



2026:AHC:16061

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 770 of 2026

Arti

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Akshara Rai, Sujeet Kumar Rai
Counsel for Respondent(s)	:	C.S.C.

Court No. - 33

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Sujeet Kumar Rai, learned counsel for the writ petitioner and Sri Gaurav Singh, learned Standing Counsel for the State.

2. Sri Gaurav Singh, learned Standing Counsel has made a statement at bar that he is possessed with the instructions and he is in a position to argue the matter and he does not propose to file any affidavit, the writ petition be decided on the basis of the documents available on record. With the consent of the parties, the writ petition is being decided at the fresh stage.

3. The case of the writ petitioner is that she is working as Staff Nurse in Women Hospital she had preferred an application for maternity leave from 22.02.2024 and again on 01.11.2025 to 29.04.2026, however, the maternity leave has not been accorded to the writ petitioner for the period 01.11.2025 to 29.04.2026. Learned counsel for the writ petitioner seeks to rely upon the judgment of this Court in **Court in Writ-A No. 9535 of 2022 (Smt. Anupam Yadav v. State of U.P. and 2 Others)** decided on 21.10.2022.

4. Learned Standing Counsel, on the other hand, submits that the matter needs to be reconsidered in the light of the fact that in the restriction that between two maternity leave, there should be a gap of two years is not correct particularly when now it is even otherwise.

5. I have heard the submission so made across the bar and perused the record.

6. Apparently, the second maternity leave has not been accorded on the ground that first maternity leave was within two years.

In **Smt. Anupam Yadav (supra)**, following was observed.-

"1. These writ petitions raise common questions of law and facts and thus are being decided together by a common order. The writ petitioners, who are working as Assistant Teachers in Primary Schools managed by the Uttar Pradesh Basic Education Department, have approached this Court assailing the orders passed by the competent authority / District Basic Education Officer whereby and whereunder the sanction of maternity leave for 180 days has been turned down by stating that the same is not admissible/ or on the ground that the period of 2 years have not elapsed from the date of the expiry of the last maternity leave granted to them under the proviso to Rule 153 (I) of Chapter XIII of the U.P. Fundamental Rules in Financial Handbook Volume-II, Part 2 to 4.

2. In order to adjudicate the legal issue involved the facts of writ petition No. 9535 of 2022 are being considered.

*3. The writ petitioner was appointed as Assistant Teacher at Primary School Dhakatal Mahewa District Etawah vide appointment letter dated 28.6.2016. The petitioner gave birth to a male child on 4.1.2021. Thereafter, the petitioner again became pregnant and applied for maternity leave online on 17.6.2022. The online maternity leave application of the petitioner has been turned down on the ground "not admissible" by the impugned order dated 23.6.2022. It is contended by learned counsel for the petitioner that rejection of the maternity leave to the petitioner by the impugned order is patently illegal as no reasons whatsoever has been disclosed by the District Basic Education Officer in turning down the maternity leave to the petitioner. He submits that the maternity leave is the right of a women employee during pregnancy and cannot be turned down in the manner as has been done by the respondents. Learned counsel has placed reliance upon a decision of the co-ordinate Bench dated 11.12.2019 passed in **Service Single No. 32394 of 2019 (Smt. Richa Shukla versus State of U.P. through Addl. Chief Secretary Basic Education Lko & others)** to submit that maternity leave to the petitioner therein was refused by orders dated 13.11.2019 and 27.11.2019. The Court proceeded to quash the orders dated 13.11.2019 and 27.11.2019 allowed the writ petition and issued a writ of mandamus directing the respondent No. 4 therein to consider the case of the petitioner for grant of maternity leave. Learned counsel for the petitioner accordingly submits that*

petitioner is equally circumstanced and is also entitled to the relief as extended to the petitioner of Service Single No. 32394 of 2019.

4. Shri Chandan Kumar, learned Standing Counsel, in opposition, to the writ petition submits that the claim of the writ petitioner for maternity leave has been turned down as the same is not admissible on the ground that period of two years has not elapsed from the date of expiry of the last maternity leave granted to the petitioner under the proviso of Rule 153 (1) of Chapter XIII of U.P. Fundamental Rules in Financial Handbook Volume-II, Part 2 to 4. He further submits that the controversy involved in the present writ petition has been settled by a co-ordinate Bench of this Court in the case of Renu Chaudhary versus State of U.P. and others reported in 2022 (2) ADJ 14 wherein the Court has proceeded to hold that the petitioner therein who is an Assistant Teacher employed with an Institution established and maintained by the Uttar Pradesh Basic Education Board is governed by the Service Rules applicable to teachers of Primary Schools maintained by the Board and other Rules including rules that apply regarding grant of leave. An employee of the Institution run and managed by the U.P. Basic Education Board is not an employee of an establishment to which the Maternity Act applies. There is no conflict between the second proviso to Rule 153 of the Fundamental Rules and the Maternity Act which does not apply to the establishment of the Basic Education Board or the schools maintained by it. The restriction on the Right to Maternity Leave of a female Government servant with regard to the birth of her child would be reckoned with reference to the number of children living at the time she applies for maternity leave irrespective of the fact whether the two children living were born before or after she entered the Government Service. Shri Chandan Kumar thus prays that the petitioner herein is not entitled to claim parity to the decision passed in Service Single No. 32394 of 2019 and the writ petition is liable to be dismissed.

5. The rival contentions fall for consideration.

6. I have heard the learned counsel for the parties at length and have perused the record.

7. Learned counsel for the respondent has placed heavy reliance on the decision of the co-ordinate Bench of this Court in the case of Renu Chaudhary (supra) to non suit the petitioner. Having gone through the aforesaid decision, I find that the decision proceeds on the premise that the Maternity Benefit Act, 1961 is not applicable to the establishment of the Basic Education Board or the Schools maintained by it. The

decision further rules that there is clearly no conflict between the second proviso to Rule 153 of the Rules and the Maternity Benefit Act, 1961. Rather no question of any conflict with the Maternity Benefit Act, 1961 can be said to arise with the leave rules i.e. the Fundamental Rule 153 as the Maternity Benefit Act, 1961 is not applicable to the case of the petitioner. On the other hand, the learned counsel for the petitioner has placed reliance also upon a decision of a co-ordinate Bench of this Court passed in **Service Single 32394 of 2019 Smt. Richa Shukla (supra)** wherein the decision proceeds on the assumption that the Maternity Benefit Act, 1961 applies to the case of the petitioner and has an overriding effect in view of the Section 27 of the Maternity Benefit Act, 1961.

8. The moot question in the opinion of the Court is thus regarding the applicability of the Maternity Benefit Act, 1961 to the case of the petitioner. There is no dispute with regard to the applicability of the Fundamental Rules i.e. Rule 153 (1) of Chapter XIII of U.P. Fundamental Rules in Financial Handbook Volume-II, Part 2 to 4. The parties are at variance only with regard to the applicability of the Maternity Benefit Act, 1961.

9. In consonance with the provisions of Article 42 contained in Part IV of the Constitution of India, the Parliament has promulgated the Maternity Benefit Act, 1961. Since Article 42 specifically speaks of "just and humane conditions of work and maternity relief", the validity of an executive or administrative action in denying maternity benefit has to be examined on the anvil of Article 42 which, though not enforceable at law, is nevertheless available for determining the legal efficacy of the action complained of.

10. The provisions of Financial Handbook Volume II to IV on the other hand were made by the Governor in exercise of his powers under Section 241(2)(b) of the Government of India Act, 1935 and are continuing in force on the strength of the provisions contained in Article 13 of the Constitution of India. The Financial Handbook contains rules which governed the services of the person serving in connection with the affairs of a province, and are at best in the nature of executive instructions, and are clearly not in the category of "an enactment" made by the legislature.

11. To attract the provisions of Article 254 of the Constitution the first requirement is that both the laws should be enactments of the respective legislatures, that is, one of the laws should be a enactment of the Parliament while the second should be a law

made by the State legislature. The Maternity Benefit Act 1961 has been enacted by the Parliament while the provisions of the Financial Handbook Volume II to IV are at best executive instructions.

12. The Supreme Court in the case of **Municipal Corpn. of Delhi v. Female Workers (Muster Roll)**, (2000) 3 SCC 224 has looked into the various provisions of the Constitution for the finding the source and power to legislate with respect to the Maternity Benefit Act, 1961, and observed as under:-

"12.6. Not long ago, the place of a woman in rural areas had been traditionally her home; but the poor illiterate women forced by sheer poverty now come out to seek various jobs so as to overcome the economic hardship. They also take up jobs which involve hard physical labour. The female workers who are engaged by the Corporation on muster roll have to work at the site of construction and repairing of roads. Their services have also been utilised for digging of trenches. Since they are engaged on daily wages, they, in order to earn their daily bread, work even in an advanced stage of pregnancy and also soon after delivery, unmindful of detriment to their health or to the health of the new-born. It is in this background that we have to look to our Constitution which, in its Preamble, promises social and economic justice. We may first look at the fundamental rights contained in Part III of the Constitution. Article 14 provides that the State shall not deny to any person equality before law or the equal protection of the laws within the territory of India. Dealing with this article vis-a-vis the labour laws, this Court in **Hindustan Antibiotics Ltd. v. Workmen** [AIR 1967 SC 948 : (1967) 1 SCR 652 : (1967) 1 LLJ 114] has held that labour to whichever sector it may belong in a particular region and in a particular industry will be treated on equal basis. Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Clause (3) of this article provides as under:

"15. (3) Nothing in this article shall prevent the State from making any special provision for women and children."

7. In **Yusuf Abdul Aziz v. State of Bombay** [AIR 1954 SC 321 : 1954 SCR 930] it was held that Article 15(3) applies both to existing and future laws.

8. From Part III, we may shift to Part IV of the Constitution containing the Directive Principles of State Policy. Article 38 provides that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social

order in which justice, social, economic and political shall inform all the institutions of the national life. Sub-clause (2) of this article mandates that the State shall strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities.

9. Article 39 provides, *inter alia*, as under:

"39. Certain principles of policy to be followed by the State.--

The State shall, in particular, direct its policy towards securing--

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

*(b)-(c)****

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

*(f) ***"*

10. Articles 42 and 43 provide 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.

43. Living wage, etc., for workers.--The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas."

11. It is in the background of the provisions contained in Article 39, specially in Articles 42 and 43, that the claim of the respondents for maternity benefit and the action of the petitioner in denying that benefit to its women employees has to be

scrutinised so as to determine whether the denial of maternity benefit by the petitioner is justified in law or not.

12. Since Article 42 specifically speaks of "just and humane conditions of work" and "maternity relief", the validity of an executive or administrative action in denying maternity benefit has to be examined on the anvil of Article 42 which, though not enforceable at law, is nevertheless available for determining the legal efficacy of the action complained of.

13. Parliament has already made the Maternity Benefit Act, 1961. It is not disputed that the benefits available under this Act have been made available to a class of employees of the petitioner Corporation. But the benefit is not being made available to the women employees engaged on muster roll, on the ground that they are not regular employees of the Corporation. As we shall presently see, there is no justification for denying the benefit of this Act to casual workers or workers employed on daily-wage basis.

13. Apart from the provisions contained in the Chapter IV of the Constitution of India it is also noticed that entry 24 of List III of VII Schedule specifically provide for maternity benefits for ready reference entry 24 is as under:-

"24. welfare of labour including conditions of work, Provident fund employers liability workmen's compensation, invalidity and old age pension and maternity benefit."

14. In light of the above, this Court is of the considered opinion that the Maternity Benefit Act 1961 has been enacted by the Parliament on a subject which finds mention in entry 24 of list III, and it was totally within its competence to make such an enactment. Even if the State legislature were to make such a law, overriding the provisions contained in the Maternity Benefit Act then the said Act would be reserved for accent of the President and would be enforceable only after obtaining such an accent as provided in article 254 (2) of the Constitution of India. 15. In order to appreciate the respective contentions of the learned counsel for the parties, it would be apt to reproduce the relevant provisions of the Maternity Benefit Act, 1961 as also the relevant provisions of the Financial Handbook, particularly, Rule 153 which are as under:

Section 3(h) of 1961 Act "maternity benefit" means the payment referred to in

subsection (1) of section 5. Section 5 of 1961 Act reads as under:-

"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.

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

Provided that the qualifying period of [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.

(3) The maximum period for which any woman shall be entitled to maternity benefit shall be [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]"

16. Section 6 of 1961 Act reads as under:-

"6. Notice of claim for maternity benefit and payment thereof.-

(1) Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in such form as may be prescribed, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.

(2) In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery.

(3) Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.

(4) On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.

(5) The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof as may be prescribed that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed that the woman has been delivered of a child.

(6) The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Act if she is otherwise entitled to such benefit or amount and in any such case an Inspector may either of his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order.

17. Section 27 of 1961 Act reads as under:-

27. Effect of laws and agreements inconsistent with this Act.- (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act: Provided that where under any such award, agreement, contract of service or otherwise, a woman is entitled to benefits in respect of any matter which are more favourable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that she is entitled to receive benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed to preclude a woman from entering into an agreement with her employer for granting her rights or privileges in respect of any matter which are more favourable to her than those to which she would be entitled under this Act.

18. Section 28 of 1961 Act reads as under:-

"Power to make rules.- (1) The appropriate Government may, subjected to the condition of previous publication and notification in the Official Gazette, make rules for carrying out the purposes of this Act.

19. Rule 153 of the Fundamental Rules

"153. Maternity leave on full pay which a female government servant, whether permanent or temporary, may be drawing on the date or proceeding on such leave may be granted to her by the head of the department or by a lower authority to whom power may be delegated in this behalf subject to the following:--

(1) In cases of confinement the period of maternity leave may extend up to the end of three months from the date of the commencement of leave:

Provided that such leave shall not be granted for more than three times during the entire service including temporary service:

Provided also that if any female government servant has two or more living children, she shall not be granted maternity leave even though such leave may otherwise be admissible to her. If, however, either of the two living children of the female

government servant is suffering from incurable disease or is disabled or crippled since birth or contracts some incurable disease or becomes disabled or crippled later, she may, as an exception, be granted maternity leave till one more child is born to her subject to the overall restriction that maternity leave shall not be granted for more than three times during the entire service.

Provided further that no such leave shall be admissible until a period of at least two years has elapsed from the date of expiry of the last maternity leave granted under this rule.

(2) In cases of miscarriage, including abortion, the period of maternity leave may extend up to a total period of six weeks on each occasion, irrespective of the number of surviving children of the female Government servant concerned, provided that the application for leave is supported by a certificate from the Authorised Medical Attendant:

NOTE--(1) Deleted.

NOTE--(2) In the case of a person to whom the provisions of Employees. State Insurance Act, 1948, apply, leave salary payable under this rule shall be reduced by the amount of benefit admissible under the said Act for the corresponding period.

NOTE--(3) Abortion induced under the Medical Termination of Pregnancy Act, 1971, should also be considered as a case of 'abortion' for the purpose of 'granting' 'Maternity leave' under this rule."

20. A perusal of Section 3(h) of 1961 Act, clearly reveals that maternity benefit means the payment referred to in sub-section (1) of Section 5 of 1961 Act. Section 5 of 1961 Act stipulates that every woman shall be entitled to and an employer shall be liable for the payment of maternity benefit at a certain rate. Sub-section (3) of Section 5 of 1961 Act provides that the maximum period for which any woman shall be entitled to maternity benefit shall be 26 weeks. Section 6 of 1961 Act provides that any woman employed in an establishment and entitled to any maternity benefit under the provisions of 1961 Act may give notice in writing to her employer stating that her maternity benefit be paid to her or to such person as she may nominate in the notice. Sub-section (4) of Section 6 of 1961 Act provides that on receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.

21. A perusal of the aforesaid provisions of 1961 Act thus indicate that a woman would be entitled to give notice in writing for grant of maternity benefit and on receipt of notice the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit. The 1961 Act does not contain any such stipulation of the time difference between grant of maternity benefit for the first and second child as stipulated in Rule 153 (1) of the Financial Handbook. Section 27 of 1961 Act categorically provides that the provisions of 1961 Act shall have effect notwithstanding anything inconsistent therewith contained in any other law whether made before or after coming into force of 1961 Act. The proviso to Section 27 of 1961 Act provides that in case a woman is entitled to benefits in respect of any matter which are more favourable to her than those to which she would be entitled under 1961 Act, the woman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that she would be entitled to receive benefits in respect of other matters under 1961 Act, meaning thereby that additional benefits that a woman would be entitled in terms of 7 agreement or contract of service would be admissible to her notwithstanding anything contained in 1961 Act. Thus, it is the additional benefits which have not been precluded but in case there is anything contrary or inconsistent to the provisions of 1961 Act pertaining to maternity benefit then it would be the 1961 Act which would be applicable."

22. So far as the applicability of the provisions of the Maternity Benefit Act, 1961 is concerned, a Division Bench of this Court in the case of **Dr. Rachna Chaurasiya versus State of U.P. and others [2017 (11) ADJ 399 (DB)]** while considering the grant of maternity leave/child care leave to a Doctor employed as Associate Professor in MLB Medical College, Jhansi in Para 23, 24 and 25 of the decision observed as under:-

"23. The aforesaid decision of the Central Government has been adopted by the State of U.P. for its employees vide Government Order dated 08.12.2008 and 24.03.2009. Subsequently, certain modifications being made by the Central Government, the same was also adopted by the State Government vide Government Order dated 11th April, 2011. The aforesaid Government Order is being reproduced hereunder. -

"प्रेषक,

वृन्दा सरूप, प्रमुख सचिव, उ०प्र० शासन।

सेवा में,

समस्त विभागाध्यक्ष एवं प्रमुख कार्यालयाध्यक्ष, उत्तर प्रदेश।

वित्त (सामान्य) अनुभाग-2 लखनऊ :

दिनांक 11 अप्रैल, 2011

विषय:- महिला सरकारी सेवकों को बाल्य देखभाल अवकाश की अनुमन्यता।

महोदय,

उपर्युक्त विषयक कार्यालय ज्ञाप संख्या-जी-2-2017/दस-2008-216-79, दिनांक 08-12-2008 तथा कार्यालय ज्ञाप संख्या जी-2-573/दस-2008-216-79, दिनांक 24-3-2009 द्वारा प्रदेश की महिला सरकारी सेवकों को केन्द्र सरकार की महिला कर्मचारियों की भांति बाल्य देखभाल अवकाश की सुविधा कतिपय शर्तों के अधीन प्रदान की गयी थी। चूंकि भारत सरकार द्वारा उक्त शर्तों में कतिपय संशोधन किए गए हैं अतः सम्यक् विचारोपरान्त श्री राज्यपाल महोदय संदर्भगत शासनादेशों में उल्लिखित शर्तों को निम्नवत् संशोधित करने की सहर्ष स्वीकृति प्रदान करते हैं:-

(1) संबंधित महिला कर्मचारी के अवकाश लेखे में उपार्जित अवकाश देय होते हुए भी बाल्य देखभाल अवकाश अनुमन्य होगा।

(2) बाल्य देखभाल अवकाश को एक कलेण्डर वर्ष के दौरान तीन बार से अधिक नहीं दिया जायेगा।

(3) बाल्य देखभाल को 15 दिनों से कम के लिए नहीं दिया जायेगा।

(4) बाल्य देखभाल अवकाश को साधारणतया परिवीक्षा अवधि के दौरान नहीं दिया जायेगा, ऐसे मामलों को छोड़कर जहाँ अवकाश देने वाला प्राधिकारी परिवीक्षार्थी की बाल्य देखभाल अवकाश की आवश्यकता के बारे में पूर्ण रूप से संतुष्ट न हो। इसे भी सुनिश्चित किया जायेगा कि परिवीक्षा अवधि के दौरान अवकाश दिया जा रहा है तो इस अवकाश की अवधि कम-से-कम हो।

(5) बाल्य देखभाल अवकाश को अर्जित अवकाश के समान माना जायेगा और उसी प्रकार से स्वीकृत किया जायेगा।

2- यदि किसी महिला कर्मचारी द्वारा दिनांक 08.12.2008 के कार्यालय ज्ञाप के जारी होने के पश्चात बाल्य देखभाल के प्रयोजन हेतु अर्जित अवकाश लिया गया है तो उसके अनुरोध पर उक्त अर्जित अवकाश को बाल्य देखभाल अवकाश में समायोजित किया जा सकेगा।

3- शासनादेश संख्या जी-2-2017/दस-2008-216-79, दिनांक 08-12-2008 तथा शासनादेश संख्या जी-2-573/दस-2009-216-79 दिनांक 24-03-2009 इस सीमा तक संशोधित समझे जायेंगे।

4- संगत अवकाश नियमों में आवश्यक संशोधन यथासमय किये जायेंगे।

भवदीया,

(वृन्दा सरूप)

प्रमुख सचिव, वित्त।"

24. From a perusal of the aforesaid Government Orders, it is clear that the State Government has adopted same policy as is enforced by the Central Government for grant of Maternity Leave as well as Child Care Leave to its employees.

25. Maternity benefit is a social insurance and the Maternity Leave is given for

maternal and child health and family support. On a perusal of different provisions of the Act, 1961 as well as the policy of the Central Government to grant Child Care Leave and the Government Orders issued by the State of U.P. adopting the same for its female employees, we do not find anything contained therein which may entitle only to women employees appointed on regular basis to the benefit of Maternity Leave or Child Care Leave and not those, who are engaged on casual basis or on muster roll on daily wage basis."

23. Then again a learned Single Judge in the case of Anshu Rani versus State of U.P. and 2 others, Writ-A No. 3486 of 2019 following the dictum of the Division Bench in the case of Dr. Rachana Chaurasiya (supra) in Para 13 of the decision observed as under:-

"13. The maternity leave is a social insurance. The maternity leave is given for maternal and child health and family support. From perusal of the different provisions of the Maternity Benefit Act, 1961 as amended in the year 2017 as well as the policy of the Central Government to grant child care leave and Government orders issued by the State Governments in the State of U.P. adopting the same for its female employees, I am of the firm opinion that the female employees of the State of U.P. are entitled for the benefits of the maternity leave as contained in the Maternity Benefit Act 1961 as amended by the Maternity Benefit (Amendment) Act, 2017."

24. Thus the State of U.P. in exercise of powers granted under Section 28 has already issued Government Order dated 8.12.2008 and 24.3.2009 adopting the provisions of the Maternity Benefits Act, 1961 for the benefit of its employees. Further, the modifications made by the Central Government have also been adopted by the State of U.P. in its Government Order dated 11.4.2011 reproduced hereinabove. Once the provisions of the Maternity Benefit Act, 1961 has been adopted by the State of U.P. as held by this Court then the said Act of 1961 would apply with full force irrespective of the provisions contained in the Financial Handbook which is merely an executive instruction and would in any case be subsidiary to the legislation made by the Parliament.

25. In conclusion it can safely be said that the Maternity Benefit Act, 1961 has been enacted by the Parliament in exercise of powers under Entry 24 in List-III of the Seventh schedule of the Constitution of India and to secure the goals stated in Articles 38, 39, 42 and 43 of the Constitution of India and also to give effect to the provisions contained in Article 15 (3) of the Constitution. The provisions of Financial Handbook

are merely executive instructions and would be subsidiary to the Act of the Parliament and in case of any inconsistency, the statutory enactment framed by the Parliament would prevail and hence, the provisions of the Maternity Benefit Act, 1961 would prevail over the provisions of the Financial Handbook and consequently, the provisions of Rule 153 (1) of the Financial Handbook Volume II to IV are read down with regard to the admissibility of leave to a women with regard to second pregnancy which would be governed by the Maternity Benefit Act, 1961 and not Rule 153 (1) of the Financial Handbook Volume II to IV. The State Government already having adopted the provisions of the Maternity Benefit Act, 1961 as recorded by the Division Bench of this Court and followed by the Single Bench in the case of Anshu Rani versus State of U.P. passed in Writ-A No. 3486 of 2019, it is clear that the provisions of the Maternity Benefit Act, 1961 would prevail over any law.

26. In the case at hand the maternity leave so applied by the petitioner has been rejected simply by stating "Anumanya Nahi". Learned counsel for the respondents has submitted that the petitioner is not entitled to the maternity leave in terms of the restriction imposed by the second proviso of Rule 153(1) of the Financial Handbook to the effect that second maternity leave cannot be granted where there is difference of less than two years between the end of the first maternity leave and grant of second maternity leave. Admittedly, the first maternity leave of the petitioner was availed and she gave birth to a male child on 4.1.2021. The petitioner became pregnant again and applied again for maternity leave on 11.6.2022. The second maternity leave to the petitioner has been refused by the impugned order. However, once the 1961 Act does not contain any such stipulation, the Basic Education Officer manifestly erred in rejecting the leave to the petitioner more particularly when Section 27 of the 1961 Act provides that it is the 1961 Act which would be applicable notwithstanding anything in consistent contained in any other law or contract of service.

27. In the light of the above discussion, the writ petition is allowed. The order impugned dated 23.6.2022 in the writ petition is set aside. The District Basic Education Officer concerned is directed to pass appropriate orders for sanctioning the maternity leave to the petitioner within a period of two weeks from the date of service of certified copy of the order upon him. "

7. Accordingly, the writ petition is being decided in the following terms.-

(a) the order dated 23.12.2025 passed by Director (Nursing), Medical &

Health Services, U.P., Lucknow, second respondent is set aside; (b) matter stands remitted back to the authority to pass a fresh order within a period of two months.

8. With the aforesaid observations, the writ petition stands disposed of.

(Vikas Budhwar,J.)

January 22, 2026
Rajesh