



2025:CGHC:20426

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 6831 of 2024

Order reserved on 1-5-2025

Order delivered on 5-5-2025

1. Lata Goyal W/o Shri Ravindra Goyal Aged About 46 Years Working As Assistant Administrative Officer, IIM Raipur, R/o HIG 1 , Sector 29 Atal Nagar Naya Raipur , District Raipur, Chhattisgarh.

... Petitioner

versus

1. The Union Of India Through Its Secretary, Ministry Of Education, Government Of India , 124-C Shastri Bhawan, New Delhi
2. Indian Institute of Management (IIM) Through its Director, Atal Nagar, PO Kurru, Abhanpur, Raipur , Chhattisgarh

... Respondents

(Cause title is taken from Case Information System)

For Petitioner	:	Shri Abhishek Sinha, Sr. Adv. with Ms Khushboo Naresh Dua, Advocate
For Resp. No.1/UOI	:	None
For Resp.No.2/IIM	:	Shri Kishore Bhaduri, Sr.Adv. with Shri Sabyasachi Bhaduri & Shri Harsh Dave, Advocates

C A V Order

By

Bibhu Datta Guru, J.

1. By the present writ petition, the petitioner is seeking for the following reliefs :

10.1. That the Hon'ble Court may kindly be pleased to declare/hold that Child Adoption Leave and Child Care Leave as per Central Civil Services (Leave) Rules 1972 are applicable to the petitioner and other women employees of IIM Raipur in absence of there being any contrary inconsistent provision in their regulation.

10.2. That the Hon'ble Court may kindly be pleased to quash/set aside the decision communicated vide communication dated 18.12.2023, 03.01.2024 and 24.01.2024 (Annexure P-1) denying the Child Adoption and Child Care Leave to the petitioner for being arbitrary, illegal, and unconstitutional.

10.3. That the Hon'ble Court may kindly be pleased to pass appropriate writ, order and direction granting petitioner Child Adoption Leave and commuted Leave as per the Rules 43(b) of Central Civil Services Leave Rules 1972.

10.4 That the Hon'ble Court may kindly be pleased to issue appropriate writ, direction and order for Child Care Leave to the petitioner as per 43(c) of Central Civil Services Leave Rules 1972.

10.5. That the Hon'ble Court may kindly be pleased to issue appropriate writ, direction and order for grant of remaining days of 96 days of Child Adoption Leave as per 43(b) Central Civil Services Leave Rules 1972.

10.6 That the Hon'ble Court may kindly be pleased to adjust 96 days of earned leave and counted as Child Adoption Leave in place of earned leave.

10.7 That, this Hon'ble Court may kindly be pleased to grant any other relief, which this Hon'ble Court may deem fit and proper may also be awarded to the petitioners including the cost of the petition.”

2. (a) Learned senior counsel appearing for the petitioner would submit that the petitioner appointed in the establishment of the respondent No.2/ Indian Institute of Management (IIM), Raipur in the year 2013 and presently holding the post of Assistant Administrative Officer. He would submit that the marriage of the petitioner was solemnized in the year 2006 and since the couple was not having any issue from the wedlock, on 20.11.2023 they adopted an infant girl child of two days. Thereafter, the petitioner applied for grant of Child Adoption Leave for 180 days with effect from 20.11.2023. The respondent authorities without appreciating the facts and circumstances of the case by the order impugned dated 18.12.2023 denied the said leave stating that as per the institute's HR policy, there is no provision. However, under the head of commuted leave, the institute policy provides a maximum of 60 days leave to female staff with less than two living children who adopt a child less than one year old. Therefore, they granted the commuted leave for a period of 60 days from 20.11.2023 to 18.11.2024.
- (b) Learned counsel would submit that the said impugned action on the part of the respondent authorities is contrary to the Central Civil Services (Leave) Rules. He would submit that the HR policy categorically of the respondent No.2 provides that where rules are silent

in the Institute's HR Policy and Service Rules, Central Government Rules may be followed and as such as per the Rule 43-B and 43-C of the Central Civil Services (Leave) Rules, 1972¹ the petitioner is entitled for 180 days child adoption leave. He would submit that by mentioning all the facts, rules, etc. the petitioner has made 'n' number of requests before the higher authorities for grant of leave, but the same does not fructify. When the grievances of the petitioner have not been redressed by the respondent No.2, the petitioner approached the State Women Commission, who after appreciating all the facts and circumstances of the case recommended for grant Child Adoption Leave of 180 days and Commuted Leave of 60 days. Despite the said fact the same has not been given to the petitioner, however, granted 84 days of Adoption Leave under the Maternity Benefit (Amendment) Act, 2017 up to 11.02.2024 and 60 days Commuted Leave up to 11.04.2024.

(c) Learned counsel would submit that in the meanwhile the IIM filed WPC No. 2461/2024 before this Court challenging the order of the State Women Commission. The said writ petition was allowed by this Court and set aside the order passed by the State Women Commission, however liberty was reserved in favour of the petitioner herein to take recourse to law against the decision taken by the IIM on the application of the petitioner for Child Adoption Leave.

(d) Learned counsel would also submit that right to life contained under Article 21 of the constitution of the India included the right of

¹ for short 'the Rules, 1972'

motherhood and also, the right of the child to get love, bond of affection and full care and attention, but the same has been denied to the petitioner. Her applications for grant of child adoption leave and child care leave both have been denied by assigning the reason that the same is not a part of HR Policy as framed by the institute and, therefore, cannot be granted ignoring that it is already mentioned in the HR Policy that where the rules are silent, provisions of the Rules, 1972 will apply. He would submit that denying such leave is tantamount to forcing women to leave their jobs. He would also submit that denying such leave has far reaching implications for women's right especially for those juggling the dual responsibility of career and motherhood. He would submit that every IIM institute is governed by The Indian Institutes of Management Act, 2017² and as per the said Act, the Central Government may, by notification, make rules, for carrying out the provisions of the Act. He would submit that the provisions of all other IIMs are also based on Government Rules who have granted such leave to the non-teaching faculty working there.

(e) In support of his contention, learned senior counsel would place reliance upon the decisions rendered by the Supreme Court in the matters of *Shalini Dharmani v State of Himachal Pradesh and Others*³ and *Minakshi Chaudhary v Rajasthan State Road Transport Corporation and Another*⁴ and the decisions rendered by this Court in

2 for short 'the Act, 2017'

3 2024 SCC OnLine SC 653

4 2024 SCC OnLine SC 2779

the matters of *Devshree Bandhe v Chhattisgarh State Power Holding Company Limited*⁵ and *Smt. Sadhna Agrawal v State of Chhattisgarh & Others*⁶.

3. (I) Learned counsel for the IIM/respondent no. 2, *ex adverso*, would submit that the respondent No. 2 is an autonomous institution established under the Act, 2017 and it is not bound by the Rules, 1972, unless expressly adopted by its Board of Governors⁷. The HR Policy of IIM Raipur is the governing framework for service conditions and the petitioner cannot unilaterally demand application of the Rules, 1972 in contravention of the Institute's policies. Learned counsel submit that the HR Policy of IIM Raipur does not contain any provision for Child Adoption Leave under the applicable leave framework instead, the policy provides for commuted leave for female staff members under certain circumstances, which was granted to the petitioner in good faith.
- (II) Learned counsel would submit that the Institute's HR Policy does not contemplate such leave, and accordingly, the petitioner was granted commuted leave for 60 days as per the rules, which is the maximum permissible leave in such cases. He would submit that the leave granted was in consonance with the Institute's HR Policy, and the petitioner's demand for additional leave beyond what is provided for in the policy is unjustified. He would submit that each IIM has its own HR Policy, approved by its respective BoG. The fact that some IIMs may have a

5 WPS No.101 of 2017 (decided on 20-2-2017)

6 WPS No.4927 of 2016 (decided on 3-1-2017)

7 for short 'the BoG'

different policy on Child Adoption Leave does not automatically bind upon the IIM Raipur to adopt the same provisions.

(III) Learned counsel would submit that the Institute has granted leave to the petitioner within the permissible policy framework, and the petitioner was never forced to resign or leave her employment. Learned counsel would further submit that the Institute is an autonomous institution of national importance. As per Section 4 read with Schedule to the Act, 2017, IIM Raipur is a body corporate having perpetual succession and a common seal, empowered to acquire, hold and dispose of property, to contract, and to sue or be sued in its own name. The Institute is governed by its own BoG and exercises administrative and financial independence in accordance with the framework laid down under the Act, 2017.

(IV) According to the learned counsel, the Act, 2017 was designed expressly to divest Government control and elevate the institutes to autonomous centres of academic and administrative excellence, free from bureaucratic interference & policy paralysis. It is the Board which has to frame regulations in respect of number of posts, emoluments and duties and conditions of service of the academic, administrative, technical and other staff under clause (j) of sub-section (2) of Section 11. The BoG of the Institute is empowered to specify, by regulations, the qualifications, classification, terms of office and method of appointment of the academic, administrative, technical and other staff.

(V) Learned counsel would submit that the BoG is the principal decision making body, and while it includes a Central Government nominee as well as a state Government nominee, besides that, however, the composition does not reflect pervasive Government control. The BoG retains full authority over staffing, admissions, finance, and academic programmes. He would submit that the same could be gauged from the fact that the Act, 2017 deliberately disassociates Governmental control. The preamble and scheme of the Act, 2017 reflects Parliament's intention to remove the deep and pervasive control of the State and instead grant these Institutes functional, financial, and administrative autonomy.

(VI) Learned counsel would submit that while imparting education may be construed as a public function, employment matters, particularly relating to teaching/non-teaching staff, do not partake the character of public duty. It does not receive any direct or indirect grant from the State or the Central Government. Neither the institute obligated to abide by the directions or guidelines issued by the Central or the State Government. It is for the BoG to decide that which policies or rules floated by the State are required to be incorporated in the functioning of the institute.

(VII) Learned counsel would submit that IIMs are not creatures of the statute but were originally societies registered under the Societies Registration Act and later brought under the purview of the Act, 2017

without thereby altering their autonomous character. He would submit that IIMs are intended to be autonomous institutions not performing any public duty that would make them amenable to writ jurisdiction under Article 226 of the Constitution of India in matters of employment and internal administration. He would submit that under the aforesaid circumstances, the respondent No.2/IIM cannot be held to be a ‘State’ or other ‘authority’ under Article 12 of the Constitution and hence this writ petition is not maintainable and is liable to be dismissed.

(VIII) To buttress his contention, learned senior counsel would place reliance upon the decisions rendered by the Supreme Court in the matters of *State of Maharashtra and Another v Bhagwan and Others*⁸, *T.M. Sampath and Others v Secretary, Ministry of Water Resources and Others*⁹, *Chairman & MD, Kerala SRTC v K.O. Varghese and Others*¹⁰ and *Army Welfare Education Society, New Delhi v Sunil Kumar Sharma and Others*¹¹. He would also place reliance upon the decision rendered by the High Court of Kerala at Ernakulam, on the question of maintainability, in the matter of *Shiny George Ambat v Union of India represented by the Secretary to the Government of India and Others*¹².

4. I have heard learned counsel appearing for the parties at length and perused pleadings and the documents.

8 (2022) 4 SCC 193

9 (2015) 5 SCC 333

10 (2007) 8 SCC 231

11 2024 SCC OnLine SC 1683

12 2023 SCC OnLine Ker 4104

On maintainability :

5. Since the present petition revolves around constitutional entitlement and protection providing an atmosphere and environment to be a part of workforce denial of which would lead to deprivation of their due participation as a member of the workforce violating the right under Articles 14, 15, 19(1)(g) and 21 of the Constitution of India, the writ petition is ***maintainable***.
6. It is the trite law that a fundamental right under Articles 19/21 can be enforced even against persons other than the State or its instrumentalities. (See: ***Kaushal Kishor v State of U.P.***¹³).
7. The reliance placed by the learned counsel for the respondent No.2 upon the decision rendered by the High Court of Kerala in the matter of ***Shiny George Ambat*** (supra) is not applicable to the facts of the present case as the said matter is relating to termination of service whereas in the present case the petitioner is seeking protection of her fundamental rights as enshrined under Article 19/21 of the Constitution of India.

On merits :

8. For the sake of convenience, it would be relevant to quote clause 1 (introduction) and clause 14.6 (commuted leave) of HR Policy of the respondent No.2; Rules 43-B and 43-C of the Rules, 1972 as under :

1. Introduction

¹³ (2023) 4 SCC 1

These Rules will be applicable to all employees of the Institute. They may be supplemented or amended by the Board of Governors (BoG) as and when required.

For any other matter relevant to the service conditions of the employees not specifically covered in this Manual, the Institute shall be guided by the rules, norms and procedures as prescribed by the Government of India from time to time.

14.6 Commuted Leave

i. Commuted leave is granted to the Employee of the Institute, whether Regular or Contractual, on a medical certificate.

ii. Commuted leave not exceeding half the amount of half-pay leave due can be taken on a medical certificate

iii. Commuted leave can be taken without a medical certificate -

Up to a maximum of 90 days in the entire service if utilized for an approved course of study certified to be in the public interest.

Up to a maximum of 60 days by a female employee if it is in continuation of maternity leave.

Up to a maximum of 60 days by a female employee with less than two living children if she adopts a child less than one-year-old.

iv. Commuted leave can be granted only when the leave sanctioning authority is satisfied that there is a reasonable prospect of the employee returning to duty on its expiry. So it cannot be granted as leave preparatory to retirement.

v. If commuted leave is taken, twice the number of days availed should be debited in the half pay leave account.

vi. When an employee granted commuted leave quits service voluntarily without returning to duty, the commuted leave shall be treated as half pay leave, and the excess leave salary shall be recovered. If the retirement is by reason of ill-health incapacitating him/her for further service or in the event of death, recovery should not be made.

vii. Commuted leave may be granted at the request of the employee even when earned leave is due to him.

Rules 43-B & 43-C of the Central Civil Services (Leave) Rules, 1972

43-B. Child Adoption Leave

(DOPT Notification No.13018/4/2004-Estt.(L), dated 31.03.2006)

(1) A female Government servant, with fewer than two surviving children, on accepting a child in pre-adoption foster care or on valid adoption of a child below the age of one year, may be granted child adoption leave, by an authority competent to grant leave, for a period of 180 days immediately after accepting the child in pre-adoption foster care or on valid adoption, as the case may be:

Provided that in a case where the pre-adoption foster care is not followed by valid adoption of the child, the leave already availed shall be debited from any other kind of leave available to the credit of such female Government Servant.

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

(3) (a) Child adoption leave may be combined with leave of any other kind.

(b) In continuation of the child adoption leave granted under sub-rule (1), a female Government servant on valid adoption of a child may also be granted, if applied for, leave of the kind due and admissible (including leave not due and commuted leave not exceeding 60 days without production of medical certificate) for a period up to one year reduced by the age of the adopted child on the date of valid adoption, without taking into account child adoption leave.

Provided that this facility shall not be admissible in case she is already having two surviving children at the time of adoption.

(4) Child adoption leave shall not be debited against the leave account.

NOTE. "Child" for the purpose of this rule will include a child taken as ward by the Government servant, under the Guardians and Wards Act, 1890 or the personal law applicable to that Government servant, provided such a ward lives with the Government servant and is treated as a member of the family and provided such Government servant has, through a special will, conferred upon that ward the same status as that of a natural born child.

(DOPT Notification No. 13026/5/2011-Estt. (L), dated 04.04.2012)

43-C. Child Care Leave

(DOPT Notification No.13018/4/2011-Estt.(L), dated 27.08.2011)

(1) Subject to the provisions of this rule, a female Government servant and single male Government servant may be granted child care leave by an authority competent to grant leave for a maximum period of seven hundred and thirty days during entire service for taking care of two eldest surviving children, whether for rearing or for looking after any of their needs, such as education, sickness and the like.

(DOPT Notification No. 11020/01/2017-Estt. (L.), dated 11.12.2018)

(2) For the purposes of sub-rule (1), "child" means-

(a) a child below the age of eighteen years: or

(b) an offspring of any age with a minimum disability of forty per cent as specified in the Government of India in Ministry of Social Justice and Empowerment's Notification No. 16-18/97-N 1.1, dated the 1st June, 2001.

(DOPT Notification No. 13018/6/2013-Dstt.(L), dated 06.06.2018)

(3) Grant of child care leave to a female Government servant and a single male Government servant under sub-rule (1) shall be subject to the following conditions, namely:

(DOPT Notification No. 11020/01/2017-Estt. (L), dated 11.12.2018)

(i) it shall not be granted for more than three spells in a calendar year,

(ii) in case of a single female Government servant, the grant of leave in three spells in a calendar year shall be extended to six spells in a calendar year.

(iii) it shall not ordinarily be granted during the probation period except in case of certain extreme situations where the leave sanctioning authority is satisfied about the need of child care leave to the probationer, provided that the period for which such leave is sanctioned is minimal.

(iv) child care leave may not be granted for a period less than five days at a time.

(4) During the period of child care leave, a female Government servant and a single male Government servant shall be paid one hundred per cent of the salary for the first three hundred and sixty-five days, and at eighty per cent of the salary for the next three hundred and sixty-five days.

EXPLANATION.- Single Male Government servant' means - an unmarried or widower or divorcee Government servant.

(5) Child care leave may be combined with leave of any other kind.

(6) 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 not exceeding sixty days and Leave Not Due) up to a maximum of one year, if applied for, be granted in continuation with child care leave granted under sub-rule (1).

(7) Child care leave shall not be debited against the leave account

9. From the aforesaid provisions, it is quite vivid that clause 1 (introduction) of the HR Policy of the respondent No.2 categorically provides that for any other matter relevant to the service conditions of the employees not specifically covered in this Manual, the Institute shall

be guided by the rules, norms and procedures as prescribed by the Government of India from time to time.

10. Sub-rule (1) of Rule 43-B of the Rules, 1972 provides that A female Government servant, with fewer than two surviving children, on accepting a child in pre-adoption foster care or on valid adoption of a child below the age of one year, may be granted **child adoption leave, by an authority competent to grant leave, for a period of 180 days immediately after accepting the child in pre-adoption foster care or on valid adoption, as the case may be.** Since the HR policy of the respondent No.2 is silent about the child adoption leave and under the said circumstances as per clause 1 of its own policy they are required to adopt the Rules, 1972 framed by the Central Government wherein sub-rule (1) of Rule 43-B categorically provides for grant of 180 days child adoption leave.
11. Part IV of the Constitution of India relates to Directive 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. Adoptive mothers, like all mothers, are capable of experiencing deep love and affection for their children, regardless of whether they are biological or adopted. The love and affection they offer can be just as strong and profound as that of a birth mother. Adoptive mothers, like birth mothers, can form strong bonds of love and attachment with their children. These bonds can be crucial for a child's emotional and psychological well-being.

13. The participation of women in the work force is not a matter of privilege, but a constitutional entitlement protected by Articles 14, 15 and 21 of the Constitution; besides Article 19(1)(g). The 'State' as a model employer cannot be oblivious to the special concerns which arise in the case of women who are part of the work force. The provision of Child Care Leave to women sub-serves the significant constitutional object of ensuring that women are not deprived of their due participation as members of the work force. Otherwise, in the absence of a provision for the grant of Child Care Leave, a mother may well be constrained to leave the work force. This consideration applies *a fortiori* in the case of a mother who has a child with special needs. Such a case is exemplified in the case of the petitioner herself.
14. The subject leave allows women to focus entirely on development of their children, free from the pressure of work. For this reason, child adoption/child care leave is not just a benefit but a right that supports the fundamental need of a woman to take care of her family. It is the inherent right of every women employee which cannot be simply denied on technical grounds. If a women is denied child care leave, it offends her fundamental right to life. 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 leave is allowed to the mothers enabling them to focus on their family by taking some time off/leave from work.

15. There ought not to be any discrimination of a woman as far as the maternity benefits are concerned only on the ground that she has obtained the baby through adoption. The object of the leave is to protect the dignity of motherhood by providing for full and healthy maintenance to the child. Child care/Child adoption leave is intended to achieve the object of ensuring social justice to women. Childhood both require special attention.
16. Not only are the health issues of the child considered while providing leave, but the leave is provided for creating a bond of affection between the two. Motherhood never ends on the birth of the child and a commissioning/adoption mother cannot be refused paid maternity leave. A woman cannot be discriminated, as far as maternity benefits are concerned, only on the ground that she has obtained the baby through surrogacy/adoption. A newly born child cannot be left at the mercy of others as it needs rearing and that is the most crucial period during which the child requires care and attention of mother. The tremendous amount of learning that takes place in the first year of the baby's life, the baby learns a lot too. A bond of affection has also to be developed.
17. There is no distinction between the natural, biological, surrogate or commissioning/adoption mothers and all of them have fundamental right to life and motherhood, contained under Article 21 of the Constitution of India and children born from the process of surrogacy/adoption have the right to life, care, protection, love, affection and development through

their mother, then certainly such mothers have right to get maternity leave for above purpose.

18. Maternity/child adoption/child care leave cannot be compared or equated with any other leave as it is the inherent right of every women employee which cannot be simply denied on technical grounds. If a women is denied maternity leave, it offends her fundamental right to life guaranteed under Article 12 of the Constitution. 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.
19. 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. ..."
20. 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)

21. The abovestated 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***¹⁴ has held that beneficial construction to be extended to beneficial legislation like the Maternity Benefits Act which effectuates directive principles of state policy and observed as under: -

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

22. 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.
23. The Supreme Court in the matter of ***Lakshmi Kant Pandey v Union of India***¹⁵ 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: -

14 (1977) 4 SCC 384

15 (1984) 2 SCC 244

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....

24. 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 rearing up the child after birth. In the case at hand, the petitioner adopted an infant girl child of two days.
25. Applying the well settled principles of law to the facts of the present and the for the reasons mentioned hereinabove, the impugned orders (Annexure-P/1) are quashed. It is held that the petitioner is entitled for 180 days child adoption leave as per the Rules, 1972. Since from para 8.22 of the writ petition it is evident the respondent No.2 has already granted 84 days child adoption leave to the petitioner as per Maternity Benefit (Amendment) Act, 2017, the respondent No.2 is directed to verify and adjust the same.

26. As a sequel, the writ petition is allowed to the extent indicated above,
leaving the parties to bear their own cost(s).

Sd/-
(Bibhu Datta Guru)
Judge

Gowri

HEAD NOTE

- The participation of women in the work force is not a matter of privilege, but a constitutional entitlement protected by Articles 14, 15 and 21 of the Constitution; besides Article 19(1) (g).
- कार्य-क्षेत्र में महिलाओं की भागीदारी विशेषाधिकार का विषय नहीं है, अपितु यह संविधान के अनुच्छेद 19 (1) (छ) के अतिरिक्त, अनुच्छेद 14, 15 तथा 21 द्वारा संरक्षित एक संवैधानिक अधिकार है।
- Child adoption/child care leave is not just a benefit but a right that supports the fundamental need of a woman to take care of her family.
- दत्तक ग्रहण/संतान पालन अवकाश केवल लाभ नहीं है, बल्कि एक ऐसा अधिकार है जो किसी महिला को उसके परिवार की देखभाल करने की मूलभूत आवश्यकता को पूर्ण करता है।
- Female Officers/employees of the Indian Institute of Management are entitled for Child Adoption Leave as per Rule 43-B of the Central Civil Services (Leave) Rules 1972, as the HR Policy of IIM, Raipur, is silent on this aspect.
- भारतीय प्रबंधन संस्थान की महिला अधिकारीगण / कर्मचारीगण, केन्द्रीय सिविल सेवा (अवकाश) नियम 1972 के नियम 43-ख के अनुसार दत्तक ग्रहण अवकाश की हकदार हैं, क्योंकि आईआईएम, रायपुर की मानव संसाधन नीति, इस विषय पर मौन है।
- A fundamental right under Articles 19/21 can be enforced even against persons other than the State or its instrumentalities.
- अनुच्छेद 19/21 अंतर्गत प्रदत्त मौलिक अधिकारों को राज्य या उसके संस्थाओं के अतिरिक्त अन्य व्यक्तियों पर भी लागू किया जा सकता है।