

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

Case:- WP(C) No. 2944/2026
CM No. 6637/2026

Dr. Surbhi Sharma, age 33 years D/o Sh. Satish Sharma,
W/o Varun Sharma, R/o House No.10, Bhawani Nagar,
District Jammu.

.....Petitioner(s)

Through: Mr. Achal Sharma, Advocate

Vs

1. UT of J&K, Commissioner/Secretary to Government,
Health and Medical Education Department,
Civil Secretariat, Jammu/Srinagar.
2. UT of J&K, Commissioner/Secretary to Government,
Finance Department, Civil Secretariat, Jammu/Srinagar.
3. Principal, Government Medical College, Jammu.

..... Respondent(s)

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

Coram: HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT
(19.09.2026)

CM No. 6637/2026

01. For the reasons stated in the application coupled with the submissions made at the Bar, the application is allowed and the amended prayer part of the writ petition is taken on record.
02. Application is *disposed of*.

WP(C) No. 2944/2026

‘There is no role in life more essential and more eternal than that of motherhood.’

M.Russell Ballard.

03. Motherhood is a divine process of creation of nurturing a life within self and bringing it into this world. This is a biological and spiritual process which teaches this world patience, resilience, empathy, humility, selflessness and protective existence, as motherhood. Maternity leave is a benefit provided to support working woman during their pregnancy and childbirth. The primary purpose of maternity leave is to ensure the health and well-being of working female employees.
04. In this petition, the petitioner herein is seeking to quash Communication No. ME-GEN/187/2025-01(E:7642802) dated 14.10.2025 (Annexure-I) to the extent of denying the benefit of pay and allowances to the petitioner during the period of maternity leave; with a direction upon the respondents to release forthwith the withheld salary and allowances of the petitioner for the period of maternity leave availed and the extended period of residency corresponding to the number of days of maternity leave, as held in the judgment in WP(C) No. 3509/2025 titled “Dr. Sonakshi Gupta & Ors vs UT of J&K & Ors.”

FACTUAL MATRIX

05. The petitioner herein is aggrieved of the communication No. ME-GEN/187/2025-01(E:7642802) dated 14.10.2025, issued by Respondent No.1, whereby it has been advised that Senior Residents/Tutors shall not be entitled to pay and allowances during the period of Maternity/Paternity Leave.
06. Petitioner came to be appointed as Registrar/Demonstrator in the

discipline of Pathology in Government Medical College, Jammu vide Order No. 369 of 2022 dated 15.12.2022, she submitted her joining report on 16.12.2022 and was blessed with baby on 12.08.2025. She applied for sanction of Maternity Leave as per Rules to the Principal Government Medical College, Jammu, it was sanctioned in favour of the petitioner for period of 180 days w.e.f 21.08.2025 to 16.02.2026 vide Order No. 389 of 2025 dated 15.10.2025.

07. Petitioner was appointed as Senior Resident/Tutor under the J&K Medical and Dental Education (Appointment on Academic Arrangement Basis) Rules, 2020, as such, the appointment of the petitioner is stated to be against the sanctioned Government for a fixed tenure and not as mere trainee. It is stated that in the year 2024, the Respondent No.1 in supersession of all previous orders and in conformity with the norms of the National Medical Commission and the National Board of Examinations, issued Government Order No. 451-JK(HME) of 2024 dated 08.07.2024, by virtue of which, it was, *inter alia* provided that Postgraduate Students, Senior Residents/Tutors and DNB PG Students in Government Medical Colleges of J&K shall be entitled to specified categories of leave including maternity and paternity leave. It is stated that the Rule 41 of the Jammu and Kashmir Civil Services (Leave) Rules, 1979 amended vide SRO 353 of 2015, unequivocally provides that during maternity leave, a woman employee shall be paid leave salary equal to the pay drawn immediately prior to proceeding on leave.

08. It is further stated that once the Government Order dated 08.07.2024 has

adopted Rule 41 for Senior Residents/Registrars/Tutors, the statutory entitlement to 'paid maternity leave' stood extended to the petitioner. The respondents, as such, cannot by a mere administrative communication, dilute, curtail or amend a statutory benefit. All Senior Residents who were on maternity leave were paid salary w.e.f 08.07.2024 and were permitted to avail the full six-month maternity leave contemplated under Rule 41. The petitioner, being similarly situated, was also entitled to be paid full 'paid maternity leave' in terms of the said statutory provision but at no stage, the respondents have ever notified or indicated that the petitioner would be denied salary during the extended period. The abrupt deprivation of salary has caused severe financial hardship to the petitioner and her family, including her newborn child.

09. It is stated that the petitioner has already completed her maternity leave and had also undergone the extended period of residency mandated solely on account of her having availed maternity leave under Rule 41. The salary has been stopped pursuant to the impugned communication, which, as per the petitioner, is unconstitutional and contrary to the statutory framework governing the petitioner's appointment.
10. The petitioner herein has challenged the impugned communication dated 14.10.2025 on the ground that the appointment of the petitioner as Registrar/Demonstrator/Senior Resident/Tutor strictly governs in terms of the J&K Medical and Dental Education (Appointment on Academic Arrangement Basis) Rules, 2020 and Rule 2(c) defines "post" as a Government post against which engagement is made. Apart from that, the

Government Order No. 451-JK(ME) of 2024 dated 08.07.2024 expressly adopts Government rules and regulations for governing the maternity benefits to the petitioner. Rule 41 unequivocally mandates that during maternity leave a woman employee shall be paid salary equal to the pay drawn immediately before proceeding on leave, as such, the impugned communication dated 14.10.2025, as per the petitioner, nullifies a statutory entitlement by a mere administrative advisory, which cannot override, curtail or amend a statutory benefit conferred under Rule 41.

11. The petitioner herein has based her claim on the judgment passed in WP(C) No. 3509/2025 titled "*Dr. Sonakshi Gupta & Ors vs UT of J&K & Ors.*" dated 10.07.2026, wherein the communication dated 14.10.2025 has been set aside to the extent of denying the benefit of pay and allowances to the petitioners therein during the period of maternity leave/paternity leave. For facility of reference, para 14 of the aforesaid judgment is reproduced as under:

"14. In view of the aforesaid discussions, this Court is of the considered view that the communication dated 14.10.2025, issued by respondent No.1 to the extent denying the benefit of pay and allowances to the petitioners during the period of maternity leave/paternity leave, is liable to be quashed and is accordingly quashed. Respondent No.1 is also directed to grant full pay and allowances to the petitioners during the period of maternity leave and also during the extended period of residency corresponding to the number of days of maternity leave".

12. *Per Contra* Mr. Raman Sharma, learned Sr. AAG representing the respondents has fairly conceded to the prayer made by the petitioner in this petition on account of the fact that this petition is similar and is

covered in terms of the judgment titled “*Dr. Sonakshi Gupta & Ors vs UT of J&K & Ors.*” mentioned (supra).

13. Heard learned counsel for the parties and perused the material on record.
14. The appointment of the petitioner as Registrar/Demonstrator in the discipline of Pathology in Government Medical College, Jammu is governed in terms of the J&K Medical and Dental Education (Appointment on Academic Arrangement Basis) Rules, 2020. In terms of Government Order No. 451-JK(HME) of 2024 dated 08.07.2024, governing leave entitlement for Postgraduate Students and Senior Residents/Tutors Students, executing their assignments in Government Medical Colleges of J&K, Postgraduate Students and DNB PG Students, are entitled to the following kinds of leave:

“1. Leave permissible for Senior Residents/Tutors:

- (a) There shall be weekly one-day off (subject to exigencies of work). In addition, a Senior Resident/Tutor shall be eligible for Twenty (20) days’ Casual Leave. Five (05) days Academic Leave per year shall be admissible subject to the relevance of the programme to the course.
 - (b) **Female Senior Residents/Tutors shall be allowed Maternity Leave, MTP/Abortion Leave as per existing Government rules and regulations.**
 - (c) Male Senior Residents/Tutors shall be allowed Paternity Leave as per existing Government rules and Regulations.”
15. SRO-353 dated 06.10.2015 amending Rule 41 of the Jammu and Kashmir Civil Services (Leave) Rules, 1979, for ready reference, is reproduced as under:

“1. For rule 41, the following rule shall be substituted, namely:—

“41(1). Maternity Leave.—(i) A woman employee (including

an apprentice) may be granted Maternity leave by an authority competent to grant leave for a period which may extend up to 180 days from the date of its commencement.

(ii) Maternity leave shall be available up to two living children only.

(iii) Maternity leave not exceeding six weeks may also be granted to a woman employee (irrespective of number of children she has) in case of miscarriage including abortion, on production of medical certificate as laid down in rule 19.

(iv) During such period, she shall be paid leave salary equal to pay drawn immediately before proceeding on leave.

(v) Maternity leave may be combined with leave of any other kind.

(vi) Maternity leave shall not be debited against leave account.”

16. The Rules mentioned (supra) clearly reflect that a woman employee may be granted Maternity Leave by an authority competent to grant leave for a period which may extend upto 180 days from the date of its commencement. During such period, she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave. The Female Senior Residents/Tutors have also been allowed Maternity Leave, as per existing Government Rules and Regulations in terms of Government Order dated 08.07.2024.
17. Rule 41(1) of the Jammu and Kashmir Civil Services (Leave) Rules, 1979, (amended via SRO 353 of 2015) clearly provides for 180 days of Maternity Leave, a female employee has an absolute right to be paid a leave salary equal to the pay drawn immediately before proceeding on leave.
18. The petitioner has challenged the impugned Order dated 14.10.2025, to

the extent it denies her the benefit of pay and allowances during the period of maternity leave on account of the fact that she had not executed her course or assignment during the said period. The issue raised in the present petition is no longer *res integra* and already stands considered and adjudicated upon by this Court in **WP(C) No. 3509/2025 titled Dr. Sonakshi Gupta & Ors. v. UT of J&K & Ors, decided on 10.07.2026**. In the said judgment, this Court, while considering the very same communication dated 14.10.2025 and the denial of pay and allowances to Senior Residents/Tutors during Maternity Leave, held that the entitlement to maternity leave could not be defeated on the ground of the tenure/course-based nature of the engagement. The Court, accordingly, quashed the impugned communication to the extent it denied pay and allowances during the period of maternity leave and directed the respondents to grant full pay and allowances for the maternity-leave period as well as for the corresponding extended period of residency.

19. In “*Hamsaanandini Nanduri vs Union of India & Ors*”, reported in 2026 INSC, 246, the Apex Court has held that “*the protection of the 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. Maternity benefit or the payment in lieu of such leave is intended to support women during the phase of early motherhood by providing economic security when they are most engaged in the care and nurture of*

a young child. This act of support recognizes that motherhood entails sustained physical, emotional, and social exertion which demands time, financial stability and resources”.

20. The underlying objective of the Government Order No. 451-JK(HME) of 2024 dated 08.07.2024 and the Jammu and Kashmir Civil Services (Leave) Rules, 1979 is to advance social justice and serves multiple purposes including enabling the mother’s physical recovery, facilitating the nurturing care of the child and ensuring the level of her previous efficiency and output. It also ensures that the women are treated with dignity at the workplace and protected from apprehension of victimization on account of forced absence during maternity.
21. In **“K Umadevi vs Government of Tamil Nadu & Ors”, reported in 2025 LiveLaw (SC) 614**, the Apex Court has held that *“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 matter of not just fair play and social justice but is also a Constitutional guarantee to the women employees of this Country towards fulfillment whereof the State is bound to act.”*
22. In view of the above, this petition is disposed of at the threshold with the consent of the leaned counsel for the parties thereby setting aside the communication dated 14.10.2025 issued by Respondent No.1 to the extent of denying the benefit of pay and allowances to the petitioner during the period of Maternity Leave. The Respondent No.1 is directed to grant full

pay and allowances to the petitioner during the period of Maternity Leave and also during the extended period of residency corresponding to the number of days of maternity leave.

23. *Disposed of.*

(MOKSHA KHAJURIA KAZMI)
JUDGE

JAMMU
19.09.2026
Vijay

Whether the order is speaking: Yes
Whether the order is reportable: Yes

