



\$~J

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Judgment pronounced on: 31.08.2026**# **CNR No.DLHC010727702024**+ **W.P.(C) 14785/2024**

RAKHI BISHT

.....Petitioner

Through: Ms. Parul Singh, Advocate along with
Mr. Kunal Kher, Ms. Harshita Jain,
Advocates.Mr. Sanjeev Mahajan, Advocate
(Amicus Curiae) and Ms. Simran
Rao, Advocate.

versus

UNION OF INDIA AND ANR.

.....Respondents

Through: Mr. Ashish Dixit, CGSC along with
Mr. Umar Hashmi, Mr. Gautam
Yadav and Ms. Iqra Sheikh,
Advocates.Ms. Mumtaz Bhalla and Ms. Prapti
Allagh, Advocates for R-2.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT**

1. The present petition has been filed by the petitioner praying as under—

“i) Allow the present petition;

ii) Issue a writ in the nature of Mandamus/ Certiorari or any other writ
directing the Respondent No.1 to frame clear and strict guidelines to
regulate the transactions pertaining to the pregnancy discrimination in the
private companies;iii) Issue a writ in the nature of Mandamus/ Certiorari or any other writ
directing the Respondent No.1 and 2 to make sure that the Petitioner is
reinstated to the position where her male counterparts have been promoted



as Senior Manager;

iv) Issue a Writ in the nature of Mandamus/ Certiorari or any other writ directing the Respondent No.2 to compensate the Petitioner for mental and emotional harassment amounting to Rs. 50,00,000/- (Rupees Fifty Lakhs Only);

v) Pass an appropriate order or direction to Respondent No.1 for initiating strict action against Respondent No.2 for violating the laws laid down in Maternity Benefit Act;

vi) Pass an appropriate order or direction appointing a committee of experts to examine the grounds raised by the Petitioner in her representation submitted to the Respondent No.2.

vii) Pass appropriate guidelines to be followed by all the private companies including Respondent no.2 to discourage discrimination against women going for maternity leaves;

viii) Issue a Writ in the nature of Mandamus/ Certiorari or any other writ directing Respondent No.2 to not jeopardize the career of Petitioner by giving false facts or willful bad feedback to her new employer, in case she seeks employment opportunity outside in duration of the court case;

ix) Pass order(s) as this Hon'ble Court may deem fit and proper in the present case.

2. At the outset, it is necessary to note that, apart from the broader reliefs sought in the present writ petition, the petitioner has also prayed for reinstatement to a position equivalent to that occupied by her male counterparts who were subsequently promoted to the post of Senior Manager [prayer (iii)] and for appointment of committee of experts to examine the grounds raised by the petitioner in her representation submitted to the respondent no. 2 [prayer (vi)]. However, it has been brought to the notice of this Court that, subsequent to the institution of the present writ petition, the petitioner voluntarily resigned from the services of Respondent No. 2 and is presently employed with Snap Inc., a multinational company, as an Accounting Manager. In view of the subsequent developments, the said



reliefs sought have become infructuous.

3. The copy of the petitioner's resignation email dated 21.10.2024 is reproduced as under –

Prapti Allagh

From: Rakhi Bisht <rakhi.bisht@hashicorp.com>
Sent: 24 October 2024 14:57
To: Sorabh Gupta
Cc: Heena Adhikari
Subject: Re: Resignation Letter

Hi Sorabh,

Yes please.

Regards,
Rakhi

On Thu, 24 Oct, 2024, 12:58 pm Sorabh Gupta, <sorabh.gupta@hashicorp.com> wrote:

Hi Rakhi,

15th November is a Holiday so can we consider 14th November as your last working day?

Thanks
Sorabh

----- Forwarded message -----

From: Sorabh Gupta <sorabh.gupta@hashicorp.com>
Date: Wed, Oct 23, 2024 at 6:07 PM
Subject: Re: Resignation Letter
To: Rakhi Bisht <rakhi.bisht@hashicorp.com>
Cc: Heena Adhikari <heena.adhikari@hashicorp.com>

Hi Rakhi,

I acknowledge receipt of your resignation email. People team will start processing it and I will work with you on your transition plan.

Thanks
Sorabh

On Mon, Oct 21, 2024 at 1:27 PM Rakhi Bisht <rakhi.bisht@hashicorp.com> wrote:

Hi Sorabh,

I am officially resigning from the position of Accounting Manager at Hashicorp and my last working day will be 15th Nov'24.

--
Regards,

Rakhi Bisht
Accounting Manager

4. The background of the matter is that the petitioner, a Chartered Accountant with approximately fourteen years of professional experience,



was appointed by respondent no. 2 as Manager, Accounting pursuant to an appointment letter dated 08.04.2022, requiring her to join on 06.06.2022. The petitioner was offered a salary of ₹2,60,000/- per month. The appointment letter dated 08.04.2022 is reproduced as under –

Date: April 8, 2022

Name: Rakhi Bisht
Address: Flat no 237 PKT 7 Rihayashi Apartment
Dwarka Sector 12
New Delhi, 110078

Sub: Appointment Letter

Dear Rakhi,

With reference to your application and the subsequent interviews you had with us, we, HashiCorp (India) Private Limited ("Company") have the pleasure in offering you an appointment as Manager, Accounting based on the following terms and conditions:

1. **Place and Date of Appointment:** Your employment with the Company will commence on June 6, 2022 ("Start Date") at HashiCorp, WeWork Berger Building, Floor 18, C-001/A2, Sector 16B, Noida, Uttar Pradesh 201301. You will be reporting to Head of Finance, India, *Arun Goel*. Your job duties are set out in the job description enclosed with this letter, in Annexure I.
2. **Probation Period:** You shall be on probation for a period of 6 (six) months commencing from the Start Date during which your suitability for continued employment will be assessed by the Company.

The Company may, upon expiry of the probation period set out above, in its sole discretion, either extend the probation period or confirm your employment with the Company. The Company may extend the term of probation for a further period of 3 (three) months, if the Company believes that your performance is not up to the Company's expectation, but it is reasonably possible that your performance will improve in the near future. In the event your employment is confirmed with the Company, a written confirmation will be issued to you. You agree that during the probation period (including any extended period of probation), the Company may terminate this Agreement without assigning any reason, by providing you a prior written notice period of 1 (one) week. However, the Company may pay you salary, at its sole discretion, in lieu of your notice period, or any part thereof.

3. **Gross Salary:** Your consolidated basic salary will be INR ₹2,60,000 (Indian Rupees only) per month. Your salary entitlement and details of the same are enclosed with this letter, in Annexure II.

All applicable taxes, including taxes levied on the remuneration, benefits/perquisite payable to you by the Company, statutory contributions made on your behalf by the Company shall be borne and paid by you. In accordance with the applicable laws in India, Company shall be withholding taxes at the applicable rates.

4. **Transfer to External Location:** You may be required to be transferred to any place of business of the Company as existing/operating presently or any new subsidiaries of the Company or acquired later in any part of India. You may also be liable to be deputed to any other companies/ concerns/ organizations/ firms with whom the Company may make such arrangement or agreement. You will not be entitled to any extra remuneration on account of such transfer or deputation.
5. **Leave:** You will be entitled to the benefits of leave in accordance with the rules of the Company in force from time to time.
6. **Duties and Responsibilities:** You will be required to effectively carry out the following duties and responsibilities assigned to you by the Company:
 - (a) The Company will expect you to work with a high standard of initiative, efficiency and economy. You will perform, observe and confirm to such duties, directions and instructions assigned or communicated to you by the Company and those in authority over you.
 - (b) You undertake to work whole-heartedly for the Company to the best of your ability and with all due care and to act in and to safeguard the interests of the Company at all times.



- (c) You will not take up any other paid or unpaid activity of a commercial nature without obtaining previous written consent of the Company. Any spare time employment in which you may wish to engage is likewise subject to the Company's previous written consent.
 - (d) You will not associate yourself or participate on your part or on the part of your next of kin in any enterprise of any competitor or business of the Company especially of a supplier, customer, agent or representative.
 - (e) You will neither enter into any commitment or dealing on behalf of the Company for which you have no express authority nor alter or be party to any alteration of any principle or policy of the Company or exceed any authority or discretion vested with you without the appropriate sanction of the Company.
 - (f) Any business records, papers and other subjects entrusted to you e.g. pricelists, books, preparations and samples as well as any notes on business matters made by you or by other people are the Company's property and the same shall not be misused by you in any manner. They must be kept carefully and returned to the Company on request but in any case on the expiry of this contract. No articles, notes or report concerning your activity or the field of activity of the Company may be published or made out by you without the Company's previous written consent.
 - (g) You will not disclose to any third person or people nor exploit in any other way, neither now nor after the end of your employment with the Company, any information which you know or you must reasonably assume to be a business or manufacturing secret.
 - (h) Salary is a matter of contract between you and the Company and therefore, it should be treated as personal and confidential and under no circumstances should it be disclosed or discussed with anybody.
 - (i) You will undertake appropriate behaviour while traveling on behalf of the Company in accordance with the Company policy.
 - (j) You will commit yourself and ensure your safety, safety of your colleagues, plant and machinery and observe the safety instructions notified by the Company and amendments made thereto from time to time and thus ensure that policy directives and guidelines of health, environment protection, quality and responsible care are implemented.
7. **Provident Fund Scheme:** You will voluntarily join the Employees Provident Fund Scheme formulated by the Government of India immediately on joining, as per the rules and regulations in force from time to time. The Company's contribution under this provident fund scheme is fixed at 12% of your salary with a matching compulsory contribution by you, subject to any change due to variation in the applicable rules and regulations.
8. **Code of Conduct:** You shall be governed and shall strictly abide by the Code of Conduct¹, Policies, Directives, terms and conditions, rules and regulations, matters concerning discipline, made and notified by the Company or its management from time to time (hereinafter referred to as "**Guidelines**").
Upon determination that there has been a violation of Guidelines, the Company / Management reserves the right to take appropriate disciplinary and/or legal action(s) against you.
9. **Confidentiality:** You undertake not to disclose in any way to any outsider nor to any employee of the Company not specifically entitled to such knowledge, any information you may come to know concerning the Company, their other plants, sales groups or subsidiaries. Furthermore, you will not transmit directly or indirectly any business or confidential information apart from and accepting such particulars as you may transmit on the Company's request in the usual course of your business activity to the Company's competitors, their helpers, employees, agents or any persons. Your obligation to keep such information confidential shall continue for a period of 1 year after resignation or termination of your services with the Company.
10. **Intellectual Property:**
- (a) You undertake to inform the Company in writing of any intellectual property such as trademarks, copyrights, designs, technical know-how, invention, discovery etc. that you may have developed during the period of your employment with the Company either individually or collectively with other employees of the Company ("**Intellectual Property**"). All Intellectual Property shall automatically stand transferred to the Company and shall



remain an absolute property of the Company at all times. If and when required to do so by the Company, you shall, at the Company's expense, take out or apply for patent licence or other rights, privileges or production as may be directed by us in respect of the Intellectual Property so that the benefit thereof shall accrue to the Company at all times and you shall execute such deeds, documents, agreements as may be required or directed by the Company for transfer, assignment or other to vest the rights in the Intellectual Property in favour of a third person, company, firm or a proprietary as its sole beneficiary.

- (b) You hereby irrevocably and unconditionally waive any and all moral rights or any rights of a similar nature under any law in any jurisdiction in and to any and all material written, created or devised by you, whether solely or jointly, resulting from or suggested by anything which you shall do pursuant to your employment with the Company.
- (c) You acknowledge that your remuneration and all consideration paid to you by the Company under this Agreement includes compensation for the assignment (if any) to the Company of the Intellectual Property and that the rights and obligations under this Clause shall continue in force after the termination of this Agreement in respect of any Intellectual Property created during your employment under this Agreement and shall be binding upon your legal representatives.

11. Termination:

- (a) Your employment may be terminated by either party, giving at least 1 (one) month notice in writing or payment of basic salary in lieu thereof, subject to the discretion of the Company. The Company, in its sole discretion can decide to waive off/ reduce the notice period depending upon the exigencies.
- (b) The Company reserves the right to terminate your employment on grounds of misconduct or unsatisfactory job performance or violation of the Company's policies, without notice or salary in lieu of the notice. For this purpose the term 'misconduct' shall mean and include, without prejudice to the general meaning thereof, any reasonable suspicion of misconduct, disloyalty, commission of any act involving moral turpitude, any act of indiscipline or in efficiency or your refusal or failure to perform your obligations, duties, responsibilities or conviction for any serious crime or felony or any other crime involving moral turpitude, fraud, wilful misrepresentation or any act having the effect or likely to have the effect of injuring the reputation or business or business relationship with the Company.
- (c) If you remain absent for a continuous period of 2 (two) days without prior approval of your reporting manager, (including overstay of leave/training), you shall be considered as having voluntarily terminated your services without giving any notice unless you give an explanation to the satisfaction of the management of the Company.

In addition to the aforesaid, your employment with the Company may be terminated in accordance with the termination policy of the Company, as amended from time to time.

In case of resignation or termination of your employment with the Company in any manner, you shall extend requisite co-operation to the Company to ensure smooth transition of your duties and responsibilities to such person as may be appointed or nominated by the Company.

- 12. Non-Solicitation:** You hereby agree that you shall not for a period of 12 months after the termination of this employment, directly or indirectly, for your own account or as agent, employee, officer, director, consultant, or shareholder or equity owner of any other person, recruit, solicit, entice, assist or engage in any activity whatsoever that would result in any person then or thereafter employed by the employer or appointed as a representative of the employer to be solicited for employment.
- 13. Statement of Facts:** This appointment letter is being issued to you on the basis of the information and particulars furnished by you in your application (including bio-data), at the time of your interview, appointment and subsequent discussions. If it transpires that you have made a false statement (or have not disclosed a material fact) resulting in your being offered this appointment, the Company may take such action as it deems fit in its sole discretion, including termination of your employment with immediate effect.
- 14. Return of Employer Property:** You shall deliver all property and equipment of the Company and all materials (including correspondence, tapes, drawing, notes, plans or other documents

PARUL SINGH

2



of whatsoever nature and all copies thereof) made or compiled or required by you during your employment and concerning the affairs, dealings and finances of the employer within 30 days of resignation or termination of your employment.

15. General:

- (a) The eligibility to claim medical insurance will be as per the Company's policy. You may contact the Human Resource Department for details regarding the same.
- (b) The age of retirement will be 60 years of age. The actual date of retirement shall be the last working day of the calendar month in which your 60th birthday falls. However, you may be retired at any age before sixty years during your services in the establishment if you are unable to continue in service satisfactorily due to any form of physical or the mental infirmity or are not able to perform the given work.
- (c) You will indemnify and keep us indemnified and hold harmless against any loss or damage caused to the Company or any claim raised by a third party against the Company due to any unauthorized act undertaken by you.
- (d) You hereby represent to the Company that you are under no obligation or agreement or legal impediment that would prevent you from becoming an employee of the Company, or adversely impact your ability to perform the expected responsibilities.
- (e) As of the date hereof, if you are covered under the Employees' State Insurance Scheme (the "Scheme") under the Employees' State Insurance Act, 1948 and if any subsequent raise in your salary puts you out of the purview of the Scheme or the limits of the Scheme are revised, which no longer keep you eligible to avail benefits of the Scheme, the Company's contribution of 4.75% towards your insurance pursuant to the Scheme will be deducted from your annual salary.
- (f) Any alteration or modification or supplement to this agreement shall be made in writing.
- (g) In matters not specifically enumerated in this letter, such as gratuity, retrenchment severance etc., you will be governed by such rules and regulations that may be applicable to your grade of employment and the Company policy.
- (h) Any notice or correspondence to be given by the Company to you shall be given at the personal email ID registered by you in your resume submitted to the company at the time of employment. You agree to keep the Company informed of any change in the aforesaid email ID.

- 16. Final Settlement:** On resignation or termination of your employment with the Company any amount owed by you to the Company including any amounts due on account of reimbursement of expenses incurred by the Company due to any loss or damage caused by you to the property of the Company shall, at the sole discretion of the Company, be deducted from any monies payable by the Company to you, including any salary, wages, bonuses, vacation pay, severance, commission, incentives, ex-gratia, variable pay or expenses payable to you. Any excess of such amounts owed by you to the Company shall be repaid by you before the end of your last working day at the Company. The Company reserves the right to recover from you any and all cost and attorney's fees which are incurred by the Company for recovery of such amounts. The final settlement shall not be done unless all outstanding amounts have been settled by you.

- 17. Jurisdiction:** In case of any dispute between the Company and you in relation to your employment, the competent courts and tribunals of New Delhi shall have exclusive jurisdiction.

We look forward to your long and mutually beneficial association with the Company and request you to sign and return the attached copy of this letter as a token of your acceptance of the aforesaid terms and conditions



5. It is submitted by the petitioner that she continued to perform her duties in that capacity until May 2023, when she informed the management of her pregnancy. According to the petitioner, shortly after disclosing her pregnancy, the respondent no. 2 altered her professional responsibilities and, in September 2023, transferred her to a different team. It is submitted that although dissatisfied with the change, the petitioner accepted the reassignment in good faith, believing the respondent no. 2's assurances that she would be restored to her original role upon her return from maternity leave.

6. Thereafter the petitioner proceeded on maternity leave in December 2023 and resumed work in July 2024. Upon her return, she was informed that no position was available for her in her original team. Instead, she was assigned to the Treasury Department, a role which, according to the petitioner, bore no resemblance to the managerial accounting position for which she had been hired. The petitioner contends that the duties assigned in the Treasury Department were traditionally performed by a Staff Accountant, a position approximately three levels below her designation, and were clerical in nature, thereby undermining her qualifications, experience, and professional standing. It is submitted that despite expressing her objections to this reassignment, she was allegedly assured that the arrangement was temporary and that she would soon be reinstated to a General Accounting role.



7. It is submitted that the petitioner repeatedly followed up over the ensuing months but to no avail. She asserts that the demotion in responsibilities caused significant professional and personal distress, as it adversely affected her career progression.

8. The petitioner has also raised grievances concerning the respondent no2's failure to provide statutory childcare support. Upon inquiry regarding the availability of a creche facility through an email dated 20.09.2024, she was informed on 27.09.2024 that the creche facility was not available at the moment. The petitioner has contended that this omission further aggravated the difficulties faced by her upon returning from maternity leave.

9. The petitioner has submitted that the reassignment materially altered her status within the organization. Prior to proceeding on maternity leave, she had five employees reporting to her and occupied a managerial position. Upon resuming work, however, she was left without any reporting staff, excluded from managerial meetings for a considerable period. She has further alleged that colleagues made derogatory remarks regarding her reduced role.

10. According to the petitioner, despite repeated assurances of reinstatement, respondent no. 2 failed to take any concrete steps to restore her to her former position.

11. It is submitted that after making several unsuccessful attempts to secure redress internally, the petitioner formally recorded her objections through an email dated 23.08.2024. Email dated 23.08.2024 is reproduced as under –



2026:DHC:7286



Formal complaint of discrimination and harassment due to Maternity Leave

Heena Adhikari <heena.adhikari@hashicorp.com>

Tue, Aug 27, 2024 at 8:14 AM

To: Heidi Hudspeth <heidi@hashicorp.com>

Cc: Rakhi Bisht <rakhi.bisht@hashicorp.com>

Thanks Heidi.

@Rakhi - Thanks for reaching out. We acknowledge your complaint and want to assure you that we take such matters seriously. I will block some time with you to discuss the matter in detail.

Regards,
Heena

Heena Adhikari (She/Her)
Sr. People Business Partner
e heena.adhikari@hashicorp.com
tz India Standard Time (IST)

<<https://www.hashicorp.com/>>

On Sat, Aug 24, 2024 at 6:00 AM Heidi Hudspeth <heidi@hashicorp.com> wrote:

Hi Rakhi,

Acknowledging receipt. Given there's a public holiday in India and the Hashi India is closed in observation, @Heena Adhikari will reach out to you as soon as possible on Tuesday.

Best regards,
Heidi

On Fri, Aug 23, 2024 at 9:51 AM Rakhi Bisht <rakhi.bisht@hashicorp.com> wrote:

Dear Heena,

I am writing to formally lodge a complaint regarding discriminatory treatment I have received in connection with my pregnancy and subsequent maternity leave. Below are the details of the events that have led me to this conclusion:

1. I informed management of my pregnancy in May 2023. Shortly after declaring my pregnancy, my role was changed, and I was moved to a different team in September 2023, where I worked until the commencement of my maternity leave in December 2023. While I was not pleased with this movement, I accepted it to support the operations in good faith that it will be an easy transition while I resume back from my leaves.
2. Upon returning from maternity leave in July 2024, I was informed that there was no role available for me in my previous team. I was given no choice but to accept a role in the Treasury department, which is not in line with my job description, the profile for which I was hired, or my career aspirations. I clearly communicated my reluctance to take on this role, but I was assured that this was a temporary situation and that I would soon be placed back in a General Accounting role.
3. I have followed up for about 2 months to have a resolution but been denied my request giving me no choice. The role I have been assigned is of Staff Accountant, which is three levels below my designation, causing me significant stress as this is leading my career progression to a downward path.
4. The treatment I have received is unfair and unethical. I strongly believe that I have been sidelined and discriminated against due to my maternity leave, which has resulted in an adverse impact on my role and career trajectory.

I request a thorough investigation into this matter and appropriate action to rectify the situation. I am quite worried that filing this complaint might result in retribution or unfavourable consequences and I sincerely hope that my complaint won't lead to any such circumstance.

5/26/24, 10:01 AM

hashicorp mail - Formal complaint of discrimination and harassment due to maternity leave

I am keen to meet with you at your earliest convenience to discuss this issue further and to explore a fair resolution. Thank you for your attention to this matter and I look forward to your prompt response.

--
Regards,

Rakhi Bisht
Accounting Manager
e rakhi.bisht@hashicorp.com
m +91 9953556570

53



12. Despite her representations, no corrective action was taken. Consequently, she served a legal notice dated 10.09.2024 upon respondent no. 2. The respondent replied to the legal notice on 27.09.2024. However, the grievances of the petitioner are stated to have remained unresolved.

13. It is contended that the petitioner remained with the organization only because of repeated assurances that her concerns would be addressed. Meanwhile, her male counterparts allegedly received promotions to the role of ‘Senior Manager’, while she continued to be denied restoration to her original post.

14. On these facts, the petitioner alleges that the actions of respondent no. 2 amount to maternity and pregnancy-based discrimination, post-maternity demotion, denial of equal professional opportunities, and violation of statutory protections available to women employees. She further contends that the impugned actions infringe her fundamental rights under Articles 14, 15, 16, and 21 of the Constitution of India, which guarantee equality, non-discrimination, equal opportunity in employment, dignity, and reproductive autonomy.

15. The petitioner has placed reliance on ***Bilju A.T. v. Union of India***, 2013 SCC OnLine Del 2152 and ***Sharmila Yadav v. Union of India and Ors.***, W.P. (C) No. 4651 of 2017.

16. *Per contra*, respondent no. 2 has opposed the petition and controverted the assertions advanced by the petitioner. In support of its case, respondent no. 2 has, *inter alia*, made the following submissions:

- i. Respondent no. 2 submits that the present writ petition is not maintainable as the dispute arises from a private employer–employee relationship and pertains to alleged service conditions



governed by a contract of personal service. It is submitted that contracts of personal service are not specifically enforceable under Article 226 of the Constitution, and any grievance arising therefrom must be pursued before the appropriate civil forum by way of a suit for damages.

- ii. It is further submitted that an efficacious statutory remedy is available under the framework of the Code on Social Security, 2020, which provides comprehensive mechanisms for enforcement of maternity-related rights and redressal of grievances.
- iii. Reliance is placed on ***Joshi Technologies International Inc. v. Union of India***, (2015) 7 SCC 728, ***Army Welfare Education Society v. Sunil Kumar Sharma***, (2024) 16 SCC 598, and ***St. Mary's Education Society v. Rajendra Prasad Bhargava***, 2022 SCC OnLine SC 1091, while submitting that disputes arising from private contracts of service and service conditions are matters of private law and ordinarily fall outside the scope of writ jurisdiction.
- iv. It is further submitted that the petition has been filed inter alia seeking a direction to respondent no. 1 to frame clear and strict guidelines to regulate the transactions pertaining to pregnancy discrimination in private companies. It is contended that the Court in exercise of its jurisdiction under Article 226, cannot issue a writ of mandamus directing the legislature to enact or amend a law in a particular manner and such power exclusively lies with the



Supreme Court in exercise of its jurisdiction under Article 32 read with Article 141 of the Constitution.

- v. Reliance in this regard is placed on the following observations of the Court in ***Union of India v. K. Pushpavanam***, (2023) 20 SCC 736 -

“13. The law regarding power of the writ court to issue a mandate to the legislature to legislate is well settled. No constitutional court can issue a writ of mandamus to a legislature to enact a law on a particular subject in a particular manner. The Court may, at the highest, record its opinion or recommendation on the necessity of either amending the existing law or coming out with a new law. The law has been laid down in this behalf in several decisions including a decision Court Employees' Welfare Assn. v. Union of India (Supreme Court Employees' Welfare Assn. v. Union of India, (1989) 4 SCC 187: 1989 SCC (L&S) 569] and State of J&K v. A.R. Zakki /State of J&K v. A.R. Zakki, 1992 Supp (1) SCC 548 : 1992 SCC (L&S) 427] The only exception is where the Court finds that unless a rule-making power is exercised, the legislation cannot be effectively implemented.”

- vi. The next contention of the respondent no. 2 is that the present writ petition raises seriously disputed questions of fact which cannot be adjudicated in proceedings under Article 226 of the Constitution. It is submitted that the petitioner has alleged that the temporary reallocation to the treasury department, scoped to her level, amounted to a prenatal demotion, whereas the respondent no. 2 has put material on record that since the petitioner's position was filled in by another employee that was promoted, she rejoined discharging the role as Manager Accounting but temporarily assigned to investment accounting and currency revaluation,



which was a part of the Accounting function discharged under the Treasury vertical, scoped to her level.

- vii. It is submitted that without prejudice to the fact that the temporary reassignment in Treasury was carried out at the same managerial role in the Finance Department at M3 Level, without disturbing the designation of the petitioner, and as such, the allegations made in the petition are opportunist. The petitioner has not placed any material on record to evince that her designation was changed in any manner, barring a bald allegation that the work assigned to her was not within the functions of the accounting department. It is submitted that not only did the petitioner's designation, level and compensation remained unchanged, she was also given an increment. It is emphasised that in her own communications and email signature, her designation continued to reflect the same position, thereby clearly evidencing that no demotion ever took place. Reliance has been placed on ***Subhas Jain v. Rajeshwari Shivam reported***, (2021) 20 SCC 454 and ***Pooja Kushawah v. Preetam Kushawah*** (First Appeal No. 393/2005)
- viii. Respondent No. 2 further submits that grant of compensation in writ jurisdiction is an exceptional public law remedy, confined to cases involving violation of fundamental rights of life and personal liberty, particularly Article 21, by the State or its instrumentalities only.
- ix. It is submitted that such compensation can only be payable by the State for violation of fundamental rights only. In the present case,



the allegations are against a private party, and as such, no compensation for the alleged violation of Maternity Benefit Act, 1961 can be quantified and paid without proof of such violation.

- x. The Respondent no. 2 contends that there was no prenatal discrimination, demotion, or violation of the provisions of the Maternity Benefit Act, 1961 or any other applicable law. It submits that the Petitioner was extended all statutory maternity benefits, including maternity benefit, medical bonus, flexible work-from-home arrangements during pregnancy and after maternity leave, an additional laptop for her convenience, and permission to avail maternity leave beyond the statutory period without adverse consequences.
- xi. The Respondent no. 2 argues that the Petitioner was never dismissed, discharged, demoted, or subjected to any reduction in pay, designation, seniority, or employment benefits. According to the Respondent, Section 12 of the Maternity Benefit Act protects women only against dismissal, discharge, or adverse alteration of service conditions connected with termination and does not regulate an employer's internal allocation of work or business decisions relating to assignments. Reliance is placed on **B. Premanand & Ors. v. Mohan Koikal & Ors.**, 2011 (4) SCC 266, to contend that courts cannot expand the scope of a statute beyond its plain language.
- xii. It is further submitted that during the petitioner's maternity leave, the respondent no.2 underwent a global corporate acquisition,



resulting in organizational restructuring and postponement of plans to create an expanded role for the Petitioner. Consequently, upon her return, she continued in the same designation of Manager–Accounting and was temporarily assigned to the Treasury Division to perform investment accounting and currency revaluation functions, which the respondent no.2 claims were commensurate with her experience and at the same managerial level (M3). The respondent no.2 asserts that this assignment was discussed with and accepted by the petitioner.

- xiii. The respondent no.2 emphasizes that the petitioner received a 10% annual increment during the relevant period, her salary and seniority remained unchanged, and she continued to hold the same designation throughout her employment, as reflected in her own correspondence and resignation email.
- xiv. The respondent no.2 further submits that the petitioner’s legal notice initially sought compensation of ₹1.5 lakh for alleged harassment, whereas the writ petition subsequently claimed ₹50 lakh, which, according to the respondent no.2, demonstrates an attempt at unjust enrichment rather than redress of any genuine legal grievance. It also argues that the petitioner has failed to produce any documentary evidence establishing demotion, discrimination, or violation of her legal or constitutional rights, and that the dispute is essentially a contractual employment matter sought to be given a constitutional colour.



- xv. The respondent no.2 disputes the findings of the Amicus Curiae, contending that the report overlooks the realities of organizational restructuring and employee rotation in multinational corporations, where cross-functional assignments are common for leadership development. It further submits that the opinion of an amicus is merely advisory, relying upon ***Sarla Sharma v. State of Rajasthan***, 2001 SCC OnLine Raj 161.
- xvi. It is further submitted that although the Maternity Protection Convention does not apply to employments generated in India, however, since the same lays down international framework, it may be noteworthy that Article 8 of the said Convention makes it manifest that a woman is entitled to return to the “same position or an equivalent position” at the end of maternity leave, and not necessarily to the identical scope of work as was being performed prior to her maternity break.
- xvii. Thus the respondent no. 2 contends that no violation of the Maternity Benefit Act or any fundamental right has been established, that the issues involve disputed questions of fact not amenable to writ jurisdiction, and that decisions regarding allocation of work and organizational deployment fall within the legitimate managerial prerogative of the employer.
17. Submissions of the Union of India are as under -
- i. It is submitted that the present writ petition raises not an issue of absence of maternity protection under law, but of inadequate implementation of the constitutional and statutory safeguards



available to women in private employment. This Court has been urged to exercise its jurisdiction under Article 226 to direct the Union of India, appropriate Governments, and statutory authorities to operationalise the protections contained in Chapter VI of the Code on Social Security, 2020 by framing effective implementation mechanisms, rules, and schemes.

- ii. It is submitted that while the Code already provides for maternity benefits, nursing breaks, creche facilities, protection against dismissal during maternity leave, and a complaint mechanism, it lacks a comprehensive and uniform implementation framework addressing pregnancy-related accommodations, role protection, return-to-work parity, lactation support, timely grievance redressal, inspection standards, and safeguards against subtle workplace retaliation.
- iii. Relying upon ***Dwarka Nath v. Income-Tax Officer, Special Circle, Dhanbad***, AIR 1966 SC 81, it is submitted that the wide jurisdiction under Article 226 empowers High Courts to mould appropriate relief to ensure effective enforcement of statutory rights. Similar reliance is placed on ***Comptroller and Auditor General of India v. K.S. Jagannathan***, (1986) 2 SCC 679.
- iv. Reliance has also been placed on ***Frank Anthony Public School Employees' Association v. Union of India***, (1986) 4 SCC 707 and ***Hamsaanandini Nanduri v. Union of India***, W.P.(C) No. 960 of 2021.



- v. It is highlighted that the Code itself contains sufficient enabling provisions for executive action. Sections 149, 150, and 154 empower the Central and State Governments to issue implementation directions, frame schemes, and make rules necessary to give effect to the Code. It is therefore submitted that Parliament has already conferred adequate statutory authority for developing a specialised maternity-compliance framework, and the Court may direct the executive to exercise these existing powers.
 - vi. Further, the Union of India has suggested a set of interim guidelines pending the formulation of a comprehensive statutory implementation framework.
18. Submissions of Mr. Sanjeev Mahajan, learned amicus are as under –
- i. The learned amicus curiae, has placed emphasis on the inconsistencies and admissions on the part of respondent no. 2. It is submitted that the reply dated 27.09.2024 sent by Respondent No. 2 to the legal notice issued by the Petitioner discloses material inconsistencies and admissions on the part of Respondent No. 2.
 - ii. It is emphasised that, in the said reply, Respondent No. 2 stated that “upon your client’s return in July 2024, there were drastic changes within our organization” and further that “your client has been temporarily assigned to the Treasury Department, as her previous role was given to an employee who had been promoted.” It is submitted that this admission clearly indicates that the petitioner’s displacement from her original role was not on account



of any bona fide restructuring alone, but was directly consequent to the filling of her position by another employee during her maternity leave, thereby resulting in loss of role and career progression.

- iii. Further emphasis has been placed on paragraph 11 of the reply. It is submitted that Respondent No. 2 itself stated that “she was assigned to the Treasury Department as a temporary measure” and that “the Treasury role was scoped to her managerial level.” However, in paragraph 14 of the counter-affidavit, Respondent No. 2 has averred that the posting in the Treasury Department was an important role within the Finance Department. It is contended that these statements are inherently contradictory.
- iv. It is further pointed out that, in paragraph 10 of the counter-affidavit, it is stated that “the Petitioner’s role was assigned to another employee as Respondent No. 2 could not have left a team of four people (previously managed by the Petitioner) without a manager during the Petitioner’s absence on account of her maternity leave for an elongated period of six months.”
- v. It is highlighted that Respondent No. 2 has also reproduced an internal communication stating, “let’s see if we can assign her some activities to keep her engaged when she starts and also have her as backup in case someone leaves”.
- vi. It is submitted that these statements amount to a clear admission that the Petitioner was replaced during her maternity leave, not on account of any bona fide restructuring, but for reasons of administrative convenience, by promoting another employee into



her role.

- vii. It is further highlighted that the contradiction in the statements of the respondent no.2 becomes evident upon comparing paragraphs 49 and 58 of the counter-affidavit. In paragraph 49, it is stated that the Petitioner was “moved from managing a team of 1–2 persons to supervising four team members,” thereby suggesting an enhancement of responsibilities. However, in paragraph 58, the Respondent states that “the Petitioner’s earlier role was filled by another employee as Respondent No. 2 could not leave a team of four people (previously managed by the Petitioner) without a manager during the Petitioner’s absence”.
- viii. It is submitted that these statements are mutually inconsistent and materially undermine Respondent No. 2’s case.
- ix. Further, relying on a chat exchanged between Respondent No. 2 and the Petitioner on 02.07.2024. It is submitted that a plain reading of the said communications reveals that the Treasury role was portrayed in a significantly elevated manner, contrary to its actual nature. The role is described as involving “investment accounting and currency revaluation,” thereby projecting it as a specialised and significant function.
- x. It is further submitted that the present case raises substantial issues concerning constitutional guarantees of equality, dignity, non-discrimination, and protection of women in the workplace. Reliance is placed upon Articles 14, 15, 21 and 42 of the Constitution of India. Reliance has been placed on ***K. Umadevi v. Government of Tamil Nadu & Ors.*** (2025) 8 SCC 263.



- xi. With regard to the statutory framework, reliance is placed upon the provisions of the Maternity Benefit Act, 1961. Particular emphasis is placed on Section 12 of the Maternity Benefit Act, 1961, which prohibits employers from varying the conditions of service of a woman employee to her disadvantage during maternity. It is contended that the prohibition extends beyond termination of service and includes any adverse alteration of employment conditions, including demotion, reduction of responsibilities, loss of status, or reassignment to an inferior role.
- xii. While relying on the other provisions of the Act including Section 12, 21 and 27 it is submitted that no employer can rely upon contractual arrangements or organizational policies to dilute the protections guaranteed under the statute.
- xiii. Reliance is also placed upon the Maternity Benefit (Amendment) Act, 2017, which introduced Section 11A mandating the provision of creche facilities in establishments employing fifty or more employees.
- xiv. It is stated that the substantive protections under the Maternity Benefit Act have since been incorporated into the Code on Social Security, 2020. Section 68(1) of the Code substantially mirrors Section 12 of the 1961 Act by prohibiting disadvantageous variation of service conditions during maternity. The Code also retains provisions relating to creche facilities and prescribes penalties for non-compliance, including imprisonment and monetary fines. It is contended that although the present dispute arose during the operation of the Maternity Benefit Act, 1961, the



subsequent enactment of the Code reinforces the legislative policy that maternity must never become a basis for adverse employment consequences.

- xv. It is further submitted that a legislative gap nevertheless remains. The existing statutes do not expressly address situations where an employee's salary remains unchanged but her role, responsibilities, status, managerial authority, or opportunities for advancement are substantially diminished upon her return from maternity leave.
- xvi. The learned Amicus relies extensively on international legal standards. Reference is made to Article 11(2)(b) of Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified by India in 1993. Reliance is also placed upon the ILO Maternity Protection Convention, 2000.
- xvii. Judicial support for the incorporation of these international standards is drawn from the decisions of the Supreme Court in ***Apparel Export Promotion Council v. A.K. Chopra***, (1999) 1 SCC 759 and ***Municipal Corporation of Delhi v. Female Workers***, (2000) 3 SCC 224. It is submitted that these decisions recognized the relevance of international conventions in interpreting constitutional rights.
- xviii. It is submitted that the alleged post-maternity demotion, deprivation of role continuity, exclusion from managerial functions, and denial of career advancement in the present case are inconsistent not only with domestic law but also with India's international commitments relating to gender equality and maternity protection.



- xix. Reliance is also placed upon the Family and Medical Leave Act, 1993 of the United States, which guarantees an employee's right to be restored to the same or an equivalent position with equivalent pay, benefits, and conditions of employment upon return from maternity leave.
- xx. Reference is likewise made to the Fair Work Act, 2009 and the Sex Discrimination Act, 1984 of Australia, which require employers to consult employees regarding decisions affecting their position during parental leave and prohibit adverse action on grounds of pregnancy, sex, or family responsibilities.
- xxi. It is submitted that the right to return to the same or an equivalent position, preservation of seniority and accrued benefits, and protection against maternity-based discrimination form the core of modern maternity jurisprudence worldwide.
- xxii. It is contended that empirical studies and international research consistently demonstrate that maternity-related disadvantage remains a significant structural barrier to women's equal participation and advancement in employment. It is emphasised that according to studies conducted by the Equality and Human Rights Commission (EHRC), a substantial number of women experience adverse employment consequences following pregnancy and maternity, including dismissal, forced redundancy, hostile treatment, or circumstances that effectively compel them to resign. Such data, according to the learned amicus reveals that maternity discrimination continues to operate as a widespread and persistent workplace phenomenon.



- xxiii. The learned Amicus further contends that a significant regulatory vacuum exists within the Indian legal framework concerning the post-maternity reintegration of women employees. While the law provides protections relating to maternity leave and prohibits overt discrimination, there are no comprehensive statutory guidelines ensuring continuity of role, preservation of professional responsibilities, protection of career progression, or dignified reintegration into the workplace after maternity leave.
- xxiv. It is submitted that unless adequate safeguards are developed, the protections available under maternity legislation risk becoming merely formal rights without meaningful practical effect.
- xxv. While objecting to the contention of the respondent no. 2 regarding alternative remedy, it is submitted that it is well settled that the rule of alternative remedy is a rule of discretion and not an absolute bar to the exercise of writ jurisdiction. Reliance is placed upon the decisions of the Supreme Court in ***Leelavathi N. v. State of Karnataka***, 2025 SCC OnLine SC 2253, ***Radha Krishan Industries v. State of Himachal Pradesh***, (2021) 6 SCC 771 and ***Whirlpool Corporation v. Registrar of Trade Marks***, (1998) 8 SCC 1. It is therefore contended that the present petition is maintainable under Article 226 as it raises issues of constitutional significance extending beyond the confines of a statutory employment dispute.
- xxvi. It is further submitted that Section 12 of the Maternity Benefit Act, 1961, and its corresponding provision under Section 68(1) of the Code on Social Security, 2020, warrant a purposive and liberal



interpretation. Being beneficial social welfare legislation, these provisions must be construed in a manner that advances the object of protecting women employees rather than restricting the scope of protection. Accordingly, it is submitted that the expression prohibiting employers from varying the conditions of service of a woman employee to her disadvantage should be interpreted broadly so as to include demotion, diminution of responsibilities, and impairment of career progression arising from maternity.

xxvii. It is submitted that judicial intervention in the present case is necessary not merely to remedy the injustice allegedly suffered by the petitioner, but also to address a broader structural imbalance affecting women in the workforce.

xxviii. In this regard, reliance is placed upon ***Vishaka v. State of Rajasthan***, (1997) 6 SCC 241 as subsequently affirmed in ***Medha Kotwal Lele v. Union of India***, (2013) 1 SCC 297.

xxix. Accordingly, learned Amicus urges this Court, pending legislative action, to formulate guidelines governing post-maternity reintegration of women employees.

ANALYSIS AND CONCLUSION

19. The petitioner has approached this Court under Article 226 of the Constitution of India, seeking, *inter alia*, protection of her statutory and constitutional rights relating to pregnancy and maternity leave, as well as the issuance of appropriate directions to safeguard women employees against maternity-based discrimination.



Maintainability

20. At the threshold, it is necessary to deal with the respondent no. 2's objection as regards the maintainability of the present petition. The objection is two-fold. First, it is contended that the respondent no. 2 is a private commercial enterprise, discharges no public function, and that the petitioner, in substance, seeks to enforce a contract of personal service, which is not specifically enforceable. Second, it is contended that the Code on Social Security, 2020 furnishes an efficacious alternative remedy.

21. It is no doubt true that the respondent no. 2 is a private commercial entity. It is not "State" within the meaning of Article 12 of the Constitution of India.

22. There can be no quarrel with the proposition that the ordinary incidents of the employment relationship between the petitioner and the respondent no. 2 are governed by contract and lie outside the domain of public law. In ***St. Mary's Education Society v. Rajendra Prasad Bhargava***, (2023) 4 SCC 498, the Supreme Court has held that, while a private body may perform functions touching upon public life, actions or decisions taken solely within the confines of an ordinary contract of service cannot be recognised as amenable to challenge under Article 226 of the Constitution of India. The same principle has been reiterated in ***Army Welfare Education Society v. Sunil Kumar Sharma & Ors.***, (2024) 16 SCC 598.

23. It may be noted that what is excluded from writ jurisdiction is action taken solely within the confines of an ordinary contract of service having no statutory force or backing. In the present case, the petitioner does not seek to enforce any term of her employment contract; rather, she seeks to enforce



Section 12 of the Maternity Benefit Act, 1961, which imposes an obligation upon every employer to whom the Act applies and which remains unaffected by the terms of the employment contract between the parties. Section 27 of the Maternity Benefit Act, 1961 provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement, or contract of service, whether made before or after the coming into force of the Act. Thus, it is evident that the obligation which the petitioner seeks to enforce is statutory in nature and operates in supersession of the terms of the contract of employment.

24. A statute which declares certain conduct unlawful and overrides the terms of a contract of service cannot be bypassed on the ground that the matter falls within the sphere of private employment. The Maternity Benefit Act, 1961, imposes positive obligations of a public character upon an employer in furtherance of a legislative policy directed towards the protection of women in the workforce. A writ petition will undoubtedly lie in respect of an obligation of such a nature.

25. The Supreme Court in ***Federal Bank Ltd. v. Sagar Thomas***, (2003) 10 SCC 733, has observed as under –

“18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.”

26. The decisions relied upon by the respondent no. 2 are inapplicable,



inasmuch as what is asserted by the petitioner is a statutory right that subsists independently of her employment contract. A writ petition is maintainable for the enforcement of statutory obligations, *inter alia*, those contained in Section 12 of the Maternity Benefit Act, 1961. Such statutory obligations subsist notwithstanding that the concerned employer does not fall within the category of “State” as defined in Article 12 of the Constitution of India. Accordingly, the present writ petition is held to be maintainable.

27. It may also be noted that the Supreme Court¹ has held that, where the actions of private entities substantially impair constitutionally protected rights, the jurisdiction of constitutional courts cannot be excluded merely because the dispute originates within a private relationship.

28. Equally untenable is the objection that the writ petition is barred on account of the availability of an alternative statutory remedy under the Code on Social Security, 2020. It is well settled that the rule of alternative remedy is a rule of prudence and self-imposed restraint; it is neither a rule of jurisdiction nor an absolute bar to the exercise of writ jurisdiction. In ***Radha Krishan Industries v. State of Himachal Pradesh***, (2021) 6 SCC 771, after considering the earlier decisions in ***Whirlpool Corporation v. Registrar of Trade Marks*** (1998) 8 SCC 1 and other precedents, the Supreme Court reiterated that the existence of an alternate remedy does not preclude the exercise of jurisdiction under Article 226 in appropriate case. The relevant observations of the Court is reproduced as under -

“27.3. *Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right*

¹ Kaushal Kishor v. State of U.P., (2023) 4 SCC 1



protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.”

29. The same principle has recently been reaffirmed in ***Leelavathi N. v. State of Karnataka***, 2025 SCC OnLine SC 2253, wherein the Supreme Court has observed as under –

“37. Nevertheless, a writ petition under Article 226 may still be maintainable notwithstanding the existence of such an alternative remedy in exceptional circumstances, including the enforcement of fundamental rights guaranteed under Part III of the Constitution; instances of ultra vires or illegal exercise of power by a statutory authority; violation of the principles of natural justice; or where the vires of the parent legislation itself is under challenge.....”

30. The present case, in the considered view of this Court, falls squarely within the recognised exceptions to the rule of alternate remedy. The petitioner does not merely seek enforcement of a statutory entitlement to maternity leave or payment of maternity benefits. Her grievance pertains to alleged post-maternity demotion, loss of managerial authority, deprivation of professional responsibilities, denial of career progression, and discriminatory treatment arising from pregnancy and motherhood. These allegations directly implicate the guarantees of equality under Articles 14 and 15, the right to dignity and livelihood under Article 21, and the constitutional commitment to maternity protection reflected in Article.

31. It is also common ground in the present case that the rules and schemes contemplated by Sections 150 and 154 of the Code on Social Security, 2020, have not yet been framed. Learned counsel for the Union of India has candidly acknowledged that the implementation framework is deficient in precisely those respects with which the present petition is concerned. As such, there is no occasion to relegate the petitioner to a



mechanism that is presently absent and yet to be framed.

32. Importantly, the issues involved in the present petition concern the broader question of whether the constitutional promise of equality and dignity for working women survives after childbirth and whether maternity can become a basis for professional disadvantage in the workplace. Such questions undoubtedly possess a significant constitutional character and warrant examination under Article 226 of the Constitution.

Constitutional And Statutory Framework Governing Maternity Protection

33. Article 14 of the Constitution of India guarantees 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.*” In the sphere of employment, this constitutional mandate requires that employees be treated fairly and that no individual is subjected to adverse treatment without a reasonable and lawful basis.

34. Article 15(1) of the Constitution further 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.*” The prohibition against discrimination on the ground of sex encompass discrimination arising from pregnancy and maternity.

35. Article 21 of the Constitution of India provides that “*no person shall be deprived of his life or personal liberty except according to procedure established by law.*” Over the years, the scope of Article 21 has been interpreted by the Supreme Court to encompass the right to live with dignity, the right to livelihood, reproductive autonomy, and the right to motherhood.

36. The significance of maternity protection as a constitutional



entitlement has been unequivocally affirmed by the Supreme Court in **K. Umadevi v. State of T.N.**, (2025) 8 SCC 263. The relevant observations of the Supreme Court are reproduced hereunder:—

51. Such international developments had its impact on Indian law. In *Suchita Srivastava v. State (UT of Chandigarh)* [*Suchita Srivastava v. State (UT of Chandigarh)*, (2009) 9 SCC 1 : (2009) 3 SCC (Civ) 570] , a three-Judge Bench of this Court in the context of the Medical Termination of Pregnancy Act, 1971 acknowledged the right of a woman to make reproductive choices and held that such a right is a facet of Article 21 of the Constitution. This Court held thus: (SCC p. 15, para 22)

“22. There is no doubt that a woman's right to make reproductive choices is also a dimension of “personal liberty” as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children.”

52. This Court in *Devika Biswas v. Union of India* [*Devika Biswas v. Union of India*, (2016) 10 SCC 726] observed that the need to respect and protect reproductive rights and reproductive health of a person has been recognised. Reproductive right is an aspect of personal liberty under Article 21 of the Constitution. This decision was rendered in the backdrop of the sterilisation campaign carried out by the State.

53. In *Devika Biswas* [*Devika Biswas v. Union of India*, (2016) 10 SCC 726] , this Court observed as under: (SCC pp. 753-54, paras 106 & 109-111)

“106. The manner in which sterilisation procedures have reportedly been carried out endanger two important components of the right to life under Article 21 of the Constitution—the right to health and the reproductive rights of a person.



109. That the right to health is an integral part of the right to life does not need any repetition.

110. Over time, there has been recognition of the need to respect and protect the reproductive rights and reproductive health of a person. Reproductive health has been defined as “the capability to reproduce and the freedom to make informed, free and responsible decisions. It also includes access to a range of reproductive health information, goods, facilities and services to enable individuals to make informed, free and responsible decisions about their reproductive behaviour”. [WHO, Sexual Health, Human Rights and the Law (2015) cited from Committee on Economic, Social and Cultural Rights, General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), 2-5-2016, E/C.12/GC/22 at para 6 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/089/32/PDF/G1608932.pdf?OpenElement>>.] The Committee on Economic, Social and Cultural Rights in General Comment No. 22 on the Right to Sexual and Reproductive Health under Article 12 of the International Covenant on Economic, Social and Cultural Rights [India ratified this Convention on 10-4-1979.] observed that “The right to sexual and reproductive health is an integral part of the right of everyone to the highest attainable physical and mental health.” [General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22 <<https://documents-ddsny.un.org/doc/UNDOC/GEN/G16/089/32/PDF/G1608932.pdf?OpenElement>>.]

111. This Court recognised reproductive rights as an aspect of personal liberty under Article 21 of the Constitution in *Suchita Srivastava v. State (UT of Chandigarh)* [*Suchita Srivastava v. State (UT of Chandigarh)*, (2009) 9 SCC 1 : (2009) 3 SCC (Civ) 570] The freedom to exercise these reproductive rights would include the right to make a choice regarding sterilisation on the basis of informed consent and free from any form of coercion.”

54. Elaborating on the contours of reproductive rights, this Court in *X1 v. State (NCT of Delhi)* [*X1 v. State (NCT of Delhi)*, (2023) 9 SCC 433] observed that the ambit of reproductive rights is not restricted to



the right of women to have or not to have children. It also includes the constellation of freedoms and entitlements that enable a woman to decide freely on all matters relating to her sexual and reproductive health.

55. This Court in X1 case [X1 v. State (NCT of Delhi), (2023) 9 SCC 433] observed that although human dignity inheres in every individual, it is susceptible to violation by external conditions and treatment imposed by the State. The right of every woman to make reproductive choices without undue interference from the State is central to the idea of human dignity. Deprivation of access to reproductive healthcare or emotional and physical well-being also injures the dignity of women. This Court referred to Article 51 of the Constitution which urges the State to foster respect for international law and treaty obligations.

56. The relevant extract of the said decision reads thus: (X1 case [X1 v. State (NCT of Delhi), (2023) 9 SCC 433] , SCC pp. 486-87, para 101)

“101. The ambit of reproductive rights is not restricted to the right of women to have or not have children. It also includes the constellation of freedoms and entitlements that enable a woman to decide freely on all matters relating to her sexual and reproductive health. Reproductive rights include the right to access education and information about contraception and sexual health, the right to decide whether and what type of contraceptives to use, the right to choose whether and when to have children, the right to choose the number of children, the right to access safe and legal abortions, and the right to reproductive healthcare. Women must also have the autonomy to make decisions concerning these rights, free from coercion or violence.”

57. In a recent decision, the Delhi High Court in Delhi Police v. Ravina Yadav [Delhi Police v. Ravina Yadav, 2024 SCC OnLine Del 4987] explained the purpose of maternity benefit. It is to ensure that a working lady may overcome the state of motherhood honourably, peaceably and undeterred by the fear of being victimised for forced absence from work during pre- and post-natal periods. Women now constituting a sizable portion of the workforce in our country, must be treated with honour and dignity at places where they work to earn their livelihood.

58. The High Court in Raveena Yadav case [Delhi Police v. Ravina Yadav, 2024 SCC OnLine Del 4987] went on to explain the impact of pregnancy on the physiological and psychological state of a woman employee undergoing pregnancy. It is not just motherhood but also childhood that require special attention. Health issues of both mother as



well as that of the child are to be kept in consideration while providing maternity leave. **Concept of maternity leave is a matter of not just fair play and social justice but is also a constitutional guarantee to the women employees of this country towards fulfilment whereof the State is bound to act.**

37. In *Hamsaanandini Nanduri vs Union Of India*, 2026 SCC OnLine SC 402, recently the Supreme Court has observed as under –

20. Women, as primary caregivers of children, play a crucial role in the early development of children, more particularly, in the formative years of the child when a mother provides stability, care, and consistent nurturing. During this period, mothers undertake extensive physical, emotional, and psychological responsibilities. It often requires them to prioritize childcare over professional commitments. In such circumstances, institutional support becomes necessary to enable them to discharge responsibilities effectively without fear of financial insecurity, professional disadvantage, or the loss of livelihood.

21. The protection of maternity leave is a basic human right, as it recognizes conditions that are necessary for the full development of human personality and realization of equality. It embodies an essential component required to promote equality at workplace and safeguards maternal and child health. In other words, it dignifies motherhood.

xxx

23. The concept of maternity benefit acknowledges the ability of a woman to exercise her reproductive choices without fear of losing her employment, more particularly, the economic security. Thus, it ensures that motherhood does not become a factor for exclusion at workplace.

24. In the aforesaid context, the right of maternity protection recognizes the biological as well as caregiving realities associated with motherhood, and seeks to correct structural inequalities that women face in employment. It represents the State's commitment to uphold human dignity, equal treatment at work, and broader ideals of social justice.

25. Thus, legislating for maternity benefit and childcare, in the form of payment during periods of recovery and care, crèche facilities at the workplace, and parental leave for tending to young children, constitutes institutional support aimed at enabling women to seek and retain employment, participate meaningfully in public life, and progressively attain substantive equality.

xxx



47. In *Dev Shree Bandhe v. C.G. State Power Holding Co. Ltd.*, reported in **2017 SCC OnLineChh 1763**, the petitioner, employed on probation, sought maternity leave which was declined by the respondent. The Court recognized the right to motherhood and the right of every child to full development as part of Article 21. Similarly, the Rajasthan High Court in *Chanda Keswani v. State of Rajasthan*, reported in **2023 SCC OnLine Raj 3274**, held that the right to life includes the right to motherhood and the right of every child to full development. Thus, it was held that denial of maternity leave cannot be on the ground that the woman seeking it has given birth biologically, or has begotten a child through surrogacy or adoption.

xxx

50. Motherhood does not end with the birth of a child. This was observed, or rather emphasized by the Chhattisgarh High Court in *Lata Goyal v. Union of India*, reported in **2025 SCC OnLineChh 5572**, wherein the petitioner, an employee of IIM, sought directions that adoption leave and child care leave as per the CCS (Leave) Rules be made applicable to her. The views expressed by the Court merit commendation.

It observed that a woman's right to practice a profession is a constitutional entitlement flowing from Articles 14, 15, and 21 of the Constitution respectively. It emphasized that State cannot remain oblivious to the needs and concerns of women in workforce. The Court categorically held that discrimination on the ground of the mode of bringing a child is impermissible, for the object of such leave is to dignify motherhood and ensure the healthy growth and development of the child. It refrained from distinguishing between a biological, adoptive or surrogate mother. The relevant observations read thus:—

“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.

xxx

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.”

xxx



111. In *X2 v. State (NCT of Delhi)*, (2023) 9 SCC 433, wherein one of us, J. B. Pardiwala, J., was a part of the Bench, observed that the bouquet of reproductive rights encompasses at the very least the right of women to have or not have children. The Court emphasized that reproductive autonomy forms an integral part of personal liberty and decisional autonomy under Article 21 of the Constitution. The relevant observations read thus:—

“101. The ambit of reproductive rights is not restricted to the right of women to have or not have children. It also includes the constellation of freedoms and entitlements that enable a woman to decide freely on all matters relating to her sexual and reproductive health. Reproductive rights include the right to access education and information about contraception and sexual health, the right to decide whether and what type of contraceptives to use, the right to choose whether and when to have children, the right to choose the number of children, the right to access safe and legal abortions, and the right to reproductive healthcare. Women must also have the autonomy to make decisions concerning these rights, free from coercion or violence.

102. Zakiya Luna has, in a 2020 publication, argued that reproduction is both biological and political. [Zakiya Luna, Reproductive Rights as Human Rights : Women of Color and Fight for Reproductive Justice (NYU Press, 2020).] According to Luna, it is biological since physical bodies reproduce, and it is political since the decision on whether to reproduce or not is not solely a private matter. This decision is intimately linked to wider political, social, and economic structures. A woman's role and status in family, and society generally, is often tied to childbearing and ensuring the continuation of successive generations.

xxx

117. Recently, in *K. Umadevi (supra)*, Ujjal Bhuyan, J., succinctly highlighted the constitutional support to social security benefits through the Directive Principles of State Policy. The relevant observations read thus:—

“30. Article 42 of the Constitution of India which is one of the directive principles of State policy mandates that the State shall make provisions for securing just and humane conditions of work and for maternity relief. Article 42 is as follows:



“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.”

31. Another directive principle is contained in Article 51 of the Constitution of India. Amongst others, it says through Article 51(c) that the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organised people with one another.”

38. In **Sarita Choudhary v. High Court of M.P.**, (2025) 9 SCC 297, the Supreme has made the following observations –

“105. The freedom from discrimination or equal protection of the laws during pregnancy and maternity of a woman are precious rights for women workforce.....”

39. Article 42 of the Constitution of India, which forms part of the Directive Principles of State Policy, mandates that *“the State shall make provision for securing just and humane conditions of work and for maternity relief.”* Although the Directive Principles are not enforceable by themselves, they constitute fundamental principles in the governance of the country and serve as important guides in interpreting constitutional guarantees.

40. The significance of Article 42 in the context of maternity protection was emphatically recognized by the Supreme Court in **Municipal Corporation of Delhi v. Female Workers (Muster Roll)**, (2000) 3 SCC 224, wherein the Court observed that –

“11. It is in the background of the provisions contained in Article 39, specially in Articles 42 and 43, that the claim of the respondents for maternity benefit and the action of the petitioner in denying that benefit to its women employees has to be scrutinised so as to determine whether the denial of maternity benefit by the petitioner is justified in law or not.

12. Since Article 42 specifically speaks of 'Just and humane conditions of work' and 'maternity relief', the validity of an executive or administrative action in denying maternity benefit has to be examined



on the anvil of Article 42 which, though not enforceable at law, is nevertheless available for determining the legal efficacy of the action complained of.”

41. The observations of the Supreme Court make it abundantly clear that maternity relief is not merely a matter of statutory entitlement but a constitutional objective rooted in the broader ideals of social justice, dignity, and humane conditions of employment. Article 42 thus reflects a clear constitutional commitment that motherhood must be protected, accommodated, and supported in the workplace, rather than becoming a source of disadvantage or exclusion.

42. Maternity Benefit Act, 1961, a beneficial piece of social welfare legislation seeks to regulate the employment of women before and after childbirth and to ensure that motherhood does not result in loss of employment, economic insecurity, or professional disadvantage.

43. The central protection relevant to the present controversy is contained in Section 12 of the Maternity Benefit Act, 1961, which provides that -

*“12. Dismissal during absence of pregnancy.—(1) When a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, **or to vary to her disadvantage any of the conditions of her service.***

(2) (a) The discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus referred to in Section 8, shall not have the effect of depriving her of the maternity benefit or medical bonus:

Provided that where the dismissal is for any prescribed gross misconduct, the employer may, by order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus or both.



(b) Any woman deprived of maternity benefit or medical bonus, or both, or discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Act, may, within sixty days from the date on which order of such deprivation or discharge or dismissal is communicated to her, appeal to such authority as may be prescribed, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefit or medical bonus or both, or discharged or dismissed shall be final.

(c) Nothing contained in this sub-section shall affect the provisions contained in sub-section (1).”

44. Section 21 of the Maternity Benefit Act, 1961, prescribes penal consequences for contravention of the Act. The same is reproduced as under—

[21. Penalty for contravention of Act by employer.—(1) If any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of this Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees:

Provided that the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in lieu of imprisonment.

(2) If any employer contravenes the provisions of this Act or the rules made thereunder, he shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both:

Provided that where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall, in addition recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto.]

45. Section 27 of the Act grants overriding effect to its provisions.



Section 27 expressly stipulates that -

27. Effect of laws and agreements inconsistent with this Act.—(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act:

Provided that where under any such award, agreement, contract of service or otherwise, a woman is entitled to benefits in respect of any matters which are more favourable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that she is entitled to receive benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed to preclude a woman from entering into an agreement with her employer for granting her rights or privileges in respect of any matter which are more favourable to her than those to which she would be entitled under this Act.

46. The Maternity Benefit (Amendment) Act, 2017, further introduced Section 11-A, mandating the establishment of creche facilities in every establishment employing fifty or more employees. Section 11-A is reproduced as under –

“[11-A. Crèche facility.—(1) Every establishment having fifty or more employees shall have the facility of crèche within such distance as may be prescribed, either separately or along with common facilities:

Provided that the employer shall allow four visits a day to the creche by the woman, which shall also include the interval for rest allowed to her.

(2) Every establishment shall intimate in writing and electronically to every woman at the time of her initial appointment regarding every benefit available under the Act.]”

47. Subsequently, the provisions of the Maternity Benefit Act, 1961 were incorporated into the Code on Social Security, 2020, which consolidates various labour welfare enactments.

48. In particular, Section 68(1) of the Code on Social Security, 2020 is



substantially identical to Section 12 of the Maternity Benefit Act, 1961. The same is reproduced as under -

“68. Dismissal for absence during pregnancy.—(1) When a woman absents herself from work in accordance with the provisions of this Chapter, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service:

Provided that the discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus under this Chapter, shall not have the effect of depriving her of the maternity benefit or medical bonus:

Provided further that where the dismissal is for any gross misconduct as may be prescribed by the Central Government, the employer may, by order in writing, communicated to the woman, deprive her of the maternity benefit or medical bonus, or both.

49. Likewise, Section 67² of the Code preserves the requirement of creche facilities for establishments employing the prescribed number of employees. The Code also contains penal provisions under Sections 133 and 134, thereby reaffirming the seriousness with which the legislature views violations of maternity protections.

²**67. Creche facility.**—(1) Every establishment to which this Chapter applies, in which fifty employees or such number of employees as may be prescribed by the Central Government, are employed shall have the facility of crèche within such distance as may be prescribed by the Central Government, either separately or along with common facilities:

Provided that the employer shall allow four visits a day to the crèche by the woman, which shall also include the intervals of rest allowed to her:

Provided further that an establishment may avail common crèche facility of the Central Government, State Government, municipality or private entity or provided by non-Governmental organisation or by any other organisation or group of establishments who may pool their resources for setting up of common crèche in the manner as they may agree for such purpose.

(2) Every establishment to which this Chapter applies shall intimate in writing and electronically to every woman at the time of her initial appointment in such establishment regarding every benefit available under this Chapter.



50. In the present case, it has been pointed that the cause of action arose at a time when the Maternity Benefit Act, 1961 governed the field, and therefore the rights and obligations of the parties must primarily be determined under the said enactment. Nevertheless, the subsequent incorporation of these protections into the Social Security Code, 2020 is of considerable relevance, as it reaffirms and reinforces the legislative commitment to safeguarding women against discrimination arising from pregnancy and maternity.

51. Now for the question as to whether the protections envisaged under the maternity laws extend beyond the mere grant of maternity leave and continuity of employment, so as to protect a woman employee from being assigned, upon her return from maternity leave, a role that is substantially inferior in status, responsibilities, authority, or prospects of career advancement than the position she previously occupied, it is first important to consider the breadth of the expression “*vary to her disadvantage any of the conditions of her service*” in section 12 of the Maternity Benefit Act, 1961. The legislative prohibition is not confined merely to termination of employment. The statute consciously employs language of far wider import, thereby extending protection against any adverse alteration of service conditions suffered by a woman on account of pregnancy or maternity leave. The legislative intent is clear, a woman employee cannot be placed in a worse position because she exercised her statutory right to maternity leave.

52. A purposive and beneficial interpretation of Section 12 necessarily extends its protection to all forms of adverse employment action that operate to the detriment of a woman employee on account of pregnancy or maternity leave. Such actions would include, demotion, reduction in managerial or



supervisory authority, reassignment to a substantially inferior role, denial of promotional opportunities, withdrawal of significant responsibilities, or any other measure that results in a material deterioration of her service conditions or professional standing. The underlying legislative premise is that pregnancy and childbirth must not become a source of professional disadvantage, and that a woman's status, responsibilities, authority, and career progression must remain insulated from prejudice arising solely on account of motherhood.

53. It is true that the Act does not expressly address situations where an employer formally preserves an employee's designation and remuneration while simultaneously divesting her of the substantive attributes of her office, such as managerial authority, supervisory responsibilities, professional standing, decision-making powers, or meaningful opportunities for career advancement.

54. In other words, the statute does not specifically contemplate circumstances where a woman employee continues in service on the same pay and designation but is, upon her return from maternity leave, effectively relegated to a substantially inferior role. Such practices may ostensibly preserve the outward incidents of employment while, in substance, inflicting a significant diminution in status, authority, responsibilities, and future career prospects.

55. This Court is of the considered opinion that an interpretation which permits an employer to achieve such an outcome would substantially defeat the object and purpose of the legislation. The law cannot be construed in a manner that allows its substantive guarantees to be circumvented through formal or cosmetic compliance.



56. The object of the Maternity Benefit Act is not merely to ensure continuity of wages during the period of maternity. The legislation is a social welfare measure intended to protect the dignity of motherhood, preserve the economic security of women, and ensure that pregnancy does not become a source of professional disadvantage. The statutory protection would be rendered illusory if employers were permitted to superficially maintain an employee's salary and designation while effectively stripping her of the substantive attributes of her position.

57. To accept such a construction would enable an employer to achieve indirectly what the statute prohibits directly. An employer could ostensibly comply with the law by retaining the employee in service, while at the same time relegating her to a diminished role devoid of meaningful responsibilities, authority, or prospects of advancement. Such an interpretation would reduce the protections under Section 12 to a mere formality and frustrate the legislative objective underlying the enactment.

58. As noted hereinabove, Articles 14, 15, 21 and 42 of the Constitution collectively guarantee equality, non-discrimination, dignity and reproductive autonomy.

59. Where a woman employee is placed at a disadvantage, deprived of professional growth, denied promotion, stripped of responsibilities, or otherwise subjected to adverse employment consequences solely on account of pregnancy or maternity leave, the resulting action is not merely contrary to the spirit of the Maternity Benefit Act but is also manifestly arbitrary and offensive to the guarantee of equality under Article 14.

60. Similarly, adverse treatment arising from pregnancy or childbirth constitutes discrimination on the ground of sex and falls within the



prohibition contained in Article 15(1). Motherhood cannot be permitted to become a basis for unequal treatment or professional disadvantage in the workplace.

61. Further, the constitutional protection afforded by Article 21 recognizes that the decision to bear and raise a child forms an integral part of a woman's dignity, bodily autonomy, and personal liberty. Any employment practice that penalizes a woman for exercising her maternity rights or effectively compels her to choose between motherhood and professional advancement strikes at the core of the constitutional guarantee under Article 21.

62. Thus, a harmonious reading of Articles 14, 15, 21 and 42 leaves little room for doubt that pregnancy and maternity cannot be treated as grounds for professional disadvantage, demotion, loss of status, or denial of career progression. Such actions undermine not only the statutory protections available to women employees but also the constitutional commitment to equality, dignity, social justice, and humane conditions of work.

Recognition of Maternity Protection in the International Law Framework

63. The above conclusion is consistent with the international conventions and standards to which India is a party and which have consistently recognised maternity protection as an indispensable facet of gender equality, dignity, and the right to work. The principles embodied in these instruments are of considerable significance, particularly in interpreting constitutional guarantees and labour welfare legislation concerning women employees.

64. India is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted on 18.12.1979 and



ratified by India in 1993. Article 11(2)(b) of CEDAW provides that –

“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:.....

....(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;”

65. The above provision highlights that the exercise of maternity rights must not result in any loss of former employment, seniority or social allowances.

66. A similar guarantee is embodied in the International Labour Organization, Maternity Protection Convention, 2000, which reflects the prevailing international consensus on maternity-related employment protections. Article 8 thereof provides:

“1. It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.

2. A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.”

67. Further, Article 9(1) mandates that:

“Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including - notwithstanding Article 2, paragraph 1 - access to employment.”

68. These provisions establish that maternity leave must not adversely



affect a woman's employment status, career trajectory, professional standing, or opportunities for advancement. Continuity of employment, equality of opportunity, and preservation of dignity are recognised as essential components of maternity protection.

69. The relevance of these international instruments within the Indian constitutional framework cannot be overstated. Article 51(c) of the Constitution of India provides that:

“The State shall endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another.”

70. In ***Apparel Export Promotion Council v. A.K. Chopra***, (1999) 1 SCC 759, the Supreme Court emphatically recognised the importance of international conventions in the interpretation of domestic law and has observed as under –

“26The message of international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (“CEDAW”) and the Beijing Declaration which directs all State parties to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honour and dignity of women is loud and clear. The International Covenant on Economic, Social and Cultural Rights contains several provisions particularly important for women. Article 7 recognises her right to fair conditions of work and reflects that women shall not be subjected to sexual harassment at the place of work which may vitiate the working environment. These international instruments cast an obligation on the Indian State to gender-sensitise its laws and the courts are under an obligation to see that the message of the international instruments is not allowed to be drowned. This Court has in numerous cases emphasised that while discussing constitutional requirements, court and counsel must never forget the core principle embodied in the international conventions and instruments and as far as possible, give effect to the principles contained in those international instruments. The courts are under an obligation to give due regard to international conventions and norms for construing domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law.



27. In cases involving violation of human rights, the courts must forever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field. In the instant case, the High Court appears to have totally ignored the intent and content of the international conventions and norms while dealing with the case.”

71. In **Municipal Corporation of Delhi v. Female Workers (Muster Roll)**, (2000) 3 SCC 224, the Supreme Court has observed as under -

“37. Delhi is the capital of India. No other city or corporation would be more conscious than the city of Delhi that India is a signatory to various international covenants and treaties. 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 series 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) the right to work as an inalienable right of all human beings;
- (b) the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.



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.”

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.”

72. In **K. Umadevi v. State of T.N.**, (2025) 8 SCC 263, the Court has observed as under –

“42. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was held in 1979 under the aegis of the United Nations. As a matter of fact, CEDAW was adopted by the United Nations General Assembly on 18-12-1979. This Convention was the culmination of more than 30 years of work by the United Nations Commission on the Status of Women, established in the year 1946, monitoring the situation of women around the world and to promote women's rights. Thrust



of CEDAW is maximum participation of women on equal terms with men in all fields of life to ensure full and complete development of a country. CEDAW is the most comprehensive international convention focused on eliminating discrimination against women. India ratified CEDAW in 1993.

43. Article 11(1) of CEDAW emphasises that appropriate measures should be taken by all nations to eliminate discrimination against women in the field of employment. Article 11(2) says that in order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, the States shall take appropriate measures. As per sub-clause (b), signatory States are under an obligation to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.

44. Article 12(1) of CEDAW obligates the States to take all appropriate measures to eliminate discrimination against women in the field of healthcare including access to healthcare services, particularly those related to family planning. On the other hand, Article 12(2) says that notwithstanding the provisions of Article 12(1), signatory States shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

45. Article 16(1)(e) of CEDAW affirms the right of a woman to decide freely and responsibly on the number and spacing of children and to have access to the information, education and means to do so. Article 16(1)(e) reads thus:

“16. (1) States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;”

46. In its 20th Session held in 1999, CEDAW adopted several recommendations. General Recommendation 24 pertains to women and health. Such recommendation emphasised on the need to ensure access to adequate healthcare facilities particularly in respect of family planning, protection of women's health and safety in working conditions, including safeguarding of the reproductive function, special protection from harmful types of work during pregnancy and with the provision for paid maternity leave. It was also emphasised that women should have the same rights as men to decide freely and responsibly on



the number and spacing of their children.

47. A Maternity Protection Convention was held on 30-5-2000 at Geneva under the aegis of the International Labour Organization. General Conference of the International Labour Organization adopted the proposals of the said Convention on 15-6-2000. International labour standards have long recognised maternity protection as essential for promoting workplace equality and safeguarding maternal and child health. This Convention applies to all employed women including those in atypical forms of dependent work.

48. Article 4 of this Convention deals with maternity leave. As per clause (1), a woman to whom the said Convention applied shall be entitled to a period of maternity leave of not less than 14 weeks. As per clause (4), maternity leave shall include a period of 6 weeks' compulsory leave after childbirth for the protection of the health of the mother and that of the child. Clause (5) clarifies that the prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reduction in any compulsory portion of post-natal leave.

49. Under Article 8(1) of the Convention, it shall be unlawful for an employer to terminate the employment of a woman during her pregnancy. As per clause (2), a woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

50. Thus, as can be seen from the above, through various international conventions, the world community has recognised the broad spectrum of reproductive rights which includes maternity benefits. Maternity leave is integral to maternity benefits. Reproductive rights are now recognised as part of several intersecting domains of international human rights law viz. the right to health, right to privacy, right to equality and non-discrimination and the right to dignity.

51. Such international developments had its impact on Indian law. In Suchita Srivastava v. State (UT of Chandigarh) [Suchita Srivastava v. State (UT of Chandigarh), (2009) 9 SCC 1 : (2009) 3 SCC (Civ) 570] , a three-Judge Bench of this Court in the context of the Medical Termination of Pregnancy Act, 1971 acknowledged the right of a woman to make reproductive choices and held that such a right is a facet of Article 21 of the Constitution. This Court held thus: (SCC p. 15, para 22)

“22. There is no doubt that a woman's right to make reproductive choices is also a dimension of “personal liberty” as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means



that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children."

73. Further in ***Neetu Bala v. Union of India and others***, 2016 SCC OnLine P&H 602, the Court has made the following observation -

"67. Based on the aforesaid discussion, there can be no conclusion other than to hold that the action of the respondents in denying appointment to the petitioner merely on account of her pregnancy is arbitrary and illegal. It is violative of Articles 14 and 16 of the Constitution. It is against the express provisions of the International Conventions referred to above. It is against the weight of the judicial precedents from major jurisdictions across the globe interpreting laws prohibiting gender discrimination. Most of all by forcing a choice between bearing a child and employment, it interferes both, with her reproductive rights and her right to employment. Such an action can have no place in modern India."

74. The cumulative effect of these international instruments and judicial pronouncements is that maternity protection extends beyond the mere grant of leave or payment of benefits. It encompasses the preservation of employment status, continuity of service, maintenance of professional standing, protection of seniority, and equal opportunities for advancement upon return to work.

75. Viewed in this backdrop, any act of post-maternity demotion, deprivation of substantive responsibilities, denial of role continuity, exclusion from professional opportunities, or stagnation of career progression would run contrary not only to the spirit of domestic maternity legislation but also to the internationally recognised standards to which India has consciously aligned itself. Such actions undermine the dignity of



motherhood, perpetuate gender-based disadvantage in employment, and are fundamentally inconsistent with the principles embodied in CEDAW, the ILO Maternity Protection Convention, and the constitutional guarantees of equality, dignity, and non-discrimination.

76. Accordingly, this Court is of the view that the question of post-maternity reinstatement cannot be examined in a narrow contractual sense. It must be assessed in light of the broader constitutional and international law framework, both of which unequivocally recognise that motherhood cannot become a ground for loss of status, diminution of responsibilities, denial of career progression, or any other form of employment disadvantage.

Common Law Jurisdictions

77. It is also considered apposite to draw guidance from the jurisprudence of other common law jurisdictions, which have progressively recognised that maternity protection extends beyond the mere grant of leave and encompasses the right of a woman employee to return to meaningful employment without suffering any diminution in status, responsibilities, or career prospects.

78. In the United States, Section 2614 of the Family and Medical Leave Act, 1993 (FMLA) as codified in chapter 29 of the United States Code, provides as under –

“2614. Employment and benefits protection

(a) Restoration to position

(1) In general

Except as provided in subsection (b), any eligible employees who takes leave under section 2612 of this title for the intended purpose of the leave shall be entitled, on return from such leave-

- (A) to be restored by the employer to the position of employment held by the employee when the leave commenced; or***
- (B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.***

**(2) Loss of benefits**

The taking of leave under section 2612 of this title shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

(3) Limitations

Nothing in this section shall be construed to entitle any restored employee to-

- (A) the accrual of any seniority or employment benefits during any period of leave; or
- (B) any right, benefit or position of employment order than any right, benefit or position to which the employee would have been entitled had the employee not taken the leave.”

79. Similarly in Australia, the Fair Work Act, 2009 provides for the following safeguard:-

“83 Consultation with employee on unpaid parental leave

If:

- (a) an employee is taking a period of unpaid parental leave, other than flexible unpaid parental leave; and
- (b) the employee’s employer makes a decision that will have a significant effect on the status, pay or location of the employee’s pre-parental leave position:

The employer must take all reasonable steps to give the employee information about, and an opportunity to discuss, the effect of the decision on that position.

84 Return to work guarantee

On ending period of unpaid parental leave, an employee is entitled to return to:

- (a) the employee’s pre-parental position; or
- (b) if that position no longer exists- an available position for which the employee is qualified and suited nearest in status and pay to the pre-parental leave position.”

xxx

“Division 5- Other protections.**351 Discrimination**

(1) An employer must not take adverse action against a person who is an employee, or prospective employee, of the employer because of the person’s race, colour, sex, sexual orientation, breastfeeding, gender identity, intersex status, age, physical or mental disability, marital status, family or carer’s responsibilities, subjection to family and domestic violence, pregnancy, religion, political opinion, national extraction or social origin.

Note: This subsection is a civil remedy provision



- (2) However, subsection (1) does not apply to action that is:
 - (a) not unlawful under any anti-discrimination law in force in the place where action is taken; or
 - (b) taken because of inherent requirements of the particular position concerned; or
 - (c) if the action is taken against a staff member of an institution conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed-taken;
 - (i) in good faith; and
 - (ii) to avoid injury to the religious susceptibilities of adherents of that religion or creed.
- (3) Each of the following is an **anti-discrimination law**:
 - (aa) the Age Discrimination 2004;
 - (ab) the Disability Discrimination Act 1992;
 - (ac) the Racial Discrimination Act 1975;
 - (ad) the Sex Determination Act 1984;
 - (a) the Anti-Discrimination Act 1977 of New South Wales;
 - (b) the Equal Opportunity Act 2010 of Victoria;
 - (c) the Anti Discrimination Act 1991 of Queensland;
 - (d) the Equal Opportunity Act 1984 of Western Australia;
 - (e) the Equal Opportunity Act 1984 of South Australia;
 - (f) the Anti-Discrimination Act 1998 of Tasmania;
 - (g) the Discrimination Act 1991 of the Australian Capital Territory;
 - (h) the Anti-Discrimination Act 1992(NT);”

80. Further, under the Sex Discrimination Act, 1984 (Australia)., Section 14 provides as under:-

“PART II- Prohibition of discrimination etc.

Division 1-Discrimination of work

14 Discrimination in employment or in superannuation

- (1) It is unlawful for an employer to discriminate against a person on the ground of the person’s sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy or potential pregnancy, breastfeeding or family responsibilities:
 - (a) in the arrangements made for the purpose of determining who should be offered employment;
 - (b) in determining who should be offered employment; or
 - (c) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of the employee’s sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy or potential pregnancy, breastfeeding or family responsibilities;



- (a) in the terms and conditions of employment that the employer affords the employee;
- (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;
- (c) by dismissing the employee; or
- (d) by subjecting the employee to any other detriment.

(3) Nothing in paragraph (1)(a) or (b) renders it unlawful for a person to discriminate against another person, on the ground of the other person's sex, in connection with employment to perform domestic duties on the premises on which the first-mentioned person resides.

(4) Where a person exercises a discretion in relation to the payment of a superannuation benefit to or in respect of a member of a superannuation fund, it is unlawful for the person to discriminate, in the exercise of the discretion, against the member or another person on the ground, in either case, of the sex, sexual orientation or marital or relationship status of the member or that other person.

(5) Subsection (4) does not apply if section 41B applies to that member in respect of that fund.

(6) In this section:

Member, in relation to a superannuation fund, includes a person who has been a member of the fund at any time."

81. In United Kingdom, Regulation 18 of the Maternity and Parental Leave etc. Regulations 1999 provides as under –

"18.—(1) An employee who returns to work after a period of ordinary maternity leave, or a period of parental leave of four weeks or less, which was—

(a) an isolated period of leave, or

[(b) the last of two or more consecutive periods of statutory leave which did not include—

(i) any period of parental leave of more than four weeks; or

(ii) any period of statutory leave which when added to any other period of statutory leave (excluding parental leave) taken in relation to the same child means that the total amount of statutory leave taken in relation to that child totals more than 26 weeks,]

is entitled to return to the job in which she was employed before her absence.

(2) An employee who returns to work after—



(a) a period of additional maternity leave, or a period of parental leave of more than four weeks, whether or not preceded by another period of statutory leave, or

(b) a period of ordinary maternity leave, or a period of parental leave of four weeks or less, not falling within the description in paragraph (1)(a) or (b) above,

is entitled to return from leave to the job in which she was employed before her absence or, if it is not reasonably practicable for the employer to permit her to return to that job, to another job which is both suitable for her and appropriate for her to do in the circumstances.

(3) The reference in paragraphs (1) and (2) to the job in which an employee was employed before her absence is a reference to the job in which she was employed—

(a) if her return is from an isolated period of statutory leave, immediately before that period began;

(b) if her return is from consecutive periods of statutory leave, immediately before the first such period.

(4) This regulation does not apply where regulation 10 applies.]”

82. These jurisdictions reveal a strikingly consistent legal principle. Across common law systems, maternity is not viewed merely as a basis for entitlement to leave; rather, it is accompanied by a corresponding right to return to employment without any loss of status, responsibilities, authority, seniority, or career progression.

83. The comparative jurisprudence is particularly instructive in the Indian context, where the constitutional guarantees of equality, dignity, and non-discrimination, coupled with the protective framework of the Maternity Benefit Act, 1961, or the Code on Social Security, 2020 seek to ensure that motherhood does not become a source of professional disadvantage. Although the Indian statutory framework does not expressly codify a right to reinstatement to the same or an equivalent position upon return from maternity leave, the legal position emerging from the rulings of the Supreme Court is substantially to the same effect.



Effective Implementation of Statutory provisions; Maternity cannot be allowed to become a source of ignominy at the workplace

84. The Maternity Benefit Act, 1961, as well as the corresponding provisions of the Code on Social Security, 2020, embody a legislative commitment to protect women employees against discrimination arising from pregnancy and maternity. The prohibition contained in Section 12 against varying “to her disadvantage any of the conditions of her service” is not confined to safeguarding continuity of employment or wages; it also encompasses the right of a woman employee to resume her employment without suffering any substantive disadvantage in her professional status, responsibilities, authority, or prospects of career advancement solely by reason of pregnancy or the availing of maternity leave.

85. Woman returning from maternity leave is entitled to be restored to the same position, or at the very least to an equivalent position carrying substantially similar status, responsibilities, authority, promotional avenues, and prospects of career progression.

86. Where a statutory framework is enacted to advance constitutional guarantees, courts are duty-bound to interpret such legislation in a manner that effectuates, rather than defeats, those guarantees. Under no circumstance, can maternity be allowed to become a source of ignominy at the work place.

87. This Court has already noted that the protections flowing from Articles 14, 15, 21 and 42 of the Constitution, when read together with the object and purpose of the Maternity Benefit Act, 1961 (as well as the corresponding provisions of the Code on Social Security, 2020) and the expansive language employed in Section 12 of the Maternity Benefit Act,



necessarily contemplate protection against substantive post-maternity disadvantage. The right of a woman employee not to suffer professional detriment on account of pregnancy or maternity leave is thus traceable not merely to statute but also to constitutional guarantees of equality, dignity, non-discrimination, and reproductive autonomy.

88. The international conventions discussed hereinabove further reinforce this position by recognising the right of a woman to return to the same or an equivalent position after maternity leave and by prohibiting employment discrimination arising from motherhood.

89. These constitutional, statutory, and international obligations collectively underscore that maternity protection is not exhausted by the grant of leave and payment of benefits. Equally important is the meaningful reintegration of a woman employee into the workplace upon her return, in a manner that preserves her professional standing and ensures that motherhood does not become a source of occupational disadvantage.

90. While the substantive rights of women employees are well recognised under the existing constitutional and statutory framework, their effective enforcement necessarily depends upon the existence of regulatory mechanisms.

91. It is in this context that this Court finds that neither the Maternity Benefit Act, 1961 nor the Code on Social Security, 2020 expressly prescribes a comprehensive framework governing the post-maternity reintegration of women employees into the workplace. The absence of such a framework has the potential to undermine the effective implementation of the constitutional and statutory protections already in existence.

92. At this juncture this Court appreciates the stand taken by learned



Standing Counsel appearing for the Union of India who has fairly acknowledged the importance of ensuring the effective implementation of maternity protections and placed before this Court certain suggestions which may serve as guiding principles for strengthening the existing legal framework. The suggested guidelines are reproduced hereunder:-

“E. SUGGESTED INTERIM GUIDELINES FOR CONSIDERATION OF THIS HON'BLE COURT

17. Without prejudice to the final adjudication of the rights of the parties in the present writ petition, it is respectfully submitted that this Hon'ble Court may consider issuing the following interim directions, to operate until a model protocol / rules / executive instructions are framed by the appropriate Governments:

I. Declaration of principle:

18. It is declared that pregnancy, childbirth, lactation, post-partum recovery, miscarriage, medical termination of pregnancy, and related medical conditions are protected conditions linked to Articles 14, 15 and 21 of the Constitution. Any adverse treatment in recruitment, confirmation, allocation of work, reporting structure, appraisal, promotion, transfer, compensation, attendance expectations, training, leadership exposure, discipline, termination, reference-checking, or return-to-work placement on account of such protected conditions shall amount to prohibited discrimination on the ground of sex unless justified strictly in accordance with law.

II. Applicability:

19. The interim directions may be made applicable, at the very least, to all private establishments to which Chapter VI of the Code on Social Security, 2020 applies and which are situated within the territorial jurisdiction of this Hon'ble Court; and further, Respondent No. 1 may be directed to circulate the same as a model protocol to all States and Union Territories and to all establishments for which the Central Government is the appropriate Government under Section 3(3) of the Code.

III. Protected period:

20. For the purposes of these directions, the protected period may be treated as commencing from disclosure of pregnancy to the employer and continuing until six months after the employee's return to active duty following maternity leave or, where she does not avail leave, until six months after childbirth. This protected



period may be extended by the competent authority in cases of medical complication, premature birth, location-related need, or infant health concern.

IV. Individualized assessment:

21. Within seven days of written disclosure of pregnancy, childbirth-related medical restriction, or breastfeeding-related need, the employer shall conduct an individualized written assessment in consultation with the employee. The assessment shall consider the nature of duties, work hours, travel, commuting burden, standing or physical exertion, ergonomics, sanitation, exposure to chemicals or stressors, availability of seating and rest, lactation needs, childcare constraints, and any medical

V. Accommodation hierarchy:

22. Where the assessment indicates risk, hardship or disadvantage to the employee or child, the employer shall proceed in the following order: first, adjustment of duties, hours, targets, reporting modes, location, travel requirement, seating, breaks, remote or hybrid work, meeting timings, and similar workplace conditions; second, assignment to suitable alternative work on equivalent pay, grade, status, location and career prospects; and third, if neither of the above is feasible, grant of such protected leave or paid status as may be just and appropriate under law or under order of the competent authority.

VI. No forced leave:

23. No employer shall compel a pregnant or post-partum employee to proceed on leave, resign, reduce rank, or accept an inferior role where a reasonable accommodation or equivalent alternative arrangement can be provided without disproportionate hardship.

VII. Written decision-making:

24. Any decision affecting the employee's role, place of work, reporting structure, hours, targets, grade-linked responsibilities, appraisal cycle, or return placement during the protected period shall be communicated by a reasoned written order, with a copy to the employee, setting out the basis of the decision and the alternatives considered

VIII. Return to the same or equivalent role:

25. Upon resumption after maternity leave, the employee shall ordinarily be restored to the same post, grade, compensation, reporting level, location, team-status, and promotional stream that she held immediately before commencement of maternity leave. If, for bona fide and demonstrable organizational reasons, the



exact position no longer exists the employer shall offer a suitable available position nearest in pay, grade, status, role-content and future career prospects, and shall record reasons in writing.

26. The right of a woman employee to return to the same work, or where that is genuinely not possible, to a suitable equivalent position on no less favourable terms, has already been expressly recognised in several mature labour-law jurisdictions. Comparative legislation thus shows that maternity protection is not treated as complete merely upon grant of leave; rather, modern statutory systems protect the employee across the entire arc of maternity by securing continuity of role, status, service conditions and protection against workplace detriment upon return. The following provisions are instructive.

xxx

30. Accordingly, comparative law demonstrates a clear and consistent pattern. The right to return to the same work, or where that is genuinely not possible, to a suitable equivalent position on no less favourable terms, is not alien to modern labour jurisprudence. On the contrary, it is treated as a central incident of maternity and parental leave protection.

These provisions therefore furnish a principled comparative basis for suggesting that the implementation framework under the Code on Social Security, 2020 should similarly secure role-restoration, continuity of service conditions and protection against detriment in the period of return to work.

IX. Prior consultation before change during leave:

31. If the employer proposes any significant change to the employee's responsibilities, pay, grade, reporting chain, team assignment or work location during maternity leave, the employer shall give prior written notice and a meaningful opportunity of consultation to the employee even while she remains on leave, before such change is given effect.

X. No disadvantage in service conditions:

32. During the protected period, the employer shall not vary to the employee's disadvantage any condition of service on account of pregnancy, maternity, childbirth-related absence, lactation, accommodation request, or childcare responsibilities reasonably connected therewith.

XI. Appraisal, increment and promotion protection:

33. Maternity leave, pregnancy-related accommodation, medical restriction, nursing breaks temporary flexibility shall not by themselves be treated as negative factors in appraisal, increment, bonus, confirmation, transfer preference, leadership assignment, promotion consideration, training exposure, high-potential categorization, or succession planning. Where a promotion or assessment process falls during maternity leave, the employee shall be given an equivalent deferred or alternate opportunity



XII. 12. Presumption in case of adverse action:

34. Where a material adverse employment action is taken after disclosure of pregnancy, during maternity leave, or within the protected period after return, the employer shall bear the burden of placing contemporaneous written material to show that such action was wholly unrelated to pregnancy, maternity, lactation, accommodation or childbirth-related absence.

XII. Lactation support:

35. Every employer to whom these directions apply shall provide reasonable lactation support in addition to the statutory nursing breaks, including a clean and private space other than a toilet, reasonable access to water, seating, and such limited storage or supportive facilities as may reasonably be arranged having regard to the size and nature of the establishment.

XIV. Creche disclosure and functionality:

36. Every establishment required to provide crèche facilities shall publish and communicate to all women employees, in writing and electronically, the nature of the crèche arrangement, location, timings, eligibility, contact person, process for access, and whether the facility is in-house, shared, common, outsourced or tied up with any government or private entity. Where a common or external crèche facility is relied upon, the employer shall ensure that the arrangement is actually functional and reasonably accessible.

XV. Pregnancy and maternity support officer:

37. Every establishment having fifty or more employees shall designate a senior officer or committee as Pregnancy, Maternity and Return-to-Work Support Officer / Committee for receiving accommodation requests, coordinating risk assessments, ensuring return placement, and maintaining a confidential record of decisions taken under these directions.

XVI. Internal timeline:

38. An accommodation request or return-to-work grievance shall be decided by the employer within seven working days by a reasoned written communication. Matters involving immediate health concern, lactation need, unsafe work condition or threatened downgrade shall be addressed within forty-eight hours.

XVII. No retaliation:

39. No employee shall intimidate, isolate, penalize, threaten, transfer, downgrade, place on a performance warning, reduce variable pay, alter role visibility, withhold recommendation, or otherwise retaliate against any employee for availing maternity benefit, seeking accommodation, using nursing breaks, accessing crèche facilities, filing a complaint, or assisting another employee in a similar matter.



XVI. Training and sensitisation:

40. Every establishment having fifty or more employees shall conduct annual sensitisation for HR personnel and line managers on pregnancy discrimination, maternity rights, workplace accommodation, lactation support, anti-retaliation and return-to-work parity.

A copy of the policy and escalation mechanism shall be displayed conspicuously and circulated electronically

XIX. Maintenance of records:

41. Employers shall maintain contemporaneous records of accommodation requests, written assessments, decisions taken, return-to-work placements, crèche arrangements and complaints received, while preserving confidentiality. Such records may be called for by the competent authority for inspection or inquiry.

XX. External complaint mechanism:

42. The appropriate Government shall designate a notified officer under the existing Code machinery for receiving and dealing with complaints relating to denial of maternity benefit, wrongful variation of service conditions, pregnancy-based discrimination, non-restoration to post, denial of nursing breaks, non-functional crèche arrangements, retaliation, or analogous complaints arising within the protected period.

XXI. Government portal and nodal mechanism:

43. Respondent No.1 may be directed, in coordination with the State Governments and Labour Departments, to create or notify within a fixed period a simple online and offline complaint pathway under the Code for maternity-related grievances in private employment, together with contact details of the competent officers and a standard complaint format.

F. SUGGESTED DIRECTIONS SPECIFICALLY ADDRESSED TO RESPONDENT NO.1

44. That, pending the framing of detailed rules / protocol / executive instructions, the interim guidelines set out in Section E above shall operate as binding directions within the territorial jurisdiction of this Hon'ble Court in respect of all private establishments to which Chapter VI of the Code on Social Security, 2020 applies, and shall also be treated as a model protocol to be circulated by Respondent No.1 to all States and Union Territories.

45. That Respondent No.1 shall, within such time as this Hon'ble Court deems fit, place on record the mechanism under the Code for receiving and adjudicating maternity-related complaints, including designation of competent authorities,



contact details, timelines and appellate forum.

46. Respondent No.1 may be directed to frame, within a time-bound period and in consultation with the States, Labour Commissioners, women's rights experts, occupational health experts and employer bodies, a Model Pregnancy, Maternity, Lactation and Return-to-Work Equality Protocol for adoption, circulation and implementation under the Code on Social Security, 2020.

47. That the concerned authorities shall ensure that the Inspector-cum-Facilitator designated officer is in a position to grant urgent interim protection in appropriate cases so that the rights conferred by Chapter VI are not defeated by fair accompli.

93. The learned Standing Counsel has also drawn the attention of this Court to the following Sections of the Code on Social Security, 2020.

“149. Power of Central Government to give directions to State Government and Social Security Organisations.—The Central Government may give directions to—

(i) any State Government or a State Board constituted under Section 12 to execute in that State, of any of the provisions of this Code; or

(ii) any of the Social Security Organisations in respect of the matters relating to the implementation of the provisions of this Code.”

“150. Power to frame schemes.—The appropriate Government may, subject to the condition of previous publication, frame schemes not inconsistent with this Code, for the purposes of giving effect to the provisions thereof.”

“154. Power of appropriate Government to make rules.—(1) The appropriate Government may, by notification, and subject to the condition of previous publication, make rules not inconsistent with this Code for the purpose of giving effect to the provisions thereof.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the amount in connection with premium for Group Insurance Scheme of the beneficiaries under clause (c), the educational schemes for the benefit of children of the beneficiaries under clause (d) and the medical expenses for treatment of major ailments of a beneficiary or, such dependant under clause (e) of sub-section (6) of Section 7;



(b) manner and time within which second appeal may be filed to the Employees' Insurance Court by the Insured Person or the Corporation under clause (b) of sub-section (7) of Section 37;

(c) the manner of commencement of proceedings before the Employees' Insurance Court, fees and procedure thereof under sub-section (1) of Section 51;

(d) bank or other financial institution in which the gratuity shall be invested for the benefit of minor under the third proviso to sub-section (1) of Section 53;

(e) the time, form and manner of nomination by an employee under sub-section (1), the time to make fresh nomination under sub-section (4), the form and manner of modification of a nomination under sub-section (5) and the form for fresh nomination under sub-section (6) of Section 55;

(f) time within which and the form in which a written application shall be made under sub-section (1) and the form of application to the competent authority under clause (b) of sub-section (5) of Section 56;

(g) the manner of registration of an establishment by the employer under sub-section (3) and the manner of composition of the Board of Trustees of the approved gratuity fund and the manner in which the competent authority may recover the amount of the gratuity payable to an employee from the insurer under sub-section (4) of Section 57;

(h) the qualifications and experience of the officer appointed as the competent authority under sub-section (1) of Section 58;

(i) authority to whom an appeal may be preferred under sub-section (3) of Section 72;

(j) class of employers and the form of notice-book under sub-section (4) of Section 82;

(k) the manner of recording the memorandum in a register by the competent authority under sub-section (1) of Section 89;

(l) such other experience and qualifications for appointment as a competent authority under sub-section (1) of Section 91;

(m) time-limit to pay the amount of cess under Section 101;

(n) fees for appeal under sub-section (2) of Section 105;

(o) conditions to acquire, hold, sell or otherwise transfer any movable or immovable property under sub-section (1), conditions to invest



moneys, re-invest or realise investments under sub-section (2) terms to raise loans and take measures for discharging such loans under sub-section (3) and terms to constitute for the benefit of officers and staff or any class of them, provident or other benefit funds under sub-section (4) of Section 120;

(p) conditions and manner of writing off irrecoverable dues under Section 121;

(q) other powers of Inspector-cum-Facilitator under clause (e) of sub-section (6) of Section 122;

(r) form and manner for maintenance of records and registers and other particulars and details under clause (a), manner and form for display of notices at the work places of the employees under clause (b) and the manner and period of filing returns to the officers or authority under clause (d) of Section 123;

(s) the form and manner of application for compounding of an offence under sub-section (4) of Section 138;

(t) the manner and form for reporting vacancies and form for filing the return by the employer, to the concerned career centre under sub-section (2) of Section 139;

(u) the time within which the Central Board or the Corporation, as the case may be, shall forward its view to the appropriate Government under sub-section (1), conditions which the exempted establishment or the class of establishment or an employee or class of employees, as the case may be, shall comply with after such exemption under sub-section (2) and conditions for management of the trust under sub-section (5) of Section 143;

(v) manner of determining the misuse of any benefit by an establishment or by any other person under Section 148; and

(w) any other matter which is required to be, or may be, prescribed by the appropriate Government under the provisions of this Code.”

94. Sections 150 and 154 of the Code on Social Security, 2020 confer upon the appropriate Government the power to frame rules and schemes for carrying out the provisions of the Code and for giving effect to its underlying objectives. The existence of such rule-making power indicates a legislative recognition that the effective enforcement of social welfare rights



may require supplementary regulatory measures. However, despite the enactment of the Code, no specific framework appears to have been formulated governing post-maternity reintegration, continuity of role, protection against post-maternity demotion, or preservation of career progression upon return to work.

95. It is hoped and expected that appropriate rules shall be framed which are consistent with the constitutional guarantees embodied in Articles 14, 15, 21, and 42 of the Constitution, as well as the statutory protections contained in the maternity laws.

96. Given the statutory framework, it is held that every woman employee returning from maternity leave shall ordinarily be entitled to reinstatement in the same position held by her immediately prior to proceeding on maternity leave. Where such reinstatement is genuinely impracticable, she shall be placed in an equivalent position carrying substantially the same pay, status, seniority, responsibilities, managerial authority, decision-making functions, promotional opportunities, and prospects of career advancement. Any reassignment resulting in a material changes in responsibilities, authority, status, or professional growth solely on account of pregnancy or maternity leave shall be presumed to be discriminatory unless justified by compelling and bona fide reasons unrelated to maternity.

97. Further, if the employer proposes any significant change to the employee's responsibilities, pay, grade, reporting chain, team assignment or work location during maternity leave, the employer shall give prior intimation to the employee, together with the rationale for the proposed change, before such change is given effect.

98. The foregoing operates for the benefit of the woman employee. It is a



shield available to her, not a fetter upon her own choices. The same would not detract from the fact that a woman resuming duty after child birth may, for reasons of recovery, nursing or care giving, herself prefer altered hours, a different place or pattern of work; or duties differently configured. The statute contemplates arrangements responsive to her own preference/s as is evident from Section 5(5)³ of the Maternity Benefit Act, 1961 and Section 60 (5)⁴ of the Code on Social Security, 2020. Nothing in this judgment is to be construed as precluding such request/accommodation, or disable an employer from granting it. It is further made clear that any such accommodation shall not be treated as consent to any diminution in the applicable conditions of service, nor be held against her in appraisal or promotion. Further, the same shall subsist only as long as she desires it; upon circumstances which occasioned it having ceased, she shall be entitled to seek substantive restoration of her previous (or equivalent) position.

99. The above is also consistent with internationally recognised labour standards, including those reflected in the International Labour Organisation's Maternity Protection Convention, 2000, which recognises the right of a woman, upon the conclusion of maternity leave, to return to the same position or an equivalent position remunerated at the same rate. Such standards may serve as guiding principles for ensuring fair, dignified, and non-discriminatory reintegration of women employees into the workplace following maternity leave, and for giving meaningful effect to the

³ In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.

⁴ In case the work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.



constitutional promise that motherhood shall not become a ground for professional disadvantage.

Application of the above Principles to the facts of the present case

100. The petitioner proceeded on maternity leave in December 2023, while holding the office of Manager-Accounting, in which capacity she supervised a team. At some point, during her absence, another employee was conferred with the responsibilities that she had previously been discharging. The respondent no.2 does not dispute this. Paragraph-4 of its reply dated 27.09.2024 to the legal notice states that *“the subsequent return to work after your Client’s maternity leave was managed in line with our Client’s business needs at the time. Upon your Client’s return in July 2024, there were drastic changes within our Client’s organization and all expansion projects (which could have given more options to our Client to reassign a role to your Client) have been temporarily put on hold on account of larger economic and business considerations of our Client. Your Client has been temporarily assigned to the Treasury department. This was undertaken as her previous role was given to an employee who had been promoted within the organization who cannot arbitrarily be removed from the role. Our Client categorically denies the allegation that this reassignment was a demotion or that it was three levels below her previous role. The Treasury department’s responsibilities require a capable individual, and our Client entrusted your Client with the said role. The nature of work assigned was in line with her capabilities and experience.”*

101. Paragraph-10 of the counter-affidavit of the respondent no.2 is to the same effect, the same reads as under:-



10. As regards the allegation surrounding discrimination upon return, it is most respectfully submitted that since the Petitioner was going on a maternity break for 6 months, the Petitioner's role was assigned to another employee as the Respondent No. 2 could not have left a team of 4 people (previously managed by the Petitioner) without a manager during the Petitioner's absence on account of her maternity leave for an elongated period of 6 months. In addition, Respondent No. 2 had plans to expand the roles and responsibilities of the Petitioner on her return to work, and hence, was considering an enhanced role for the Petitioner. However, this plan was put on hold because the Respondent No. 2 was acquired by IBM Corporation, USA, during the Petitioner's Maternity Leave. Accordingly, the Respondent No. 2 informed the Petitioner that it would identify a suitable role for her shortly, and would ensure that the Petitioner continued to remain meaningfully engaged at the same position upon her return from maternity leave. In this regard, the Respondent No. 2 took several efforts to identify a suitable role commensurate with the Petitioner's qualifications, experience and seniority within the Finance function recognizing her capabilities. It is submitted that the Respondent No. 2 is a multinational corporation with complex cross-border organizational and operational structures, and the roles and responsibilities in senior positions are dynamic, with such roles being changed frequently to take into account changed organizational dynamics. In this regard, the Plaintiff was informed, and was fully aware, that an enhanced role, with specific roles and responsibilities, would have been created for her.

102. It is also evident from the narration of facts, as projected by the



respondent no.2 itself, that until the very end of the petitioner's leave, there was no clarity as to where, and in what role, she would be posted. Paragraph-10 of the counter-affidavit, as noticed hereinabove, avers that the respondent no.2 "took several efforts to identify a suitable role commensurate with the Petitioner's qualifications, experience and seniority within the Finance function". The counter-affidavit further discloses that, on 28.06.2024, just a couple of days before the petitioner was due to resume duty, the Director of the respondent no.2 wrote to a Member of the Global Accounting and Finance Operation Teams as under:

"Friday, June 28th

SSI: With Brooke:

Arun Goel 4 12:15 AM

Hi Brooke. Hope you are doing well. Rakhi Bisht (Manager Accounting) is coming back to work starting July 1st after her maternity break. We will have almost full capacity availability for Rakhi so please suggest if we can assign something in Tech. Accounting or anything that you might want to assign to her. She already has a very good exposure in US Accounting and has worked with Jun for almost 1.5 years. She is a very strong performer and is a Chartered Accountant with 12+ years experience. She will be able to handle the technical stuff quite well.

Brooke Reid 12:17 AM

Thank you. When I look at our workload I'll see what we can find for her

Arun Goel 4 12:32 AM

Thanks a lot. Brooke"

103. Another message was sent on same day to another Member of the Global Accounting and Finance Operation Teams as under:-



SS2: With Jun:

Arun Goel 4 12:10 AM

Hi Jun. hope you are doing well. Rakhi is coming back to work starting July 1st after her maternity break. We will have almost full capacity availability for Rakhi so please suggest if we can assign something in US Accounting that can be assigned to her. She already has a very good exposure in US Accounting

Jun Du 12:17 AM

*Hi Arun. I'm doing well and hope you are well too
glad to hear that Rakhi is back and hope she and her family are doing great*

let me check In with the team to see what they need help on we are starting to get requests from IBM so we are going to be needing some

in addition, there is also a risk with people leaving given the situation we are in, so it is good to hear to we have some coverage in the case that someone on the team were to leave

Arun Goel 4 12:31 AM

Thanks, Jun. Yes it is good to have her back at this time. Let's see if we can assign her some activities to keep her engaged when she starts and also have her as a backup in case someone leaves.

Jun Du 1:09 AM

sounds good, i'll update you after I had a chance to go over with the team

104. On 02.07.2024, the following exchange took place between the petitioner and the Director/ representative of the respondent no.2 –



"Tuesday, July 2nd

SS with Respondent No. 2

Arun Goel 6:26 PM

Hi Rakhi. Jun has suggested a couple of interesting items for you: Investment accounting and currency revaluation. Let me know if you can help with these. If you are okay, we can ask them to provide the training.

Rakhi Bisht 6:42 PM

Hi Arun, Yes I would like to get in to that.

Arun Goel 7:03 PM

Okay. Thanks

Rakhi Bisht 9:51 PM

Had a call with Jun I will start shadowing Larissa on these 2 items

Arun Goel 9:55 PM

Great, also, please make notes and I asked Jun for creating some video, etc. so that other people can get a chance to learn these processes. Investment Accounting and currency reval could be nice things to learn for everyone

Rakhi Bisht 9:55 PM

Yes

Arun Goel 9:56 PM

Thanks"

105. Upon consideration of the sequence of events as they unfolded, and taking the respondent no.2's own version at face value, the following aspects stand out:-

- i. The position previously held by the petitioner prior to the commencement of her maternity leave was entrusted to another employee.
- ii. This was not done merely as a temporary or stop-gap arrangement; rather, the petitioner's return to her previous post was foreclosed in her absence.
- iii. During the petitioner's maternity leave, no consideration whatever



appears to have been given as to what she would do upon her return; the question was taken up on 28.06.2024, just prior to the petitioner resuming duties.

- iv. The manner in which the matter was then taken up was to enquire of colleagues whether they could assign her “something”, or “anything that you might want to assign to her”. This was clearly an enquiry directed not towards identifying a position commensurate with the role that she was earlier entrusted with, but towards locating works of any description that somebody might be willing to give her.
- v. The precise object of the exercise, as set out in the above reproduced exchanges was to “keep her engaged when she starts” and “to have her as a backup in case someone leaves”.
- vi. What was communicated to the petitioner on 02.07.2024 was two items of work, “investment accounting and currency revaluation” and not a position carrying any defined scope, reporting line, or complement of staff.
- vii. The petitioner was not consulted at any stage, neither before her previous position was filled, nor while alternatives were considered.
- viii. At no stage was any reason or written communication furnished to her, recording what had become of her previous position, what was proposed in its place and upon what basis the changes were effectuated.
- ix. Importantly, the petitioner’s grievance first raised verbally, then by E-Mail dated 23.08.2024 and then by legal notice dated 10.09.2024 was met with no process of examination of any kind and with no reasoned answer.



It is also apparent from a perusal of the record that, at the relevant time, the respondent no. 2 was in contravention of Section 11-A of the Maternity Benefit Act, 1961. The provision requires every establishment having fifty or more employees to provide the facility of a creche and, under sub-section (2), requires every establishment to intimate to every woman, at the time of her initial appointment, the benefits available to her under the Act. The petitioner enquired about the availability of such a facility on 20.09.2024, to which respondent no. 2 replied on 27.09.2024. The pleaded case of respondent no. 2, at paragraph 100 of its counter-affidavit, is that the facility existed but the said facility was not functional on the given days, and that the petitioner was working from home all through July, August and September 2024.

106. From a perusal of paragraph 100 of the counter-affidavit filed by respondent no. 2, it is evident that respondent no. 2 was remiss in discharging its obligation to provide a creche facility. A facility which is not functional the days on which a woman employee to use the same, does not satisfy the statutory obligation.

107. Quite apart from the above factual aspects, which are apparent from respondent no. 2's own version, there are also several inconsistencies in the stand taken by respondent no. 2 in response to the allegations made in the petition. The said discrepancies are as under:-

- i. In Paragraph 11 of its reply dated 27.09.2024, the respondent no. 2 states that "the Treasury role was scoped to her managerial level, and additional responsibilities were added to match her experience". In the very next paragraph of the same reply, it is asserted that the Treasury role "is a very important role and function" for the needs



of the organisation. If the role was inherently commensurate with her standing, the occasion to scope it to her level, and to add responsibilities in order to match her experience, would not have arisen.

- ii. Paragraph 49 of the counter-affidavit asserts that the petitioner “moved from managing a team of 1-2 persons to supervising 4 team members”. The suggestion is that the responsibilities of the petitioner were enlarged. However, paragraph 10 and, again, paragraph 58 of the counter-affidavit state that her earlier position had to be filled because “a team of 4 people (previously managed by the petitioner)” could not be left without a manager. Two mutually irreconcilable accounts are thus given of the size of the team that she supervised before proceeding on leave.
- iii. Paragraph 10 largely attributes the filling of her position to the impossibility of leaving her team without a manager. On the other hand, paragraph 58 attributes it to “operational exigencies as well as the respondent no. 2’s annual promotion cycle”. There is considerable ambiguity in the position taken by the respondent no.2.
- iv. Paragraphs 10 and 48 of the counter-affidavit aver that the respondent no. 2 “had plans to expand the roles and responsibilities of the petitioner on her return to work” and “was considering an enhanced role”, which were shelved following the acquisition by IBM. That averment is irreconcilable with the correspondence dated 28.06.2024, in which the Director of respondent no. 2 is found asking two colleagues in two different verticals whether they might have “something” or “anything” to assign to her.



- v. Paragraph-10 of the counter-affidavit asserts that the respondent no.2 took several efforts to identify a suitable role commensurate with the petitioner's "qualifications, experience and seniority". The only contemporaneous record of any such effort is the correspondence dated 28.06.2024, which reveals a contrary picture.

108. The significance of the above contradictions is that the respondent no. 2 has not, at any stage, neither contemporaneously in its communications with the petitioner, nor in its reply to her legal notice, nor in its pleadings before this Court, been able to furnish a single, consistent, and coherent account of what was done to her position and why. Secondly, and more importantly, these were precisely the matters on which the petitioner sought clarification from her employer at the relevant time, but in respect of which she received none.

109. In these proceedings, this Court is not going into the question of whether the role ultimately offered to the petitioner in the Treasury Department was at par with the role that she had previously performed. This Court is refraining from doing so inasmuch as such an enquiry would inherently involve an evidentiary exercise for which the present proceedings may not be apposite.

110. However, the admitted facts of the case, as apparent from the stand taken by the respondent no. 2 itself, are demonstrative of the unfair treatment meted out to the petitioner. The position that emerges is that the post was filled during her maternity leave, without any information or intimation to her, and in a manner that foreclosed her return to it. There was no application of mind as to the duties that would be assigned to her upon her return; the question was taken up only few days before she was due to



resume her duties and was addressed by enquiring of colleagues in two different departments whether they had “something” or “anything that might be assigned to her”. The petitioner was consulted at no stage, and no reason or communication was ever furnished to her. When she complained, no process of any kind was brought to bear upon her complaint.

111. As already observed, the protection conferred by Section 12 inherently subsumes the requirement that a woman who returns to work from maternity leave be treated with dignity. The conduct of the respondent no. 2 cannot be reconciled with this obligation. As noticed hereinabove, the Supreme Court has observed that maternity protection dignifies motherhood and ensures that motherhood does not become a factor for exclusion at the workplace. The treatment accorded to the petitioner in the present case, however, ran in a different direction. The petitioner was virtually treated as “spare capacity”, to be placed wherever a colleague could be persuaded to take her. As regards the reliefs that may be granted to the petitioner in the present case, the observations of the Supreme Court in **Dwarkanath v. Income Tax Officer**.⁵, 1965 SCC OnLine SC 61, are instructive. In terms thereof, the jurisdiction under Article 226 extends to redressing injustice

⁵ 4. We shall first take the preliminary objection, for if we maintain it, no other question will arise for consideration. Article 226 of the Constitution reads:

“...every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.”

This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression “nature”, for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country.....



wherever it is found and to moulding relief to meet the peculiar circumstances of a case.

As observed in *K. Umadevi v. Government of Tamil Nadu & Ors.*, (2025) 8 SCC 263, and *Hamsaanandini Nanduri v. Union of India*, 2026 SCC OnLine SC 402, maternity protection is ultimately referable to the dignity, reproductive autonomy, and equality guaranteed by Articles 14, 15, and 21 of the Constitution of India. It is noticed that, although Section 21 of the Maternity Benefit Act, 1961 prescribes penal consequences for its contravention, its evident object is to punish and deter. The provision does not purport to measure the loss sustained by the woman or the reparation that is required to be made.

112. Importantly, the infraction on the part of the respondent no. 2 and the corresponding prejudice caused to the petitioner are of a kind for which no penalty is expressly prescribed under the statutory provisions. This aspect has been fairly conceded by Mr. Ashish K. Dixit, learned CGSC appearing for the respondent no. 1. As such, given that a wrong has been committed in the present case, an appropriate remedy must necessarily be provided to the petitioner.

113. The assessment of compensation for a wrong of the kind suffered by the petitioner is not an exercise in arithmetic. The injury occasioned comprises the indignity to which the petitioner was subjected, the loss of professional standing, the anxiety caused by having to seek rehabilitation or an explanation from her employer (the respondent no. 2), which was never forthcoming, the diminution of her professional standing among colleagues, and the eventual relinquishment of her employment. These injuries do not admit of precise pecuniary measurement. At the same time, this Court is not



precluded from awarding suitable monetary compensation. In **Consumer Education & Research Centre v. Union of India**, (1995) 3 SCC 42, the Supreme Court has observed as under –

“29.....It is, therefore, settled law that in public law claim for compensation is a remedy available under Article 32 or Article 226 for the enforcement and protection of fundamental and human rights. The defence of sovereign immunity is inapplicable and alien to the concept of guarantee of fundamental rights. There is no question of defence being available for constitutional remedy. It is a practical and inexpensive mode of redress available for the contravention made by the State, its servants, its instrumentalities, a company or a person in the purported exercise of their powers and enforcement of the rights claimed either under the statutes or licence issued under the statute or for the enforcement of any right or duty under the Constitution or the law.”

114. In **Nilabati Behera v. State of Orissa**, (1993) 2 SCC 746, the Supreme Court has made the following observations –

“34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting “compensation” in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making ‘monetary amends’ under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of ‘exemplary damages’ awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort,



through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law — through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with *Rudul Sah v. State of Bihar* [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred to by Brother Verma, J.”

115. Given that the petitioner is a Chartered Accountant with approximately 14 years of professional standing and was drawing a salary of



Rs. 2.6 lakhs per month, this Court considers it appropriate to direct the respondent no. 2 to pay compensation amounting to Rs. 10,00,000/-, which is approximately equal to four months salary. The petitioner would also be entitled to costs amounting to Rs. 1,50,000/-, having regard to the duration of the proceedings and the circumstances in which she was constrained to approach this Court to vindicate a statutory protection.

CONCLUSION

116. For the aforesaid reasons this Court declares and directs as follows:-

- i. The prohibition contained in Section 12(1) of the Maternity Benefit Act, 1961, and Section 68(1) of the Code on Social Security, 2020, against varying, to a woman's disadvantage, any conditions of service during her statutorily protected absence is not confined to measures amounting to, or directly associated with, termination of employment nor is it exhausted by merely maintaining her salary and designation. The expression "conditions of service" extends to the substantive incidents of employment, including the nature and content of the duties entrusted to her, her grade and functional status, reporting hierarchy, supervisory responsibilities, and her entitlement to be considered for appraisal and promotion. Retention of the same designation and remuneration is, therefore, necessary but not by itself sufficient if changes are brought about in respect of the aforesaid attributes, to her detriment.
- ii. A woman returning from maternity leave is ordinarily entitled to be restored to the post held by her immediately prior to proceeding on such leave. Where, for bona fide and demonstrable organisational



reasons, the post is no longer available, she is entitled to be placed in a position as nearly equivalent to it as possible in terms of pay, grade, status, role, responsibilities, managerial authority, and prospects for advancement.

- iii. Where, for bona fide reasons, the post previously held by a woman (who returns from maternity leave) is no longer available, the employer shall, before her resumption of duty, duly intimate the reasons for the non-availability of the post and the particulars of the alternative or equivalent position proposed to be offered to her including its grade, remuneration, reporting relationship and duties attached thereto. If any objection thereto is raised by the concerned woman employee, the same shall be duly considered by the employer and the outcome of such consideration shall be conveyed to her by way of a reasoned communication.
- iv. Nothing in the above declaration/s shall preclude a woman from herself seeking appropriate adjustment in her duties, hours, place or pattern of work or an alternate role, having regard to her post maternity circumstances and every such request shall be duly considered. Any such request and the consequential arrangement, shall not be treated as consent to any diminution in her condition of service or waiver of protection conferred by Section 12 of the Maternity Benefit Act, 1961 and Section 68 of the Code on Social Security, 2020, nor shall be held against her in her appraisal or in the consideration of her case for increment or promotion. Further, upon cessation of circumstances, which occasioned such an arrangement, she shall be entitled to seek restoration of her previous or equivalent



position.

- v. The respondent no. 2 shall pay to the petitioner a sum of Rs. 10,00,000/- by way of compensation (for reasons set out hereinabove), together with costs amounting to Rs. 1,50,000/-, within a period of eight weeks from today, failing which the said amounts shall carry interest at the rate of 9% per annum from the date of this judgment until realisation.
- vi. The respondent no. 1 shall, in exercise of the powers conferred by Sections 149, 150 and 154 of the Code on Social Security, 2020, and after such consultation with the State Governments, Labour Commissioners, employers' organisations and expert bodies as it considers appropriate, frame rules or schemes, or issue directions, providing for the effective implementation of Chapter VI of the Code in relation to pregnancy-related accommodation, protection of role and status upon return from maternity leave, lactation support, creche disclosure and functionality, timelines for disposal of grievances, protection against retaliation, and the designation of authorities competent to receive and determine complaints, including the grant of urgent interim protection. In doing so, the respondent no. 1 shall have regard to the suggestions made by Mr. Ashish K. Dixit, learned CGSC, as noticed in the foregoing portion of this judgment. The aforesaid exercise shall be completed within a period of six months from today.

117. This Court records its appreciation for the assistance rendered by Mr. Sanjeev Mahajan, learned Amicus Curiae, and Mr. Ashish K. Dixit, learned CGSC, for their lucid submissions and for placing constructive proposals



2026:DHC:7286



before this Court.

118. The petition is disposed of in the above terms.

SACHIN DATTA, J

AUGUST 31, 2026/*uk/sv*