



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 15769/2016

Minakshi Chaudhary D/o Gopi Lal, aged about 27 years, R/o Village and Post Khareda, Tehsil Todabhim, District Karauli.

----Petitioner

Versus

1. Rajasthan State Road Transport Corporation, Parivahan Marg, Chomu House, Jaipur through its Managing Director.
2. The Chief Manager, Rajasthan State Road Transport Corporation, Tonk Depot, Tonk.

----Respondents

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For Petitioner(s)	:	Mr. Ram Pratap Saini Mr. Aamir Khan
For Respondent(s)	:	Mr. Puneet

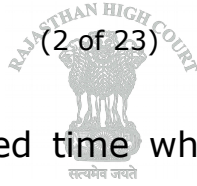
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**HON'BLE MR. JUSTICE ANOOP KUMAR DHAND**

**Order**

Reserved on	28/08/2024
Pronounced on	05 /09/2024
Reportable	

1. Motherhood is one of the most profound and rewarding experiences in a woman's life. It is a blessing that transcends societal boundaries, cultural norms and professional roles. Motherhood is not only a biological process, but also an emotional, psychological and social journey that reshapes a woman's identity.
  2. Ensuring the health of both the mother and her newborn is vital, not just for the child's development but for the nation's future. Today's children will drive tomorrow's progress. If they are not nurtured in a healthy environment and given proper care, the promise of a brighter future remains elusive. Denying essential benefits to mothers and their infants equates to denying the nation its potential.
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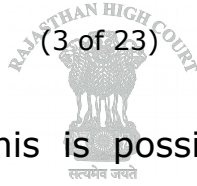


3. Pregnancy is a sacred time when a mother and her child bonds while the child is developing, but this extends far beyond that. The journey from pregnancy to motherhood is something that every new mother wants to cherish.

4. The period of pregnancy and the early years of parenthood are critical for both mother and the child. During this period, women need adequate rest, medical care and emotional support to ensure their good health and well-being, as well as that of their newborn.

5. The physical demand of pregnancy and child birth, coupled with the responsibilities of carrying a newborn, necessitates a period of leave from professional duties. This leave allows women to focus entirely on their health and development of their children, free from the pressure of work. For this reason, Maternity Leave is not just a benefit but a right that supports the fundamental need of a woman to take care of her family. Whatever is needed to facilitate the birth of a child to a woman, who is in service, the employer must provide, for women to effectively balance their reproductive and maternity roles. The employer must realize the 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.

6. Pregnancy and childbirth are crucial phases in a woman's life. To support working women during this time, the Indian Government and the State Government has put in place a Maternity Leave policy that allows the expecting mothers to receive pay during Maternity Leave. The care that Indian mothers receive before and after they have a child, is ingrained in our Indian culture. Therefore, it makes sense to have the same care,



even at the workplace. This is possible only when proper and adequate Maternity Leave is allowed to the mothers enabling them to focus on their family by taking some time off/ leave from work.

7. Maternity Leave safeguards and protects the interest and livelihood of such mothers, allowing them to nurture their newborns while taking care of themselves. Such leave ensures the holistic well-being of the mother and their babies. The "*Right to Payment in Maternity Benefit*" refers to the entitlement of a pregnant woman to receive financial compensation or benefits when they are unable to work due to pregnancy and immediately after child birth. This right ensures that women can take time off/leave from work to recover from child birth and care for their newborn without facing financial hardships.

8. The Maternity Benefits Act, 1961 (for short, 'the Act of 1961') was enacted by the Law Makers to regulate the employment of women in certain establishments for certain periods i.e. before and after child-birth, by providing them maternity benefits along with certain other benefits. As per Section 5 of the said Act (before 2017), a woman could take twelve weeks of leave before and after delivery. On the basis of the above provision of the Act of 1961, the respondent-Rajasthan State Road Transport Corporation (for short, 'RSRTC') incorporated the provision for 90 days of Maternity Leave for its women employees under Regulation 74 of the RSRTC Employees Service Regulations, 1965 (for short, 'the Regulations of 1965').

9. The petitioner, while working on the post of Conductor became pregnant, applied for grant of Maternity Leave and consequently 90 days of Maternity Leave was granted to her, as per the Regulations of 1965. The petitioner has approached this





Court for issuing direction to the respondents to grant her 180 days of Maternity Leave.

10. Counsel for the petitioner submits that the petitioner was appointed on the post of Conductor and during the course of her employment, she became pregnant and delivered a child and after the birth of her child, she submitted an application seeking Maternity Leave of 180 days. Counsel submits that in spite of requesting for 180 days of Maternity Leave, the respondents have sanctioned only 90 days of Maternity Leave to the petitioner. Counsel submits that in all other services, the similarly situated employees are granted 180 days of Maternity Leave but without any basis, discrimination has been caused to the petitioner and only 90 days of Maternity Leave have been granted to her. Counsel submits that under these circumstances, appropriate direction be issued to the respondents to grant 180 days of Maternity Leave to the petitioner. In support of his contentions, he has placed reliance upon the following judgments passed by this Court:-

- (1) **Laxmi Devi Vs. State of Rajasthan and Ors.** (S.B. Civil Writ Petition No. 1373/2010)
- (2) **Meenakshi Rao Vs. The State of Rajasthan and Ors.** (S.B. Civil Writ Petition No. 1598/2017)
- (3) **Reena Singla Vs. State of Punjab and Ors.** (CWP No. 5142/2013)

11. Per contra, learned counsel for the respondents opposed the arguments raised by counsel for the petitioner and submitted that as per the Regulation 74 of the Regulation of 1965, petitioner is entitled to get the Maternity Leave of 90 days only, hence, the respondents have not caused any illegality in not granting 180 days of Maternity Leave to the petitioner. Counsel submits that



under these circumstances, the petitioner is not entitled to get the benefit of 180 days of Maternity Leave and the petition is liable to be rejected.

12. Heard and considered the submissions made at Bar and perused the material available on record.

13. As per the order dated 22.09.1977 issued by the respondents under the Regulation of 1965, the women employees working at RSRTC are entitled to twelve weeks of Maternity Leave, in pursuance of the amended provisions of the Act of 1961. While as per Regulation 74 of the Regulations of 1965, Maternity Leave may be allowed on full pay/wages for a period which may extend upto a period of 90 days. Meaning thereby, a woman employee working with RSRTC is entitled to the Maternity Leave for a maximum period of 90 days.

14. As per Regulation 74 of the Regulations of 1965, the petitioner is entitled to get 90 days of Maternity Leave whereas she has raised her claim for grant of 180 days of Maternity Leave. Now the legal issue which emerges for consideration before this Court is "whether a woman employee, like the petitioner, working at RSRTC is entitled to get 180 days of Maternity Leave or not?"

15. The only difficulty before the respondents is Regulation 74 of the Regulations of 1965 which provides for a maximum period of 90 days of Maternity Leave. For ready reference Regulation 74 is reproduced as under:-

"74 The competent authority may grant Maternity Leave to a woman employee of the Corporation thrice during the entire service period. However, if there is no surviving child even after availing of it thrice, maternity leave may be granted on one more occasion.





Maternity leave may be allowed on full pay/wages for a period which may extend upto a period of 90 days from the date of its commencement."

16. It appears that one more Standing Order No. 1192 was issued in the year 1977 by the respondents on the basis of the provisions under the Act of 1961, which provides for a ceiling limit of twelve weeks of Maternity Leave to women employees.

17. Later on, the report of Fifth Central Pay Commission was submitted in January 1997, looking to the widely raised demand to increase the period of Maternity Leave to six months from 90 days. Hence, a recommendation was made that the Maternity Leave may be enhanced to 135 days, and accordingly, Rule 103 of the Rajasthan Service Rules 1951 (for short, 'the RSR') and Rule 43 (ii) of the Central Civil Services (Leave) Rules 1972 (for short, 'CCS Rules') were amended and the ceiling limit of Maternity Leave was extended to 135 days.

18. Then again, another recommendation was made in March 2008, at the time of submission of the Report of Sixth Pay Commission, for increasing the Maternity Leave of 135 days to 180 days and accordingly, the provisions regarding Maternity Leave were amended under Rule 103 of the RSR for women employees working under the department of State Government and the same Maternity Leave of 180 days was kept under the amended provisions of Rule 43(1) of the CCS Rules.

19. For ready reference, Rule 103 of the RSR is reproduced as under:-

"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.”

20. Similarly, Rule 43 (1) of the CCS Rules lays down the provisions for 180 days of Maternity Leave for a female Government employee. Rule 43 (1) of CCS Rules reads as under:-

“Rule 43 (1) A female Government servant (including an apprentice) with less than two surviving children may be granted maternity leave by an authority competent to grant leave for a period of [180 days] from the date of its commencement.

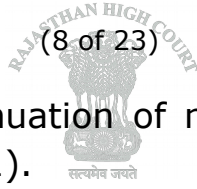
(2) During such period, she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

NOTE:- In the case of a person to whom Employees' State Insurance Act, 1948 (34 of 1948), applies, the amount of leave salary payable under this rule shall be reduced by the amount of benefit payable under the said Act for the corresponding period.

(3) Maternity leave not exceeding 45 days may also be granted to a female Government servant (irrespective of the number of surviving children) during the entire service of that female Government in case of miscarriage including abortion on production of medical certificate as laid down in Rule 19: Provided that the maternity leave granted and availed of before the commencement of the CCS (Leave) Amendment Rules, 1995, shall not be taken into account for the purpose of this sub-rule.]

(4) (a) Maternity leave may be combined with leave of any other kind.(b) Notwithstanding the requirement of production of medical certificate contained in sub-rule (1) of Rule 30 or sub-rule (1) of Rule 31, leave of the kind due and admissible (including commuted leave for a period not exceeding 60 days and leave not due) up to a maximum of 3[two years] may, if applied for, be





granted in continuation of maternity leave granted under sub-rule (1).

(5) Maternity leave shall not be debited against the leave account."

21. The Law Commission of India while submitting its 259<sup>th</sup> Report, made strong recommendation to amend the Act of 1961 and suggested that the same be amended in accordance with the progressive provisions of the CCS Rules and Maternity Leave be increased from 12 weeks to 180 days. The Law Commission was of the view that the provisions of Maternity Leave should be made obligatory on the State and must not be left to the will of the employers. Moreover, the provisions of Maternity Leave should accrue to all women including women working in the unorganized sector and private sectors as well. Hence, it was realized by the Legislators that Maternity Leave of twelve weeks for female employees is not adequate or enough for the working women in different establishments, hence, the same was increased and enhanced to 26 weeks vide the Maternity Benefit (Amendment) Act, 2017 dated 27.03.2017. Section 5(3) of the Act of 1961 was amended as under:-

"(3)(i) For the words "twelve weeks of which not more than six weeks" the words "twenty six" of which not more than eight weeks shall be substituted."

22. Furthermore, in the case of **Municipal Corporation of Delhi v. Female Workers (Muster Roll) & Anr., reported in (2000) 3 SCC 224**, the Hon'ble Supreme Court, while directing Delhi Municipal Corporation to extend benefits as contemplated by the Act of 1961 to its muster-roll women employees also and not just to its regular employees, invoked *Doctrine of Social Justice* and Article 11 of UN Convention on the Elimination of all Forms of Discrimination against Women to hold that the Act of 1961







postulate such benefit to all women employees. 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 [AIR 1958 SC 30 : 1958 SCR 651 : (1958) 1 LLJ 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 [AIR 1964 SC 737 : (1964) 3 SCR 724 : (1963) 2 LLJ 436] Gajendragadkar, J., (as his Lordship then was), speaking for the Court, said:

"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 approach and refuses to yield blindly to





abstract notions, but adopts a realistic and pragmatic approach. सत्यमेव जयते

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.

...

37. Delhi is the capital of India. No other city or corporation would be more conscious than the city of Delhi that India is a signatory to various international covenants and treaties. The Universal Declaration of Human Rights, adopted by the United Nations on 10-12-1948, set in motion the universal thinking that human rights are supreme and ought to be preserved at all costs. This was followed by a series of conventions. On 18-12-1979, the United Nations adopted the "Convention on the Elimination of all





Forms of Discrimination against Women". Article 11 of this Convention provides as under:

"Article 11

1. States/parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) the right to work as an inalienable right of all human beings;

(b) the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States/parties shall take appropriate measures:

(a) to prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of





maternity leave and discrimination in dismissals on the basis of marital status;

(b) to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) to provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary."

38. These principles which are contained in Article 11, reproduced above, have to be read into the contract of service between the Municipal Corporation of Delhi and the women employees (muster roll); and so read these employees immediately become entitled to all the benefits conceived under the Maternity Benefit Act, 1961."

23. The aforesaid judgment passed by the Hon'ble Supreme Court in Female Workers (Muster Roll) case sparked a significant response across the country, prompting several Courts to grant benefits to working women who had previously been denied relief on technical grounds. The findings of Hon'ble Supreme Court related to the connection between the intent and objectives of the Constitution's framers in providing liberty, freedom and rights to its citizens—specifically women—and the benefits they are entitled

to under the Act of 1961. This judgment paved the way for





equitable rights for women employees regarding Maternity Leave, regardless of the nature of their employment. It was emphasized that the language of the Act of 1961 should not be interpreted narrowly to apply only to women employed in industries but should also be extended to women working in both the organized and unorganized sectors. The judgment passed by the Hon'ble Supreme Court still holds the field.

24. In the case of **B. Shah vs. Presiding Officer, Labour Court, Coimbatore and others**, reported in **(1977) 4 SCC 384**, the question which emerged for consideration before the Hon'ble Supreme Court was whether for calculating the maternity benefit, for the period covered by Section 5, Sundays being wage-less holiday should be excluded or not. The Hon'ble Apex Court while holding that Sundays must also be included, applied the beneficial rule of construction in favour of the woman worker and observed that the benefit, conferred by the 1961 Act, read in the light of the Article 42 of the Constitution, was intended to 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. The Hon'ble Apex Court in para 18 of the judgment held as follows:-

"18. Bearing in mind the above mentioned dictionary or popular meaning of the term "week", we think that in the context of sub-sections (1) and (3) of Section 5 of the Act, the term has to be taken to signify a cycle of seven days including Sundays. The language in which the aforesaid sub-sections are couched also shows that the Legislature intended that computation of maternity benefit is to be made for the entire period





of the woman worker's actual absence i.e. for all the days including Sundays which may be wageless holidays falling within that period and not only for intermittent periods of six days thereby excluding Sundays falling within that period for if it were not so, the Legislature instead of using the words "for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day" would have used the words "for the working days falling within the period of her actual absence immediately preceding and including the day of her delivery and the six weeks immediately following that day but excluding the wageless days". Again the word "period" occurring in Section 5(1) of the Act is a strong word. It seems to emphasise, in our judgment, the continuous running of time and recurrence of the cycle of seven days. 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."

25. In the case of **Bandhua Mukti Morcha v. Union of India**, reported in (1984) 3 SCC 161, the Hon'ble Supreme Court while dealing with a complaint made on behalf of the women complaining violation of their human rights on being forced to serve as bonded labourers held that Maternity relief is a fundamental right under Article 21 of the Constitution, which is founded upon the





Directive Principles of State Policy, particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 of the Constitution of India. The Hon'ble Apex Court in para 10 of the judgment observed as follows:-

*"10. ...This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State — neither the Central Government nor any State Government — has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of State policy contained in clauses (e) and (f) of Article 39, Articles 41 and 42 are not enforceable in a Court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity but where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21,*





*more so in the context of Article 256 which provides that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State."*

26. In the case of **Swornalata Dash v. State of Odisha & Ors**, reported in **2023 SCC Online Ori 5095**, the Orissa High Court, while holding held that the Maternity Leave being in the nature of a fundamental right of a female employee cannot be denied under any circumstances observed as follows:-

"7. Undisputedly, the Institution in question namely, Practicing Girls' High School, Fakirpur, Keonjhar is an Aided Educational Institution within the meaning of Section 3(b) of the Orissa Education Act, 1969. The Institution has also been declared eligible under the GIA Order, 1994 followed by the GIA Order, 2013. The Opposite Parity-authorities in answering the averments of the Writ Petition have referred to the provisions of the two Grant-in-orders referred to above. But then the said orders relate to different provisions regarding payment of grant-in-aid and not to matters concerning leave of the employees of the institutions. The Opposite Party No. 3 has also referred to Rules, 1974 as being silent regarding sanction of maternity leave to employees of Block Grant Institution. But maternity leave cannot be compared or equated with any other leave as it is the inherent right of every woman employee which cannot simply be denied on technical grounds. It would be preposterous to hold otherwise as it would militate against the very process designed by nature. If a woman employee is denied this basic human right it would be an assault on her dignity as an individual and thereby offend her fundamental right to life guaranteed under







Article-21 of the Constitution, which has been interpreted to mean life with dignity. In this context, the following observations of the Apex Court in the case of Municipal Corporation of Delhi v. Female Workers (Muster Roll) (supra) are highly relevant;

“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 phenomena 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 work place 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.”

8. Even though said observations were made keeping the provisions of the Maternity Benefit Act, 1961 in view, they would be equally applicable to women employees to whom the Act does not apply. The Apex Court has also referred to the Directive Principles of State Policy as set out under Article 39 and in other Articles, specially Article 42. Articles 39 and 42 are quoted herein below;





9. For the foregoing reasons therefore, this Court holds that the refusal by the authorities to sanction maternity leave to the Petitioner is contrary to law and therefore, cannot be sustained."

27. In the case of **Chanda Keswani v. State of Rajasthan**, reported in **2023 SCC Online Raj 3274**, this Court, while dealing with the issue as to whether denying Maternity Leave to surrogate mothers amounts to violation of Right to Life under Article 21 of the Constitution of India, unequivocally held that right to life contained under Article 21 of the Constitution of India includes the right of motherhood and the right of the child to get love, bond of affection and full care and attention. The extract of the judgment relevant for the present controversy is reproduced as follows:-

"28. *In view of the aforesaid legal analysis, it is ipso facto clear that no distinction can be made by the State Government to a natural mother, a biological mother and a mother who has begotten a child through surrogacy method. Because the right to life contained under Article 21 of the Constitution of India includes the right of motherhood and the right of the child to get love, bond of affection and full care and attention. Therefore, the action of the State-respondent is quite unjustified in denying maternity leave to the surrogate mother (the petitioner) for taking care of her twins born through surrogacy method. Making a difference between natural biological mother and surrogate/commissioning mother would amount to insult of motherhood. A mother cannot be discriminated, as far as maternity leave is concerned, only because she begot the child through the process of surrogacy. Newly born babies through this process cannot be left at the mercy of others, as these infants need love, care, protection and attention of mother during the early crucial time after*





their birth i.e. infancy, as the bond of love and affection develops between the mother and children during this period after birth."

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 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 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).

36. In view of the discussions made herein above, it is held that the petitioner is entitled to 180 days of Maternity Leave like the other female employees working under the Service Rules, applicable to the State and Central Government services and to woman employee, falling under the purview of Maternity Benefit (Amendment) Act, 2017.

37. The instant writ petition accordingly stands allowed. The respondents are directed to grant 180 days of Maternity Leave, in terms of the Maternity Benefits (Amendment) Act, 2017, to the petitioner after adjusting 90 days of Maternity Leave, with all consequential benefits within a period of three months from the date of receipt of the certified copy of this order. If grant of enhanced 90 days of Maternity Leave is not feasible due to lapse of time, the respondents are directed to additionally pay 90 days salary to the petitioner, as compensation.

38. Stay application and all pending application(s), if any, also stand disposed of.

39. Before parting with the order, it is suggested and recommended to the respondent-RSRTC to bring suitable amendment in Regulation 74 of the Regulations of 1965 and increase 90 days of Maternity Leave to 180 days, keeping in view the amended provisions of Section 5(3) of the Maternity Benefits (Amendment) Act, 2017.

40. A general mandamus is issued to the Government of India Ministry of Personal, Public Grievances and Pension through its





Secretary and to the Government of Rajasthan through Chief Secretary of the State, to issue necessary orders and instructions to all Unrecognized and Private Sectors to make suitable amendments in their provisions for grant of 180 days of Maternity Leave to the female employees working under such sectors.

41. Let a copy of this order be sent to the Secretary, Department/Ministry of Personal, Public Grievances and Pension, Government of India, New Delhi; the Chief Secretary of the State of Rajasthan and the Managing Director-RSRTC for necessary compliance.

**(ANOOP KUMAR DHAND),J**

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