-wage workers cannot be said to have continuity of service for an unlimited period. The effect of that judgment was that their tenure also stood notionally extended so far as application of maternity benefits under the 1961 Act was concerned.*

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 3(h)] and not "leave". Section 5(2) of the statute, which we have quoted above, stipulates*

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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."*

6.9 Further, a Co-ordinate Bench of this Court, in ***Minakshi Chaudhary Vs. Rajasthan State Road Transport Corporation and Ors.****; 2024 (4) RLW 2692 (Raj.)*, while extensively dealing with the jurisprudence of maternity leave benefit to women employees held that maternity leave is not just a benefit but a

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right that supports the fundamental need of a woman to take care of her family. The relevant portion of ***Minakshi Choudhary*** *(supra)* is reproduced herein below:

> ***28.*** *Taking note of the above cases, it is indisputably clear that maternity benefits are not merely derived from statutory rights or contractual agreements between employer and employee but they are fundamental and integral aspect of a woman's identity and dignity, when she chooses to start a family and bear a child. The freedom to bear a child is a fundamental right guaranteed by the Constitution under Article 21 and the choice not to bear a child is an extension of this right. Any attempt to obstruct a woman from exercising this right, violates the fundamental rights, enshrined in the Constitution and contradicts the principles of social justice.*
>
> ***29.*** *The benefit of enhanced Maternity Leave to women employees is undoubtedly a piece of welfare legislation which is intended to give women equal opportunity in public employment. Therefore, granting only 90 days of Maternity Leave to the female employees working at RSRTC would amount to discrimination against the women employees of other departments only for the reason that they are working at RSRTC. The inalienable right of maternity should not and cannot be a reason to deny equal opportunity to women employees of RSRTC. This precisely would be the result of limiting Maternity Leave to women employees, irrespective of nature of their employment.*
>
> ***30.*** *Women contribute to half of the segment of our society and they have to be honoured and treated with dignity at all places, including where they earn their livelihood. Whatever be the nature of the duties, in the place where they work, they must be provided with all facilities to which they are entitled for. The Act of 1961 aims to provide all these facilities to a working woman in*

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a dignified manner so that she may navigate the state of motherhood honourably, peacefully, undeterred by the fear of being victimized for her absence during the pre or post-natal period.

31. *Maternity Leave benefits are not just statutory entitlements but fundamental rights that reflects a woman's identity and dignity when she decides to start a family. The right to bear children is protected under Article 21 of the Indian Constitution as part of the Fundamental Right to Life and Personal Liberty. Additionally, Article 15(3) of the Constitution of India provides the State to make special provisions for women and children, supporting the principle of substantive equality. Article 42 of the Constitution of India calls for humane working conditions and maternity relief. The Right to Life under Article 21 of the Constitution of India encompasses not only bodily protection but also the right to a meaningful and dignified life. The State is obligated to ensure that pregnant working women receive all necessary support and protection for their health and that of their child while maintaining their employment.*

32. *UNICEF emphasizes that newborns need to experience their surroundings through sight, sound, movement and touch immediately after birth. To help the baby feel secure and content, they should be held gently, stroked and comforted. Additionally, UNICEF suggests that parents should engage with their baby through laughter and smiles during the first 1-6 month. To meet these sensitive needs, it's crucial for mothers to spend ample time with their babies to ensure that they receive proper care and attention.*

33. *The global recognition of Maternity Leave underscores its critical role in safeguarding the health and well-being of both mothers and their children. These benefits also support women's ability to thrive in their careers, which can contribute to overall economic growth. The Universal*

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Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of All Forms of Discrimination against Women, highlight the importance of providing maternity benefits to working women, reflecting their vital significance.

34. *The respondent-RSRTC is trying to take shelter of Regulation 74 of the Regulations of 1965. Such Regulation has become an ancient provision, in view of the subsequent Acts of the Central and the State Governments, whereby the ceiling limit of Maternity Leave has been increased to 180 days and Section 5 of the Act of 1961 has also been amended in the year 2017. Hence, under these changed circumstances, all female employees are entitled to get the benefit of Maternity Leave, in terms of the 2017 amendment. The Regulation of 1965 do not overrule the amended provisions of the Maternity Benefits (Amendment) Act, 2017. The Regulation 74 of the Regulations of 1965 is liable to be amended now, as the same is the need of hour.*

35. *Keeping in view all the above provisions of law, it can be safely held that a working woman is entitled to 180 days of Maternity Leave in every establishment and denial to grant 180 days of Maternity Leave to the female employees working at RSRTC, on the basis of Regulation 74 of the Regulations of 1965, is not only discriminatory but also violative of their fundamental rights, contained under Articles 14 and 21 of the Constitution of India. Denial of 180 days of Maternity Leave to the female employees working at RSRTC, like the petitioner, undermines a woman's right to child birth and Maternity Leave, as provided under the Act of 1961 (as amended in 2017).*

6.10 Further, a Co-ordinate Bench of this Court at Jodhpur in a recent judgment passed in the case of ***Rani Tanwar vs State of***

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Rajasthan & Ors.; *S.B. Civil Writ Petition No. 9700/2020* (Decided on: 01.07.2025) while relying on the judgment passed in ***Hemlata Saraswata*** *(supra)* observed and held as under:

> ***6.*** *In Hemlata Saraswat (supra), the Court held as under:*
>
> *"The petitioner, even if working on contract basis, has entered into services under the order dated 15.09.2003(Annex.1) after having been found fit and eligible by the Selection Committee as stated in the said order. Hers has not been a back door entry. Merely because the respondents would choose to put her on consolidated salary and state it to be a contractual appointment, the fact that she is a woman employee cannot be lost sight of and the essential benefits fundamentally dealing with the very basics of human rights of allowing maternity benefit to the woman cannot be and ought not to have been ignored; and the petitioner ought to have been allowed maternity leave as applied for. It may be pointed out that there had not been any other reason of denying maternity leave to the petitioner except that she was working on consolidated salary on contract basis. Such being a proposition already declared unacceptable, the action of the respondents is not only illegal but mala fide too.*
>
> *The present one was clearly an avoidable litigation if the authorities concerned would have dealt with the matter with due regard to their constitutional duties and sadly enough they have chosen to proceed in utter disregard of their duties, without regard to the requirements of the rules, and even in disregard to the decisions rendered by this Court. The petition, thus, deserves to be allowed with costs.*

7. *The Hon'ble Apex Court, in Dr. Kavita Yadav vs. The Secretary, Ministry of Health and Family Welfare Department & Ors.; (2024) 1 SCC 421 while dealing with a*

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situation where the contractual period of service of the employee ended during the currency of her maternity leave period, held asunder:

> *"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."*

8.*In view of the above settled position of law, the present writ petition is allowed. It is hereby declared that the petitioner was entitled for grant of maternity leave as applied for. The respondents are directed to grant and release the benefit of maternity leave for the period as applied for, to the petitioner as per law, within a period of eight weeks from now. The petitioner shall be entitled for interest at the rate of 6% per annum on the accrued amount.*

6.11 The aforesaid authorities thus, demonstrate that the nature of employment, whether regular, casual or contractual, cannot, by itself, be treated as a conclusive ground for denying maternity benefits where the applicable statutory conditions are fulfilled. At the same time, the entitlement in an individual case must be examined with reference to the governing statutory provisions, the nature of the establishment and the eligibility requirements prescribed by law.

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7. Applying the aforesaid principles to the facts of the present case, it is evident that the petitioner sought maternity leave during the subsistence of her contractual engagement. Her application dated 07.12.2022 (Annexure 2) sought leave commencing from 26.12.2022 for a period of six months, ending on 25.06.2023. The petitioner's initial contractual tenure was to continue until 03.08.2023. Accordingly, the entire period of maternity leave sought by her fell within the period of her contractual engagement.

7.1 The respondents have not disputed the fact that the petitioner applied for maternity leave during her contractual tenure. Their principal objection is founded upon Condition No. 5 of the appointment order dated 25.07.2022 (Annexure 1), which stipulated that no additional leave, apart from the declared State Government holidays, would be permissible.

7.2 The law laid down by Hon'ble Apex Court in ***Female Workers (Muster Roll)*** *(supra)* and ***Dr. Kavita Yadav*** *(supra)* as well as by Co-ordinate Bench of this Court in ***Minakshi Choudhary*** *(supra)* and ***Rani Tanwar*** *(supra)* is to the effect that the benefit of maternity leave cannot be denied merely on account of the nature of employment, provided that the person fulfils the prescribed eligibility requirements. Maternity protection is intended to safeguard the health and dignity of the woman and to ensure that she is not compelled to forgo her statutory entitlement merely because of the nature or duration of her employment.Further, any contractual condition inconsistent with

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the applicable provisions of the Maternity Benefit Act, 1961, would be subject to Section 27 of the said Act.

7.3 In the present case, the impugned letter dated 16.12.2022 (Annexure 3) rejected the petitioner's request solely on the basis of Condition No. 5 of the appointment order dated 25.07.2022 (Annexure 1). The rejection does not proceed on any independent determination of her eligibility under the applicable maternity benefit provisions. Such an approach is inconsistent with the protective object of the Maternity Benefit Act, 1961, and the principles enunciated by the Hon'ble Supreme Court as well as this Court in the aforesaid judgments.

7.4 In these circumstances, this Court finds that the petitioner's claim cannot be rejected merely on the ground that she was appointed on a contractual basis or that the terms of her appointment restricted the grant of additional leave. Since the period for which maternity leave was sought fell entirely within her initial contractual tenure, and the impugned rejection was founded upon the general restriction contained in Condition No. 5 of the appointment order, the denial of maternity benefits cannot be sustained.

8. In view of the foregoing discussion, the present writ petition is **allowed**. Consequently, the impugned letter dated 16.12.2022 is quashed and set aside, and the petitioner is entitled to the relief of maternity benefits in accordance with the applicable law for the period claimed by her.

8.1 The respondents are directed to extend maternity benefits to the petitioner for a period of 180 days commencing from

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26.12.2022 and to pay her the admissible remuneration for the said period, in accordance with the applicable statutory provisions.

8.3 The above exercise shall be completed within three months from the date on which the respondent receive certified copy of this judgment.

9. Pending applications, if any, stand disposed of.

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