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WP-9877-2026

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

(AFR)

HON'BLE SHRI JUSTICE VISHAL DHAGAT

ON THE 24th OF MARCH, 2026WRIT PETITION No. 9877 of 2026*DR. PRITI SAKET**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Hitendra Kumar Golhani - Advocate with Ms. Kajal Vishwakarma - Advocate for petitioner.

Shri Kamal Singh Baghel - Government Advocate for respondents/State.

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ORDER

Petitioner has filed this petition under Article 227 of the Constitution of India challenging impugned order dated 16.06.2023 passed by Principal, Government Tilak PG College, Katni, District Katni (M.P.).

2. By said order, petitioner was granted maternity leave from 05.04.2023 for period of six months, but while on leave, no honorarium is to be paid to petitioner. Said amended order was passed in accordance with Circular of State Government dated 25.02.2022, para 6.8, and Section 5 of Maternity Benefit Act, 1961. In impugned order, it is mentioned that petitioner was granted maternity leave vide order dated 02.05.2023 from 05.04.2023 for period of six months and during said period, petitioner was to



be paid honorarium. Later on, said order was amended as mentioned above.

3. Counsel appearing for petitioner submitted that amended order dated 16.06.2023 is bad in law, as petitioner is to be given paid maternity leave as per Act of 1961. Petitioner is being victimized and harassed as she belongs to Scheduled Caste category. Provisions of law has been misused. Petitioner has also made representation for taking action against authorities under Section 3(1) of SC and ST (Prevention of Atrocities) Act, 1989, but no action has been taken. In view of same, prayer is made to set aside impugned order and grant maternity leave to petitioner with remuneration (honorarium), as ordered earlier.

4. Government Advocate appearing for respondents/State submitted that there is no illegality in impugned order. Order is passed in accordance with law. Petitioner does not fulfill requirement in accordance with Act and Circular of State Government, therefore, earlier order granting leave with honorarium was modified and leave of 6 months was sanctioned without honorarium.

5. Heard the counsel for the parties.

6. Petitioner is working as a guest faculty and engaged on contractual basis for temporary period. Guest faculty is engaged on contract basis when regular teacher, Lecturer or Assistant Professor is not available. Seat may be vacant due to lack of appointment or any other contingency such as long leaves, study leaves etc. From aforesaid, it is clear that nature of appointment is temporary in nature without any permanency. Guest faculty cannot be said to be a government employee, therefore, Madhya Pradesh Civil Services



Leave Rules is not applicable to petitioner. Now second question for consideration before this Court is whether Maternity Benefit Act, 1961 is applicable to petitioner or not. Establishment has been defined under Act of 1961 to be a Factory, Mine, Plantation or establishment where persons are employed for exhibition, shop or establishment or such establishment which are covered under Section 2(1) of Act of 1961. Definition of establishment given in Section 2(1) is wide and it covers any establishment belonging to Government and also establishment where ten or more persons are employed on any day preceding twelve months. In view of same, Maternity Benefit Act, 1961 will be applicable in case of petitioner. As per said Act, every woman has right to payment of maternity benefit according to provisions of Act of 1961. For claiming benefit of Act of 1961, woman should have been employed in establishment not less than 80 days in a year preceding date of expected delivery. Relaxation is also given to woman who has migrated into State of Assam and was pregnant at the time of immigration.

7. The Maternity Benefit Act, 1961 is amended in year 2017. As per the said amendment, benefit of payment of wages for 26 weeks is to be granted to a woman and breakup of 26 weeks is 08 weeks before expected date of delivery and 18 weeks after delivery. Benefit to a woman having more than two surviving children, shall be 12 weeks. Petitioner has been denied benefit of paid maternity leave as she was not employed with the employer for more than 80 days in a year. Under Act of 1961 (as amended in 2017), benefit of wages for period of 26 weeks are permissible if a woman has worked not less than 80 days in 12 months. Learned Government



Government Advocate appearing for State has denied the benefit of paid maternity leave for period of six months taking aid of Section 5(2) of Maternity Benefit Act, 1961.

8. On examining the order passed by respondents and taking into account framework of the Maternity Benefit Act, 1961 and spirit of Constitution of India, India is constituted to be Sovereign, Socialist, Secular, Democratic Republic. State has to deliver justice, social, economical and political. Social justice includes welfare measures for health and family. As per Article 38 of the Constitution of India, State shall strive to promote welfare of people and Article 39 of the Constitution of India lays down that State shall direct its policy towards securing health and strength of workers, men and women particularly children of tender age. State is also required to provide equal justice and free legal aid as per Article 39A of the Constitution of India. Aforesaid directives principles are guidelines for the State Government to formulate its policy. Spirit of the Constitution of India and directives principle cannot be overlooked by Constitutional Court. Section 5(2) of the Act of 1961, bars benefit of maternity leave unless woman has worked for 80 days in 12 months. Said bar of working 80 days in 12 months for availing benefit of grant of maternity leave shall not be applicable over establishment of State Government. State is required to take welfare measures for its citizens.

9. In view of same, impugned order dated 16.06.2023 passed by Principal, Government Tilak PG College, Katni, District-Katni (MP) is set aside and petitioner is directed to be granted benefit of maternity leave in



accordance with Section 5(1) of the Maternity Benefit Act, 1961.

10. Petitioner will be entitled for paid leave for period of 26 weeks and breakup of same will be upto 8 weeks before expected date of delivery and 18 weeks after period of delivery. For said period, petitioner is to be given benefit of the wages. For rest of leave period, no honorarium is to be paid to petitioner and will be treated to be leave without pay.

11. Order will apply to State Government and rigour of 80 days work in previous 12 months for availing maternity leave benefit shall apply in accordance with Act over other establishments except State Government.

12. With aforesaid direction, writ petition is *disposed of*.

(VISHAL DHAGAT)
JUDGE

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