



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



S.B. Civil Writ Petition No. 13746/2026

CNR: RJHC020707742026 | URN: CW / 29895U / 2026

Chandra Kanta Pahariya Alias Chandrakanta Khinchi D/o Ram Lal Pahariya, Aged About 47 Years, R/o Vatika Sanganer, Jaipur (Raj).

-----Petitioner

Versus

1. State of Rajasthan through Principal Secretary Education Department, Government of Rajasthan, Jaipur.
2. District Education Officer And Additional Chief Executive Officer, Elementary Education, Zila Parishad, Jaipur.
3. Principal, Government Primary School, Tiba Kai Dhani, Sanganer, District Jaipur.

-----Respondents

For Petitioner(s) : Mr. Vivek Gaur
For Respondent(s) : Mr. Gopal Krishna Sharma, AGC

HON'BLE MS. JUSTICE REKHA BORANA

Order

30/07/2026

1. The present writ petition has been filed aggrieved of the action of the respondent Department in not granting the second maternity leave to the petitioner-employee.
2. The case of the petitioner is that her marriage was solemnized on 25.03.1999 and she gave birth to her first child on 07.09.2000 which was prior to her appointment in service. After her appointment on the post of teacher in the year 2005, she gave birth to her second child on 08.10.2005 and availed her first maternity leave at that point of time. However, the petitioner got divorced from her husband vide decree dated 18.04.2015 (Annex-



2). Subsequently, the petitioner solemnized her second marriage on 07.12.2023 and a child was born out of the said wedlock on 20.06.2026. The petitioner therefore, applied for the second maternity leave. However, the same was not granted to the petitioner for the reason that the Department held the child in question to be her third child and in her service record, details of two children had already been entered.

3. After hearing the Counsels, this Court is of the clear opinion that the petitioner deserves to be granted the maternity leave as prayed by her. The controversy involved is required to be examined in the light of Rules 103 and 103C of the Rajasthan Service Rules, 1951 (for brevity 'the Rules of 1951') which govern the grant of maternity leave and child care leave to Government servants. The relevant provisions read as under:

"103. Maternity Leave – Maternity leave may be granted to a female Government Servant with less than two surviving children upto a period of [180 days] from the date of its commencement. However, if there is no surviving child even after availing it twice Maternity Leave may be granted on one more occasion.

During such period she will be entitled to leave salary equal to pay drawn immediately before proceeding on leave. Such leave shall not be debited to the leave account but such entry should be made in the service book separately."

"103C. Child Care Leave.- [(1) A female Government servant and a single male Government servant may be granted child care leave by an authority competent to grant leave, for a maximum period of two years, i.e. 730 days during her/his entire service for taking care of her/his



two eldest surviving children whether for rearing or for looking after any of their needs, such as examination, sickness, etc."

4. What can be concluded from a co-joint reading of the above two provisions is that a female Government employee is entitled to a maternity leave twice in her complete service tenure. The intention of legislature in enacting Rule 103 of the Rules of 1951 clearly seems to have been in terms of the Policy of the State as an objective to keep a control on population growth. But then, as held by Hon'ble the Apex Court in ***K. Umadevi Vs. Government of Tamil Nadu & Ors.; (2025) 8 SCC 263***, the provision for maternity leave must be construed while keeping into consideration the perspective that child birth is a natural incident of life. Further, when Courts are confronted with such situations, they should attempt to give effect to the purpose of law rather than to prevent its application.

5. Herein, it is an admitted fact that the maternity leave as claimed by the petitioner is the second one, sought by her during her service tenure. It is further an admitted fact that although it is her third biological child but then the child has been born out of her second marriage. In ***K. Umadevi*** (supra), Hon'ble the Apex Court while dealing with a situation where the employee had already availed child care leave qua the two children of her spouse from the first marriage, held as under:

"33.4. Thus, this Court was categorical in declaring that the factum of appellant's spouse having two biological children from his first marriage would not impinge upon the entitlement of the appellant to avail maternity leave for her sole biological child. Grant of child care leave to the appellant for





the two children of her spouse from his previous marriage cannot be used to disentitle her to maternity leave under Rule 43 of the 1972 Rules. In the context of employment, child birth has to be construed as a natural incident of life and, hence, provisions for maternity leave must be construed in that perspective. Observing that **when courts are confronted with such situations, they would do well to attempt to give effect to the purpose of the law in question rather than to prevent its application.**

...

35. Policy of the State to arrest population growth by resorting to various population control measures is certainly a laudable objective. So is the objective of granting maternity benefit to women employees. The object of having two child norm as part of the measures to control population growth in the country and the object of providing maternity benefit to women employees including maternity leave in circumstances such as in the present case are not mutually exclusive. The two must be harmonized in a purposive and rationale manner to achieve the social objective."

6. Applying the above ratio to the present matter, this Court is of the opinion that the entitlement of maternity leave of a woman Government employee cannot be construed in a narrow manner. Herein, as it is admitted on record that the maternity leave as sought to be availed by the petitioner is the second one only, the same could not have been denied on the pretext that it is her third biological child. Had it been that the petitioner had already availed maternity leaves twice qua the children from her first marriage and had applied for the third one qua the child from her second marriage, things would have been different. That not being so, and the maternity leave as sought being the second only, the entitlement of the petitioner for the same could not have been denied.





7. In view of the above observations and analysis, the present writ petition deserves to be and is hereby, **allowed**. The respondent Department is directed to pass appropriate orders for the grant of maternity leave as prayed for by the petitioner, in accordance with law, within a period of one week from the date of receipt of the copy of the present order.

8. Stay petition and pending application(s), if any, stand **disposed of**.

(REKHA BORANA),J

96/ARVIND