

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.101 of 2017

Devshree Bandhe, W/o Dinesh Kumar Bandhe, aged about 29 years, R/o CSEB Korba (East), District Korba (C.G.)

---- Petitioner

Versus

1. Chhattisgarh State Power Holding Company Limited (A Government of Chhattisgarh Undertaking, A successor company of CSEB), through its Chairman, Chhattisgarh State Power Holding Company Limited, Danganiya, Raipur, District Raipur (C.G.)
2. Chhattisgarh State Power Generation Company Limited, (A Government of Chhattisgarh Undertaking, A successor company of CSEB), through its Chairman, Chhattisgarh State Power Generation Company Limited, Danganiya, Raipur, District Raipur (C.G.)
3. Chief Engineer (HR), Chhattisgarh State Power Generation Company Limited, Danganiya, Raipur, District Raipur (C.G.)
4. Superintending Engineer, Human Resources Department, Chhattisgarh State Power Holding Company Limited, Korba (East), Korba Thermal Power Plant, Korba (कोरबा ताप विद्युत गृह), District Korba (C.G.)
5. Deputy General Manager, Human Resources Department-2, Chhattisgarh State Power Holding Company Limited, Raipur, District Raipur (C.G.)

---- Respondents

For Petitioner:	Mr. Manoj Paranjpe, Advocate.
For Respondents:	Mr. B.D. Guru and Mr. Rajendra Tripathi, Advocates.
<i>Amicus Curiae:</i>	Mr. Ashish Surana, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

20/02/2017

1. Every child has a right to love and be loved and to grow up in

an atmosphere of love and affection and of moral and material security and this is possible only if the child is brought up in a family. The most congenial environment would, of course, be that of the family of his biological parents.

2. The above-stated observation made by P.N. Bhagwati, J, speaking for the Supreme Court in the matter of **Lakshmi Kant Pandey v. Union of India**¹ aptly and squarely applies to the facts of the present case, as maternity leave sought for by the petitioner for upbringing of a newly born child has been declined by the respondent authorities.
3. The distinguished question of law that has cropped-up for consideration is whether a female Government servant/ mother appointed on contingency basis is entitled to avail maternity leave under Rule 38 of the Chhattisgarh Civil Services (Leave) Rules, 2010 (for short 'the Rules of 2010').
4. The above-stated question of law arises in this petition on the following factual backdrop: -
5. The petitioner's land was subjected to compulsory acquisition by the Chhattisgarh State Power Holding Company Limited and as per the rehabilitation policy, the petitioner was appointed on the post of Office Assistant for two years on probation (contingency) with all dearness allowance and other allowances by order dated 5-7-2011. The petitioner

1 (1984) 2 SCC 244

was first blessed with a son in the year 2015 for which she claimed maternity leave which was declined by referring to a notification dated 4-8-2011 which the petitioner was advised not to challenge. Thereafter, when she was blessed with second male baby on 7-10-2016 in Nav Jeevan Nursing Home, Korba, she again moved an application for grant of maternity leave in accordance with Rule 38 of the Rules of 2010 and that application has been rejected vide order Annexure P-1 dated 5-11-2016 holding that according to the existing rules i.e. the Rules of 2010 read with notification dated 4-8-2011, contingency paid employees are not entitled to be considered for extension of the benefit of maternity leave. Feeling aggrieved and dissatisfied with the order declining maternity leave, this writ petition under Article 226 of the Constitution of India has been preferred stating that the petitioner is a regular employee and the respondent Company is an authority of the State within the meaning of Article 12 of the Constitution of India and the petitioner is performing same duties and responsibilities which are being performed and undertaken by a regular employee and in fact, the petitioner is a regular employee and thus, the benefit of maternity leave cannot be denied to the petitioner and as such the order passed by the respondent Company is unsustainable and bad in law.

6. The respondent Company has filed return stating that by

virtue of the provisions contained in Rule 2(b) of the Rules of 2010, the provisions of the Rules of 2010 are not applicable to the petitioner who is a contingency paid employee. Therefore, the respondent Company is absolutely justified in rejecting the petitioner's application for grant of maternity leave.

7. Mr. Manoj Paranjpe, learned counsel for the petitioner, would submit that in the matter of grant of maternity leave, the respondent Company is not entitled to make discrimination between regular employee and contingency paid employee. The petitioner has been unreasonably denied the benefit holding her to be the contingency paid employee, whereas her land has been subjected to compulsory acquisition and in lieu of acquisition, under the rehabilitation policy, she has been given employment which is of permanent nature and in order to refuse such benefit, the shelter of sub-rule (b) of Rule 2 of the Rules of 2010 has been taken. He would further submit that in **Municipal Corporation of Delhi v. Female Workers (Muster Roll) and another**², the Supreme Court has clearly mandated that the muster roll female employees working in the Municipal Corporation of Delhi are entitled for the benefit of maternity leave under the provisions of the Maternity Benefit Act, 1961, as such merely on the ground of category of employee, the benefit of maternity

2 (2000) 3 SCC 224

leave cannot be denied in view of the constitutional provisions incorporated in Articles 15 (3) and 42 of the Constitution of India. Therefore, the impugned order deserves to be set aside.

8. I have heard learned counsel for the parties and considered their rival submissions and also gone through the documents available on record with utmost circumspection.

9. At this stage, it would be appropriate to notice certain constitutional provisions in this regard. Part-III of the Constitution provides for fundamental rights. Article 14 provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. 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 Article 15 provides as under: -

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

10. Their Lordships of the Supreme Court in the matter of **Hindustan Antibiotics Ltd. v. The Workmen**³ have held that the labour to whichever sector it may belong in a particular region and in a particular industry, will be treated on equal basis.

11. Part IV of the Constitution of India relates to Directive

³ AIR 1967 SC 948

Principles of State Policy. Article 38 of the Constitution 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. Article 39 provides 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 to livelihood;

(b) xxx xxx xxx

(c) xxx xxx xxx

(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) xxx xxx xxx"

Articles 42 and 43 of the Constitution 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 co-operative basis in rural areas."

12. Their Lordships of the Supreme Court in **Municipal Corporation of Delhi** (supra) had an occasion to consider as to whether female workers on muster roll are entitled for maternity benefit under the provisions of the Maternity Benefit Act, 1961 (for short 'the Act of 1961'). Their Lordships considered the issue in the light of the provisions contained in Articles 42 and 43 of the Constitution of India and also in view of Section 5 of the Act of 1961 and found that the provisions of the Act of 1961 are wholly in consonance with the Directive Principles of State Policy set out in Articles 39, 42 and 43 of the Constitution of India and muster roll / daily wage female workers are also entitled for maternity leave. Rejecting the plea of the Municipal Corporation of Delhi and emphasizing the relevance and significance of the doctrine of social justice as propounded by the Supreme Court in the matter of **Crown Aluminium Works v. Workmen**⁴, quoted with approval the following observations made by Gajendragadkar, J, in the matter of **J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. Labour Appellate Tribunal of India**⁵: -

"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

4 AIR 1958 SC 30

5 AIR 1964 SC 737

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."

13. Their Lordships while highlighting the importance of women in the Indian society have held that to become a mother is the most natural phenomenon in the life of a woman, and pertinently observed as under: -

"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 facilitates to which they are entitled. ..."

14. 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 serious 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) to (f) xxx xxx xxx

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."

(emphasis supplied)

15. The Supreme Court in Municipal Corporation of Delhi (supra) reading Article 11, reproduced above, into the contract of service between the Municipal Corporation of

Delhi and the women employees (muster roll) held them entitled for the benefits conceived under the Act of 1961.

16. It is well settled law that the rules and regulations in force have to be interpreted taking into account the development of medical science and the change in society and societal conditions. The Supreme Court in the matter of **Anuj Gang v. Hotel Association of India**⁶ has held that changed social psyche and expectations are important factors to be considered in the upkeep of law. Section 30 of the Punjab Excise Act, 1914 prohibited the employment of any man under the age of 25 years or any woman in any part of premises in which liquor or intoxicating drugs were consumed by the public. This law which may have been good having regard to the social conditions as they prevailed in the 20th Century, but having regard to the present social conditions and equality to sexes guaranteed under the Constitution, the same was declared invalid.

17. Principles of Statutory Interpretation (12th Edition 2010) in Chapter-4 by Justice G.P. Singh under the heading "Later Social, Political and Economic Developments and Scientific Inventions" states, as it is possible that in some special cases a statute may have to be historically interpreted "as if one were interpreting it the day after it was passed". But generally statutes are of the "always speaking variety" and

6 (2008) 3 SCC 1 para 9

the court is free to apply the current meaning of the statute to present day conditions⁷. There are at least two strands covered by this principle.

“The first is that courts must apply a statute to the world as it exists today. The second strand is that the statute must be interpreted in the light of the legal system as it exists today⁸. Reference to the circumstances existing at the time of the passing of the statute does not, therefore, mean that the language used, at any rate, in a modern statute, should be held to be inapplicable to social, political and economic developments or to scientific inventions not known at the time of the passing of the statute. “Legislative standards are generally couched in the terms which have considerable breadth. Therefore a statute may be interpreted to include circumstances or situations which were unknown or did not exist at the time of enactment of the statute⁹.”

18. The Rule of Dynamic Construction was held as under by the eminent Author:

"The question again is as to what was the intentions of the law makers: Did they intend as originalists may argue, that the words of the statute be given the meaning they would have received immediately after the statute's enactment or did they intend as dynamists may contend that it would be proper for the court to adopt the current meaning of the words? The courts have now generally leaned in favour of dynamic construction¹⁰. But the doctrine has also its limitations. For example it does not mean that the language of an old statute can be construed to embrace something conceptually different¹¹.

⁷ *R v. Ireland*, (1997) 4 All ER 225, p. 233 : (1997) 3 WLR 534 (HL) (LORD STEYN)

⁸ *McCartan Turkington Breen (a firm) v. Times Newspapers Ltd.*, (2000) 4 All ER 913, p. 926 (HL) (LORD STEYN)

⁹ *Senior Electric Inspector v. Laxminarayan Chopra*, AIR 1962 SC 159, p. 162 : 1962 (3) SCR 146

¹⁰ *Randal N. Grahm, A Unified Theory of Statutory Interpretation*, (2002) 23 Statute Law Review 91, p. 134

¹¹ *Birmingham City Council v. Oakley*, (2001) 1 All ER 385, p. 396 (HL)

The guidance on the question as to when an old statute can apply to new state of affairs not in contemplation when the statute was enacted was furnished by Lord Wilberforce in his dissenting speech in *Royal College of Nursing of the U.K. v. Dept. of health and Social Security*¹². Which is now treated as authoritative¹³. Lord Wilberforce said: “In interpreting an Act of Parliament it is proper, and indeed necessary, to have regard to the state of affairs existing, and known by Parliament to be existing, at the time. It is a fair presumption that Parliament’s policy or intention is directed to that state of affairs. Leaving aside cases of omission by inadvertence, this being not such a case when a new state of affairs, or a fresh set of facts bearing on policy, comes into existence, the courts have to consider whether they fall within the parliamentary intention. *They may be held to do so, if they fall within the same genus of facts as those to which the expressed policy has been formulated. They may also be held to do so if there can be detected a clear purpose in the legislation which can only be fulfilled if the extension is made.* How liberally these principles may be applied must depend on the nature of the enactment, and the strictness or otherwise of the words in which it has been expressed. The courts should be less willing to extend expressed meaning if it is clear that the Act in question was designed to be restrictive or circumscribed in its operation rather than liberal or permissive. They will be much less willing to do so where the new subject matter is different in kind or dimension from that for which the legislation was passed. In any even there is one course which the courts cannot take under the law of this country: they cannot fill gaps; they cannot by asking the question, ‘What would Parliament have done in this current case, not being one in contemplation, if the facts had been before it?’ attempt themselves to supply the answer, if the answer is not to be found in the terms of the Act itself¹⁴”.

As stated by Lord Bridge: “When a change in social conditions produces a novel situation,

¹² (1981) 1 All ER 545, pp. 564, 565 : (1982) AC 800 : (1981) 2 WLR 279 (HL)

¹³ *Fitzpatrick v. Sterling Housing Association Ltd.*, (1999) 4 All ER 705, pp. 710, 721, 739-740, 744 (HL)

¹⁴ Note 11, *supra*.

which was not in contemplation at the time when a statute is first enacted, there can be no *a priori* assumption that the enactment does not apply to the new circumstances. If the language of the enactment is wide enough to extend to those circumstances, there is no reason why it should not apply¹⁵.” Thus, when in the changed circumstances the common law fiction that by marriage the wife must be deemed to have irrevocably consented to sexual intercourse in all circumstances has become anachronistic, the husband can be convicted of rape under the Sexual Offences (Amendment) Act, 1976, if he was sexual intercourse with his wife without her consent¹⁶.

On the same principles, general words are construed to include new inventions and technological advances not known at the time when the Act was passed. It has, accordingly, been held that telephone is ‘telegraph’ within the meaning of that word in the telegraph Acts, 1863 and 1869 although telephone was not invented in 1869¹⁷; that a photographic copy is ‘copy’ under the Engraving Copyright Act, 1734¹⁸; and that an electric tram car is a stage carriage within the meaning of the Stage Carriage Act, 1832¹⁹. Similarly, ‘broadcasting’ has been held to be covered by the word ‘telegraph’ as used in the phrase ‘telegraph & other works and undertaking’ in section 92(1)(a) of the British North America Act, 1867²⁰; and radio broadcasting has been held to be included in the expression ‘postal, telegraphic, telephonic and other like services’ under section 51(5) of the Australian Constitution²¹. Following the same principle, it has been held by the Supreme Court that the definition of ‘telegraph line’ in the Indian telegraph Act, 1885, which is included by reference in the Indian Electricity Act, 1910, is wide enough to take in electric lines used for the purpose of

15 *Combel Commodities Ltd. v. Siporex Trade, SA* (1990) 2 All ER 552, p. 557

16 *R v. R (rape : marital exemption)*, (1991) 4 All Er 481 : (1992) 1 AC 599 : (1991) 3 WLR 767 (HL)

17 *A.G. v. Edison Telephone Co. of London*, (1880) 6 QBD 244

18 *Gambart v. Ball*, (1863) 32 LJCP 166

19 *Chapman v. Kirke*, (1948) 2 All ER 556

20 *In re, regulation and Control of Radio Communications in Canada*, (1932) AC 304 (PC)

21 *R v. Brislan, Ex parte, Williams*, (1935) 54 CLR 262

wireless telegraph²²; the definition of 'cinematograph' contained in section 2(e) of the Cinematograph Act, 1952 and in Cinema Regulation Acts enacted by the States in 1952 will cover video cassette recorders/players (developed in 1970s) for representation of motion pictures on a television screen²³; the word 'handwriting' in section 45 of the Evidence Act, 1872 will embrace typewriting although it was only in 1874 that the first practical typewriter was marketed²⁴ and evidence taken of a witness in America by video conferencing in India where the accused is being tried will satisfy the requirement of evidence taken in presence of the accused under section 273 of the Criminal Procedure Code enacted in 1973 when the technique of video conferencing had not developed²⁵. ..."

19. It was further stated in the above-stated celebrated text as under:-

"When the new technological advances becoming known after the passing of the statute fall within the same genus covered by it and when its purpose would be defeated unless extension were made, the court may even be willing to strain the language a bit to cover the new advances. On these considerations section 1(1) of the Human Fertilisation and Embryology Act, 1990 which defines 'embryo' to mean 'a live human embryo where fertilization is complete' was construed to cover even an embryo produced not by fertilization but by cell nuclear replacement (CNR), a method developed by scientists after 1990, by reading the definition of embryo to mean 'a live human embryo where if it is produced by fertilisation fertilisation is complete'²⁶.

Dealing with section 123 of the Indian Evidence Act, 1872, and the phrase 'affairs of the

²² *Senior Electric Inspector v. Laxminarayan Chopra (supra)*

²³ *Laxmi Video Theatres v. State of Haryana*, AIR 1993 SC 2328

²⁴ *State v. S.J. Choudhary*, 1996(2) Scale 37, pp. 40, 41 : AIR 1996 SC 1491, p. 1496 : (1996) 2 SCC 428 (para 16).

²⁵ *State of Maharashtra v. Dr. Praful B. Desai*, 2003 AIR SCW 1885 : (2003) 4 SCC 601 : AIR 2003 SC 2053

²⁶ *R (On the application of Quintavalle) v. Secretary of State for Health*, (2002) 2 All ER 625, pp. 633, 637 (CA)

State', Gajendragadkar, J. observed: "If may be that when the Act was passed, the concept of Governmental functions and their extent was limited; and so was the concept of the words 'affairs of the State' correspondingly limited; but as is often said, words are not static vehicles of ideas or concepts. As the content of the ideas or concepts conveyed by respective words expand, so does the content of the words keep pace with the said expanding content of the ideas or concepts and naturally tend to widen the field of public interest which the section wants to protect²⁷." Similarly while considering the word 'necessaries' in section 5 of the Admiralty Courts Act, 1861, Sinha J. observed: "Global changes and outlook in trade and commerce could be a relevant factor.- What was not considered a necessity a century back may be held to be so now²⁸."

A distinction is said to exist in this respect between ancient statutes and statutes which are comparatively modern. The principle is thus explained by Subbarao, J.: "It is perhaps difficult to attribute to legislative body functioning in a static society that its intention was couched in terms of considerable breadth so as to take within its sweep the future developments comprehended by the phraseology used. It is more reasonable to confine its intention only to the circumstances obtaining at the time the law was made. But in modern progressive society it would be unreasonable to confine the intention of a Legislature to the meaning attributable to the word used at the time the law was made, for a modern Legislature making laws to govern society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity. Indeed, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situation, if the words are capable of comprehending them²⁹."

²⁷ *State of Punjab v. Sodhi Sukhdev Singh*, AIR 1961 SC 493, p. 502

²⁸ *Liverpool and London SP&I Association v. M.V. Sea Success & Asso. Ltd.* (2004) 9 SCC 512 (para 65)

²⁹ *Senior Electric Inspector v. Laxminarayan Chopra*, AIR 1962 SC 159, p. 163

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

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

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

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

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

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

21. The above-stated provisions relating to grant of maternity benefit is benevolent and beneficial provision contained in the said Rule. It is well settled law of construction that in interpreting provisions of beneficial pieces of legislation, which is intended to achieve the social justice, must be construed beneficially. The Supreme Court in the matter of **B. Shah v. Presiding Officer, Labour Court, Coimbatore and others**³⁰ has held that beneficial construction to be

³⁰ 30 (1977) 4 SCC 384

extended to beneficial legislation like the Maternity Benefits Act which effectuates directive principles of state policy and observed as under: -

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

22. According to Shorter Oxford English Dictionary (Fifth Edition), "maternity" means (1) the quality or condition of being a mother; motherhood and (2) the qualities or conduct characteristic of a mother; motherliness. According to other Oxford English Dictionaries, "maternity" means motherhood.

23. According to Black's Law Dictionary (Eighth Edition), "maternity" means the state or condition of being a mother, especially a biological one; motherhood.

24. Maternity means the period during pregnancy and shortly after the child's birth. If maternity means motherhood, it would not be proper to distinguish between a natural and biological mother and a mother who has begotten a child through surrogacy. The object of maternity leave is to protect the dignity of motherhood by providing for full and healthy

maintenance of the woman and her child. Maternity leave is intended to achieve the object of ensuring social justice to women. Motherhood and childhood both require special attention. Not only are the health issues of the mother and the child considered while providing for maternity leave but the leave is provided for creating a bond of affection between the two.

25. Right to life under Article 21 of the Constitution of India includes the right to motherhood and also the right of every child to full development.

26. The Supreme Court in **Lakshmi Kant Pandey** (supra) while expanding the scope of right to life held that right to life includes the right to motherhood and also the right of every child to full development, and observed as under: -

"6. ... Children are a "supremely important national asset" and the future well-being of the nation depends on how its children grow and develop. The great poet Milton put it admirably when he said: "Child shows the man as morning shows the day" and the Study Team on Social Welfare said much to the same effect when it observed that "the physical and mental health of the nation is determined largely by the manner in which it is shaped in the early stages". The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into fulness of physical and vital energy and the utmost breadth, depth and height of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation. ..."

27. In **Municipal Corporation of Delhi** (supra), the question

before the Supreme Court was whether female workers working in muster roll in the Corporation are entitled for maternity benefit at par with regular employees under the provisions of the Maternity Benefit Act, 1961. The Supreme Court noticed the constitutional provisions contained in Articles 38, 39, 42 and 43 of the Constitution of India and Sections 2 and 5 of the Maternity Benefit Act, 1961 as well as Article 11 of the “Convention on the Elimination of all Forms of Discrimination against Women” adopted by the United Nations on 18-12-1979 and held that female workers working in muster roll are entitled to all benefits conceived under the Maternity Benefit Act, 1961. It was observed as under: -

“33. ... 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 work place while carrying a baby in the womb or while rearing up the child after birth. ...”

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](#). We conclude our discussion by providing that the direction issued by the Industrial Tribunal shall be complied with by the Municipal Corporation of Delhi by approaching the State Government as also the Central Government for issuing necessary notification under the proviso to sub-section (1) of [Section 2](#) of the Maternity Benefit

Act, 1961, if it has not already been issued. In the meantime, the benefits under the Act shall be provided to the women (muster roll) employees of the Corporation who have been working with them on daily wages.”

28. In a very recent decision in the matter of **State of Punjab and others v. Jagjit Singh and others**³¹, Their Lordships of the Supreme Court while applying the principle of “equal pay for equal work” to temporary employees held as under: -

“57. There is no room for any doubt that the principle of “equal pay for equal work” has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India under [Article 141](#) of the Constitution of India. The parameters of the principle have been summarised by us in para 42 hereinabove. The principle of “equal pay for equal work” has also been extended to temporary employees (differently described as work-charge, daily wage, casual, ad hoc, contractual, and the like). The legal position, relating to temporary employees has been summarised by us, in para 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us yet again.

58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependents would suffer immensely, if he does not accept the

lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.”

29. In light of the legal analysis and the principles of law enunciated in **Municipal Corporation of Delhi** (supra), if the facts of the present case are examined, it is quite apparent that the petitioner has been appointed on the post of Office Assistant way back in the year 2011 and since then, she is in the job on the said post. It is not the case of the respondents herein that her job is not similar to that of a regular employee or that she is unable to perform the duties of a regular employee. It is claimed that the petitioner though is appointed on contingency basis, she is performing same duties and responsibilities undertaken by a regular employee. Therefore, the respondent Company who is also an authority of the State within the meaning of Article 12 of the Constitution of India, is not justified in holding that the petitioner working on contingent basis is not entitled for the benefit of maternity leave.

30. Accordingly, the impugned orders Annexures P-1 and P-2 to the extent of holding that the contingent paid employee is not entitled for the benefit of maternity leave, are quashed. It is directed that the petitioner will be entitled for maternity leave as provided in Rule 38 of the Rules of 2010, in accordance



with law.

31. It is made clear that the petitioner's status, whether she is regular employee or contingent employee, has not been decided by this Court and it is left open. The petitioner has been referred as contingent employee in this order, only for the purpose of deciding this writ petition.

32. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.101 of 2017

Devshree Bandhe

Versus

Chhattisgarh State Power Holding Company Limited and others

HEAD NOTE

Contingency paid employees of Chhattisgarh State Power Holding Company Limited are entitled for maternity leave under Section 38 of the Chhattisgarh Civil Services (Leave) Rules, 2010.

छत्तीसगढ़ राज्य पावर होल्डिंग कंपनी लिमिटेड के आकस्मिकता निधि से वेतन प्राप्त करने वाले कर्मचारी, छत्तीसगढ़ सिविल सेवा (अवकाश) नियम, 2010 की धारा 38 के अंतर्गत प्रसूति अवकाश प्राप्त करने के पात्र हैं।

