

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

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WP(C) No. 3509/2025 (O&M)

Reserved on: 06.07.2026
Pronounced on: 10.07.2026
Uploaded on: 10.07.2026

Whether the operative part or full
Judgment is pronounced: **Full**

Dr. Sonakshi Gupta and ors.

.....Petitioner(s)

Through: Mr. Abhinav Jamwal, Advocate

Versus

UT of J&K and others.

.....Respondent(s)

Through: Mr. Raman Sharma, AAG with
Ms. Saliqa Sheikh, Advocate

CORAM: HON'BLE MR JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. In a glaring departure from its character as a compassionate welfare State, the respondents have sought to penalize the petitioners for the foundational human experience of motherhood. The petitioners, engaged as Senior Residents/Tutors under the 2020 Academic Arrangement Rules, find themselves in financial doldrums by the impugned communication dated 14.10.2025. By disallowing pay and allowances during maternity leave under the specious plea that such Doctors are 'out of assignment,' the UT of J&K has reduced a vital socio-economic safeguard into an economic sanction. It is axiomatic that maternity benefits are an extension of the right to live with dignity;

to strip the petitioners of their emoluments at their most vulnerable hours is a profound constitutional injury.

2. The factual matrix essential for the adjudication of the present petition lies within a narrow compass. The petitioners, whose individual leave details are set out in paragraph 2 of the petition, duly availed of their maternity leave. Their entitlement is anchored in Government Order No. 451-JK (HME) of 2024 dated 08.07.2024, issued by respondent No. 1 in supersession of all previous circulars and in accordance with the norms of the National Medical Commission and the National Board of Examinations. This directive unambiguously extends maternity, MTP, and abortion leave to Postgraduate Students, Senior Residents/Tutors, and DNB PGs across J&K's Government Medical Colleges. The petitioners invoke the statutory mandate of Rule 41(1) of SRO 353 of 2015 dated 06.10.2015, which dictates that a female employee (expressly including an apprentice) is entitled to up to 180 days of maternity leave, with an absolute right to draw a leave salary equal to her last-drawn pay.
3. While some of the petitioners were currently on leave, and others had completed their maternity leave and were undergoing their extended period of residency pursuant to Government Order No. 451-JK(HME) of 2024 dated 08.07.2024, their salaries were abruptly withheld. This sudden stoppage was enforced solely on the strength of the aforementioned communication dated 14.10.2025.
4. Through the medium of the present petition, the petitioners challenge the communication dated 14.10.2025, which denies pay and allowances

to Senior Residents/Tutors on the basis of advice of the Finance Department vide U.O. advice dated 18.09.2025. The petitioners contend that they were induced to believe, by the clear language of the Government Order dated 08.07.2024, that maternity leave was fully paid, and that the extension of tenure was a mere administrative adjustment to facilitate the completion of their mandatory three-year residency. The respondents never notified the petitioners of any impending salary deprivation. It is further submitted that Rule 2(c) of the *Rules of 2020* defines a 'post' as a Government post against which engagement is made, and since the Government Order dated 08.07.2024 explicitly incorporates the Government Rules and Regulations, the mandate of Rule 41(1) *supra*, requiring payment of full leave salary, applies absolutely. Because the impugned communication dated 14.10.2025 fails to even reckon with the mandate of the order dated 08.07.2024, it stands out as wholly illegal, arbitrary, and violative of the Constitution of India.

5. The respondents, in their response, assert that the petitioners' reliance on the *J&K Civil Service Regulations* is fundamentally flawed. The core of the respondents' defense rests on the premise that the petitioners occupy fixed-tenure assignments and do not hold civil posts, thereby precluding them from claiming wholesale parity with permanent Government employees. According to the respondents, Government Order No. 451-JK(HME) of 2024 was promulgated to streamline leave entitlements, pairing the permission to take maternity or paternity leave with a concomitant extension of tenure. This extension, they submit, is

strictly an academic and administrative mechanism designed to ensure completion of the core training period, rather than a vehicle to source additional fiscal benefits beyond actual days of duty. Respondents further state that the impugned communication dated 14.10.2025 is merely a faithful execution of the Finance Department's advice vide U.O. dated 18.09.2025, prompted by queries raised by institutional Principals. They canvas that the communication takes away no vested rights but simply delineates the standard financial consequences of a period wherein no public service was rendered. In conclusion, they urge that the broad phraseology of 'existing Rules' in the parent order dated 08.07.2024 cannot be judicially extended to override the distinct rules governing tenure-based emoluments.

6. Mr. Abhinav Jamwal, learned counsel appearing for the petitioners, while reiterating the submissions made in the writ petition, placed strong reliance upon the judgment rendered by the Division Bench of this Court (comprising of Hon'ble the Chief Justice and myself) **in LPA No. 34/2025, Jammu and Kashmir Bank Ltd. and others v. Tanu Gupta**. It was submitted that the ratio laid down in the said judgment squarely applies to the facts of the present case that a woman employee cannot be subjected to any financial disadvantage merely on account of availing maternity leave.

7. *Per contra*, Ms. Saliqa Sheikh, learned counsel appearing for the respondents, submitted that the petitioners are not Government employees, but their engagement is tenure-based under the J&K Medical and Dental Education (Appointment on Academic

Arrangement Basis) Rules, 2020. It is contended that their engagement is governed exclusively by the terms and conditions of the said Rules and the relevant Government Orders regulating such appointments. On these grounds, the learned counsel argues that the petitioners are disentitled from invoking the statutory framework of the *J&K Civil Services (Leave) Rules, 1979* applicable to permanent employees, and thus cannot claim pay and allowances during the currency of their maternity leave.

8. Heard learned counsel for the parties and perused the record.
9. Undisputedly, the petitioners hold tenure and course-based appointments governed by the *Jammu and Kashmir Medical and Dental Education (Appointment on Academic Arrangement Basis) Rules, 2020*. In terms of Government Order No. 451-JK(HME) of 2024 dated 08.07.2024, issued in supersession of all previous orders on the subject and in accordance with the norms of the National Medical Commission and the National Board of Examinations, the Health and Medical Education Department, i.e., respondent No. 1, directed that female Senior Residents/Tutors shall be allowed maternity leave, MTP/abortion leave, as per the Government rules and regulations. Although the 2024 Government Order provides that the tenure/course shall be extended by the corresponding number of days for which leave is availed, it simultaneously guarantees the core benefit of maternity and MTP/abortion leave to female Senior Residents/Tutors under existing Government rules.

10. This reference necessarily attracts Rule 41(1) of the *J&K Civil Services (Leave) Rules, 1979* (amended via SRO 353 of 2015), which provides for 180 days of maternity leave. Under this statutory mandate, a female employee possesses an absolute right to be paid a leave salary equal to the pay drawn immediately before proceeding on leave. The respondents cannot pivot and deny these basic protections under the pretext of the petitioners' tenure status.
11. During the currency of order dated 08.07.2024, the communication dated 14.10.2025 cannot be termed as a 'clarification,' but a blatant administrative overreach. It is evident that the Finance Department, in its anxiety to prune public spending, has lost sight of constitutional bounds. To penalize a mother based on the technical nature of her employment contract, while her physical and biological reality is identical to that of a regular employee, is an egregious infraction of equality that cannot withstand judicial scrutiny.
12. This Court is deeply perplexed as to how respondent No. 1 can profess to act under the banner of a welfare State while simultaneously defending such an ex-facie discriminatory communication. In the judgment (supra), the Division Bench considered an identical controversy, wherein the Jammu and Kashmir Bank Ltd. had discriminated between contractual female employees and regular female employees for the purpose of granting service benefits during maternity leave. The Division Bench in case of ***Jammu and Kashmir Bank Ltd. and others v. Tanu Gupta*** (supra), after considering catena

of judgments of the Hon'ble Supreme Court, observed and held as under:

“1. The life of a working mother stands as a profound testament to the ancient Sanskrit ideal of ‘*Kshamaya Dharitri/क्षमायाधरित्री*’—a patience as vast and enduring as the Earth itself. She navigates the demanding currents of the professional world with adept skill (*Lokavritt Kaushal/लोकवृत्तकौशल*), whilst simultaneously shouldering the silent, unremunerated, and all too often invisible labour of the household (*Gruhakarmanyapi/गृहकर्मण्यपि*).

2. The profound pain of childbirth is merely the opening chapter in a lifelong narrative of sacrifice. To deny maternity benefits is not only to ignore this profound 'double burden,' but to fail entirely in our constitutional obligation to ensure a level playing field for those who literally labor to bring the next generation of citizens into existence.

3. It is precisely this fundamental controversy that lies at the heart of the present intra-court appeals.

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13. Article 15 of the Constitution of India forbids discrimination, *inter alia*, on the ground of sex, whereas Article 15(3) carves out a vital enabling provision, authorizing the State to enact special measures for women and children. This is augmented by Article 42, which directs the State to ensure just and humane working conditions alongside maternity relief. To give teeth to this constitutional vision and preserve the dignity of motherhood, Parliament enacted the Maternity Benefit Act, 1961. The statutory substratum of this Act is to ensure that working women are neither forced to labor during advanced pregnancy nor deprived of their livelihoods, thereby securing full remuneration and health security for both mother and child.

14. Article 38 of the Constitution serves as a solemn injunction upon the State to promote the welfare of the people by effectively securing and safeguarding a social order anchored in social, economic, and political justice, which must inform all institutions of national life. In tandem, Article 38(2) mandates a persistent strive to minimize income inequalities and eliminate disparities in status, facilities, and opportunities. This egalitarian vision is reinforced by Article 39, which commands the State to direct its policy towards ensuring that men and women equally enjoy the right to an adequate means of livelihood, that equal pay for equal work is secured for both sexes, and that the vulnerabilities of workers and children are protected against abuse and economic coercion that might force them into unsuitable vocations.

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“16. In “*Municipal Corpn. of Delhi v. Female Workers (Muster Roll)*”, (2000) 3 SCC 224, the Hon’ble Apex Court has held 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 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.
(emphasis added)

17 In *Deepika Singh v. Pgimer, Chandigarh*, (2023) 13 SCC 681, the Hon’ble Apex Court has observed as under:

26. Unless a purposive interpretation were to be adopted in the present case, the object and intent of the grant of maternity leave would simply be defeated. The grant of maternity leave under the 1972 Rules is intended to facilitate the continuance of women in the workplace. It is a harsh reality that but for such provisions, many women would be compelled by social circumstances to give up work on the birth of a child, if they are not granted leave and other facilitative measures. No employer can perceive childbirth as detracting from the purpose of employment. Childbirth has to be construed in the context of employment as a natural incident of life and hence, the provisions for maternity leave must be construed in that perspective.
(emphasis added)

18. The judgment in *Deepika Singh*’s case was relied upon with approval by the Hon’ble Supreme Court in *Kavita Yadav v. State (NCT of Delhi)*, (2024) 1 SCC 421.

19. We are firmly of the view that any ambiguity or silence within the rules regulating maternity benefits must be resolved

through a lens of beneficial construction. The sole objective of such interpretation must be to advance the cause of the female employee, not to orchestrate her disentitlement. Any interpretation to the contrary would not only defeat the spirit of the beneficial regulations but would also run entirely counter to the mandate of gender justice embodied in Article 15 of the Constitution of India.”

13. Maternity leave cannot be reduced to a matter of state charity; it is an unassailable constitutional right anchored in the dignity of women. The respondents, having explicitly absorbed the existing Government Rules vide order dated 08.07.2024 to grant maternity leave to these Doctors, cannot now blow hot and cold by withholding their salaries. The right to full emoluments is an organic corollary of the right to leave itself, which cannot be defeated by an arbitrary executive fiat. The authoritative pronouncement of the Division Bench (*supra*) is directly applicable here, leaving no room for a contrary interpretation.
14. In view of the aforesaid discussions, this Court is of the considered view that the communication dated 14.10.2025, issued by respondent No. 1 to the extent denying the benefit of pay and allowances to the petitioners during the period of maternity leave/paternity leave, is liable to be quashed and is accordingly quashed. Respondent No. 1 is directed to grant full pay and allowances to the petitioners during the period of maternity leave and also during the extended period of residency corresponding to the number of days of maternity leave.
15. Disposed of.

(Rajnish Oswal)
Judge

Jammu
10.07.2026
Karam Chand

Whether approved for reporting? Yes