



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

(1) S.B. Civil Writ Petition No. 5769/2020

Gayatri D/o Bhani Ram, Aged About 30 Years, R/o Chak 3-5-A Rd, Village And Post Mahsana, Via Dhirera, Tehsil Loonkaransar, District Bikaner.

----Petitioner

Versus

1. Maharaja Ganga Singh University, Bikaner, Through Its Registrar.
2. Comptroller Examination, Maharaja Ganga Singh University, Bikaner.
3. Rastra Udai Shikshan Prashikshan College, F 2- 3, Buchwal Industrial Area, Bikaner.

----Respondents

Connected With

(2) S.B. Civil Writ Petition No. 17552/2019

1. Principal, Rastra Udai Shikshak Prashikshan College, Situated At F 2-3, Beechhwal Area, Bikaner.
2. Manager, Rastra Udai Shikshan Prashikshan College, Situated At F 2-3, Beechhwal Area, Bikaner Through Deen Dayal Vyas S/o Late Shri Kanhaiya Lal Vyas, Aged 61 Years, R/o Purani Ginnani, Bikaner.

----Petitioners

Versus

1. Gayatri D/o Shri Bhaniram Jat, W/o Shri Lekhram, B/c Jat, R/o Chak 351 R.d., Village And Post Mahrana, Post Dhirera, Tehsil Loonkaransar, District Bikaner.
2. Registrar, Maharaja Gangasingh University, Bikaner.

----Respondents

(3) S.B. Civil Writ Petition No. 642/2020

Maharaja Ganga Singh University, Bikaner, Rajasthan Through Its Registrar.

----Petitioner

Versus

1. Gayatri D/o Shri Bhaniram Jat W/o Lekhram, By Caste- Jat, Resident Of Chak- 351 R.d. Village And Post- Mehrana, Post- Dhirera, Tehsil- Loonkaransar, District-



Bikaner (Raj.).

2. Principal, Rastra Udai Shikshak Prashikshan College, Situated At F-2-3, Beechhwal Area, Bikaner.
3. Manager, Rastra Udai Shikshak Prashikshan College, Situated At F-2-3, Beechhwal Area, Bikaner. Through Deen Dayal Vyas S/o Late Shri Kanhaiya Lal Vyas, Aged - 61 Years, Resident Of Purani Ginnani, Bikaner (Raj.).

----Respondents

(4) S.B. Civil Writ Petition No. 17551/2019

1. Principal, Rastra Udai Shikshak Prashikshan College, Situated At F 2-3, Beechhwal Area, Bikaner.
2. Manager, Rastra Udai Shikshan Prashikshan College, Situated At F 2-3, Beechhwal Area, Bikaner Through Deen Dayal Vyas S/o Late Shri Kanhaiya Lal Vyas, Aged 61 Years, R/o Purani Ginnani, Bikaner.

----Petitioners

Versus

1. Sudarshna Bishnoi W/o Shri Hetram Bishnoi, B/c Bishnoi, R/o Ward No. 1, Near Krishi Upaj Mandi Samiti, Nokha, Bikaner.
2. Registrar, Maharaja Gangasingh University, Bikaner.

----Respondents

For Petitioner(s)	:	Mr. Vikas Bijarnia Mr. Bheem Kant Vyas
For Respondent(s)	:	Mr. D.D. Chitlangi

HON'BLE DR. JUSTICE NUPUR BHATI

J U D G M E N T

Reportable

<u>Judgment Reserved on</u>	<>	12/10/2023
<u>Date of Pronouncement</u>	<>	30/10/2023

**SBCWP No.5769/2020 :**

1. Though the matter has been listed under the 'Orders Category', however, the matter is being heard today itself with the consent of counsel for both the parties.

2. The instant writ petition has been preferred under Article 226 of the Constitution of India with the following prayers:-

a) Respondents may kindly be directed to accept examination form of the petitioner for B.Ed. Second Year examination and permit her to appear in the B.Ed Second Year examination.

b) any other appropriate order which is deemed just and proper in the facts and circumstances of the case may kindly be also passed; and

c) the petitioner may kindly be allowed the cost of writ petition.

3. Brief facts of the case are that the petitioner could not join the B.Ed. Course in time due to her pregnancy by which she was blessed with a male child on 08.08.2018 and then after one month of the birth of the child the petitioner joined the course of B.Ed. and the petitioner was not permitted to pursue her studies thus the petitioner filed an application before Permanent Lok Adalat. The Permanent Lok Adalat passed an interim order dated 11.03.2019 in favour of petitioner wherein petitioner was permitted to pursue her studies of B.Ed. I Year Course and it was also ordered for relaxation in minimum attendance of 80% on receiving her examination form. Eventually Permanent Lok Adalat vide order dated 22.10.2019 (Annexure-1) allowed the application filed by the petitioner.



4. Thereafter the respondents challenged the order dated 22.10.2019 passed by Lok Adalat by filing a writ petition before this Hon'ble Court i.e. S.B. Civil Writ Petition No. 17752/2019 and S.B. Civil Writ Petition No. 642/2020.

5. Pursuant to the directions of Lok Adalat the petitioner was permitted to attend classes and thus she completed her Iyear B.E.d. Course, thereafter the result of the Iyear (Annexure-2) was declared on 31.07.2019 and the result of Iyear was produced in a sealed envelope before the Permanent Lok Adalat by the respondent No.1 Maharaja Ganga Singh University.

6. After completion of the I year B.Ed Course vide communication dated 16.12.2019 (Annexure- 4) the petitioner was directed to attend 16 week internship and the petitioner thereafter pursued the studies of 2nd year B.Ed Course.

7. As per the Gazette Notification dated 28.11.2014 the National Council for Teacher Education (NCET) had prescribed the duration of maximum three years for completion of the B.Ed. Course of two years. However the petitioner joined the course belatedly only after a period of about one month and had successfully completed her 1st year B.Ed. Course. The petitioner was pursuing the 2nd year B.Ed. Course and was not able to complete the Course beyond the period prescribed as the respondent University was not permitting the petitioner to fill up second year examination form after completing 1st year examination despite the fact that the petitioner is continuously studying her 2nd year course and attending regular classes and



has also submitted the examination form along with the demand draft (Annexure-6) thrice before the respondent University.

8. Thus the petitioner being aggrieved with the arbitrary action of the respondents in not accepting the examination form of the petitioner for B.Ed. 2nd year the petitioner preferred this writ petition.

9. Learned counsel of the petitioner submitted that the petitioner is entitled for taking part in B.Ed. 2nd year examination and the act of respondents in not accepting the examination form is illegal arbitrary and unjust and against the provisions of law. He further submitted that the order dated 22.10.2019 passed by Permanent Lok Adalat is justified in allowing the application of petitioner and directing the respondents including the Registrar Maharaja Ganga Singh University, Bikaner to permit the petitioner to participate in the examination and declare her result along with other reliefs. Furthermore the Permanent Lok Adalat vide order dated 11.03.2019 had passed an interim order and permitted the petitioner to pursue her studies of B.Ed. with further directions of internship and relaxation in minimum attendance on receiving her examination form.

10. Learned counsel for the petitioner also submitted that the petitioner completed 1st year B.Ed. Course and the result of which was produced in a sealed envelope before this Court by respondent No.1 Registrar Maharaja Ganga Singh University, However, the respondents permitted the petitioner to pursue her studies of 1st year B.Ed pursuant to the order of Permanent Lok



Adalat and permission was granted by Maharaja Ganga Singh University which conducts the examinations of B.Ed. of its affiliated colleges including the petitioner's college.

11. Learned Counsel for the petitioner further submitted that the petitioner on account of conceiving was not able to attend the B.Ed Course classes and thus she should not be deprived of her right to education on the ground of not attending the classes of B.Ed I Year Course. In support of his submissions, learned counsel for the petitioner placed reliance on the judgment passed by the Hon'ble High Court Of Judicature At Madras in the case of **A.Arulin Ajitha Rani vs State of Tamil Nadu** (SBCWP 440/2011); relevant portion of the judgment is reproduced here as under:-

"26. The fear that the grant of any concession even to girls who get married before attaining the age of 21 would be seen as destructive of the policy to encourage marriages above the age of 21 years, cannot be a factor to deprive the benefit. In the social context in which we live, marriages before the age of 21 are a matter of hard reality. When it is not illegal for a girl above 18 years of age to get married, it may not be feasible to deprive them of the benefit of maternity leave on the ground that it is the policy of the State to encourage people to get married after completion of 21 years.

27. Therefore, the writ petition is allowed and the impugned order is set aside. The first respondent is directed to formulate a policy in general, for all educational institutions and universities in the State, so as to ensure that girl students, whose attendance falls short of the prescription, on account of marriage and pregnancy, are granted the benefit of condonation of shortage of attendance, so that the natural biological process does not act as a hindrance to



the education and empower of women. There will be no order as to costs.”

12. Per contra learned counsel for the respondent raised a preliminary objection that the present writ petition is not maintainable as the Permanent Lok Adalat has passed the impugned order dated 14.05.2019 without having any power and authority as the Permanent Lok Adalat does not have the jurisdiction to take cognizance in the present case as under Section 22A(b) the present case does not fall in the definition of “Public Utility Service. Hence, a writ petition was filed by the respondents on this ground while challenging the impugned order dated 22.10.2019 **(S.B. Civil Writ Petition No.17552/2019 & 642/2020)**. He further submitted that in the Gazette of India notified on date 28.11.2014 issued by NCTE (Annexure-R/1) it has been clearly laid down that attendance in all academic work and practical work for student-teachers (students who are pursuing their studies in B.Ed./M.Ed. etc.) 80% attendance is mandatory and 90% attendance in school based training shall be mandatory. In the absence of petitioner having mandatory attendance of 80% and 90% she had rightly been declined to continue the B.Ed Course.

13. Learned counsel for the respondents further submitted that the fact stated by the petitioner that the Permanent Lok Adalat permitted the petitioner to attend the classes is false as the interim order was passed by the Permanent Lok Adalat on 11.03.2019 whereby the petitioner was allowed to be appear in the examination only, however the B.Ed. first Year Course had



already completed wherein the attendance of the petitioner was zero and as such she was not entitled to appear in the examination. The averment regarding having successfully completed her B.Ed. First Year Course by the petitioner is not correct as the petitioner was allowed to appear in the B.Ed. First year examination in pursuance to interim order passed by the Permanent Lok Adalat and practical examination of the petitioner is still pending and the petitioner would be responsible if she fails to complete her entire B.Ed Course within prescribed period.

In support of his submissions, learned counsel for the respondents placed reliance on the judgment passed by the hon'ble high court of kerala in the case of **Jasmine vs Kannur University** (SB CWP 17993/2016 (Y)); The relevant portion of the judgment is reproduced here as under:-

"6. This Court, with due respect, is unable to accept the finding of the learned Single Judge that in providing just and humane conditions of work and for maternity relief and in making effective provisions for securing the right to work and to education, a female student could be given relaxation from attending the requisite classes as stipulated by the educational agency or the University for participating in the examination. The requirement, insofar as providing minimum attendance in lecture classes, is to equip the students to better perform in the profession they wish to pursue. Mere bookish knowledge is not the criteria W.P.(C) No. 17993/2016 of judging a professional, and pass in examination is not the only standard. The professional courses in that the student carries it out in a competent educational agency under a curriculum, structured as semesters over a period of years. That involves attendance in lecture classes, participation in seminars, performance in practicals; herein giving lectures and so on and so forth,





which; together with the pass in the final examinations, not only awards a degree but sends forth a well moulded professional into society. This ensures that the students, after the award of the degree, when send out to the professional world, is equipped to discharge the professional duties with high standards, commitment and orientation in the chosen vocation.

7. The petitioner herein is a student of B.Ed., a teacher training course, and is being trained to work as a teacher, whose role in nation building cannot, but be W.P.(C) No. 17993/2016 emphasised. It cannot be said that merely for the reason of her pregnancy a student could be allowed to sit for the examinations even without satisfying the requisite attendance, as prescribed by the educational agency. It cannot also be said that the case of the petitioner is an exceptional one, since, pregnancy cannot be considered to be a medical condition visited on the petitioner unexpectedly. This Court is of the firm view that the petitioner ought to have definitely adjusted her priorities when continuing a higher education, especially in a course which trains her to be a professional teacher. Pregnancy was an optional choice and that cannot be a reason to permit a student to deviate from the requirements of a regular course of study, and the insistence to adhere to the course regulations cannot be termed to be, a negation of the preferential treatment to women enshrined under the W.P. (C) No. 17993/2016 Directive Principles or in derogation of the values of motherhood. The petitioner has chosen to expand her family and can only be deemed to have taken a sabbatical from regular studies; which is definitely permissible and laudable too. But that cannot be turned to her advantage for wriggling out of the terms and conditions of a regular academic course. The award of a degree is not a private affair concerning the awardee alone; when it also brings with it the stamp of approval of a reputed educational agency, on which the society acts. Personal preferences and individual predilection should bow down to the larger public interest and societal obligations. The petitioner definitely will





be entitled to continue the second semester in the next year and appear for the examination after securing the requisite attendance. W.P.(C) No. 17993/2016 The writ petition would stand dismissed. No Costs."

14. Learned counsel for the petitioner in rebuttal submitted that in the year 2002 an amendment was brought in the Legal Services Authority Act 1987 wherein under Section 22A(b) the Secondary education or educational institution has been added in the definition of "Public Utility Service". He further submitted that the submission of the learned counsel for the respondents is without merit that the Permanent Lok Adalat did not have the jurisdiction to take cognizance in the matter as after inclusion of Secondary education or Educational Institution in the definition of "Public Utility Service", the Permanent Lok Adalat shall have jurisdiction to take cognizance in the matter.

15. Heard Learned Counsel for the parties; perused the material available on record and the judgments cited at the bar.

16. The petitioner-Gayatri took admission in the B.Ed. Course for the Session 2018-2020 with the respondents. She was pregnant and gave birth to a child on 08.08.2018 and thus, was not in a position to attend the regular classes of the I Year B.Ed Course. The petitioner after passage of one month from the date of delivery, presented herself before the respondents for attending the classes of I Year B.Ed. Course, however, the respondents did not permit her and on 15.10.2018, the petitioner was informed verbally by the respondents that her name was struck off from the roll, as the petitioner was not attending the classes of the said



Course, however, no information was ever received by the petitioner in writing. This Court also observes that the petitioner submitted her attendance before the respondents on 09.01.2019 by way of an application form, the receipt of which was duly signed on 11.01.2019 by the respondent. The petitioner continued with her studies at home as the respondent did not permit her to attend the I Year B.Ed Classes and she was continuously taking up the issue of permitting her to attend the classes of B.Ed. I Year Course, however, no heed was paid to her request and thus, the petitioner approached the Permanent Lok Adalat, Bikaner, by way of filing an application before it. Moreover, the Permanent Lok Adalat, Bikaner granted an interim order dated 11.03.2019 in favour of the petitioner while directing the respondents to permit the petitioner to sit in the ongoing session on regular basis and also to permit the petitioner to take up the internship course and also directed the respondents to permit the petitioner to appear in the Main Examination, 2019 for the I Year B.Ed. Course.

17. The petitioner accordingly continued the classes as well as appeared in the Main Examination, 2019 for B.Ed. I Year Course and the result of the said examination was placed before the Permanent Lok Adalat in a sealed envelope and the petitioner was declared as successful in the said examination. As the petitioner was not permitted to appear in the subsequent B.Ed. II Year Examination, the petitioner preferred this present writ petition.

The respondent University and respondent College have also preferred S.B. Civil Writ Petition No.17552/2019 and 642/2020



against the impugned award dated 22.10.2019 passed by the Permanent Lok Adalat.

18. The respondents had also declared the result of I Year B.Ed. Main Examination of the petitioner and also permitted her to attend the regular classes of II Year B.Ed. Course but, on account of shortage of attendance in the I Year Course, the petitioner was not permitted to appear in the II Year Main Examination.

19. As per the Gazette Notification dated 28.11.2014 (Annexure-R/1) and the Bye Laws, 80% attendance in B.Ed./M.Ed., and 90% attendance in school based training, is mandatory and undoubtedly, the petitioner could not secure the said mandatory attendance in the I Year B.Ed. Course on account of her pregnancy. Furthermore, this Court vide order dated 24.07.2020, had granted interim order in favour of the petitioner while permitting the petitioner to fill the examination form for B.Ed. II Year and consequently, allowing her to appear in the B.Ed. II Year Main Examination provisionally while directing her result not to be declared without prior permission of this Court.

20. On 20.04.2021, the respondents placed before this Court the result of the petitioner for the II Year B.Ed. Course Main Examination in a sealed envelope and it was found that the petitioner was declared 'Pass' in the B.Ed. II Year Course Main Examination, 2020 and the same is taken on record. Moreover, in the present case, the respondents did not permit the petitioner to attend the regular classes of I Year Course as well as the Main Examination of I Year B.Ed. Course and the subsequent II Year



Examination thereafter, as her attendance was much below the required benchmark as laid down in the Gazette Notification dated 28.11.2014 (Annexure-R/1) and the Bye Laws.

21. India has ratified the Convention on the Elimination of all Forms of Discrimination against Women and as per Article 12(2) of the Convention on the Elimination of all Forms of Discrimination against Women, it is necessary to grant maternity leave to pregnant women and thus, in order to avoid any discrimination, shortage of attendance is required to be condoned. Relevant portion of the Article 12(2) of the Convention on the Elimination of all Forms of Discrimination against Women (hereinafter referred to as CEDAW for short) is reproduced hereunder:-

"Article 12(2).


Notwithstanding the provisions of paragraph 1 of this article, States Parties 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."

22. Article 42 of the Constitution of India provide for just and humane conditions of work and maternity relief and the same is obligatory upon the state, though, the said provision as laid down under Part-IV of the Constitution of India, is not enforceable by any court but, it shall be the duty of the State to apply these principles while making the laws. Article 42 of the Constitution of India is reproduced hereinbelow:-



"Article 42 in The Constitution Of India -

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"



23. The Maternity Benefit Act, 1961 has been enacted with an object to regulate the employment of women in certain establishment for certain period before and after child birth and to provide for maternity benefit and certain other benefits. There is no doubt that the Maternity Benefit Act, 1961 is applicable only where there is a relationship of an employee and an employer but, this fact cannot be ignored that in order to extend several benefits to a pregnant woman in their respective work field and to avoid any discrimination, such act has been enacted.

24. This Court is conscious of the fact that every educational institution has its own rules and regulations regarding attendance of the students in the classes in order to ensure that there is a regular attendance by the students attending theory or practical knowledge which can be acquired, but in the present case, on account of pregnancy and the delivery of a child by the petitioner, the petitioner was unable to attend the classes of the B.Ed. Course.

25. This Court finds that in the case of ***Vandana Kandari Vs. University of Delhi*** reported in ***MANU/DE/1614/2010***, the student whose shortage of attendance on account of advance stage of pregnancy was not condoned by the University, filed a writ petition before the Delhi High Court and after referring to the



decision of Hon'ble High Court of Madras in the case of **Nithya Vs. University of Madras & Ors.** reported in **AIR 1995 MAD 164** and also the decision of the Delhi High Court in **Neera Gupta Vs. University of Delhi** reported in **1996 IVAD Delhi 337** taking note of Articles 15(3) & 42 of the Constitution of India, the Delhi High Court held that a female student cannot be deprived of her right to take examination, when her shortage of attendance is due to advanced stage of pregnancy and that such students deserve relaxation under the mandate of the Constitution so that the natural biological process does not act as a hindrance to the education and employment of women. Therefore, depriving the petitioner from sitting in the examination on account of shortage in the attendance occasioned due to pregnancy cannot be taken to be in consonance with Article 14 and 21 of the Constitution of India.

The Hon'ble Apex Court in the case of **Air India Limited Vs. Nergesh Meerza (1981) 4 SCC 335** has held that retiring an Air Hostess upon attaining age of 35 years or on marriage taking place within a period of four years of service or on first pregnancy whichever occurs earlier is discriminatory and is in violation of Articles 14, 15, 15(1), 16, 16(2) and 19 of the Constitution of India.

26. Thus, in view of the above discussion, this Court is of the firm view that a female student like the petitioner cannot be deprived of undertaking the examinations on account of shortage in the attendance due to the fact that she could not attend the



classes due to advanced pregnancy. The petitioner deserves relaxation under the mandate of the Constitution and the action of the respondents in not permitting the petitioner to attend I Year B.Ed Classes, I Year Main Examination, II Year Classes & II Year Main Examination is declared illegal, arbitrary, unjust and against the mandate of the Constitution of India. The petitioner had duly appeared in the Main Examination of I Year B.Ed Course in pursuance of the directions of the Permanent Lok Adalat, Bikaner and the petitioner had been declared pass in the said examination. This Court vide interim order dated 24.07.2020 directed the respondent to permit the petitioner to attend the classes of II Year B.Ed Course and also permit the petitioner to sit in the Main Examination-2020 of the II Year B.Ed Course. The result of the II Year B.Ed Main Examination was placed before this Court and the petitioner has been declared Pass in the said examination. Thus, this Court deems it appropriate to direct the respondents to declare the result of the II Year B.Ed Main Examination and also issue in her favour the necessary certificates forthwith.

27. Consequently, the instant writ petition is allowed in these terms. Stay application as well as all other pending applications, if any, stand disposed of accordingly.

28. No order as to costs.

IN SBCWP Nos.17552/2019 and 642/2020:-

1. Both these writ petitions have been filed by the petitioner under Article 226 & 227 of the Constitution of India challenging



the award dated 22.10.2019 passed in Application No.51/2019, by the Permanent Lok Adalat, Bikaner.

2. Since common questions of facts and law are involved in both these writ petitions, therefore, the same are decided by this common order.

3. The issue involved in these writ petitions is identical to one in the writ petition bearing **SBCWP No.5769/2020 (Gayatri Vs. Maharaja Ganga Singh University, Bikaner)**, whereby, the writ petition has been allowed by this Court by an order of even date. As a result the order dated 22.10.2019 passed by the Permanent Lok Adalat, Bikaner in Application No.51/2019 is upheld to the extent of granting exemption to the petitioner on medical grounds in her minimum presence on account of delivery and permitting her to sit in the examination as per Rules and also permitting her to undertake Internship in the upcoming session of IInd Year.

4. Consequently, both the writ petitions are partly allowed and the order dated 22.10.2019 passed by the Permanent Lok Adalat, Bikaner in Application No.51/2019 is quashed and set aside to the extent of payment of compensation of Rs.10,000/- towards mental, physical and financial loss caused to respondent no.1 due to going through this long legal battle and Rs.5,000/- towards complaint expenses.

5. Stay applications as well as all other pending applications, if any, also stands dismissed.

6. A copy of this order be placed in each file.

**IN SBCWP No.17551/2019 :**

1. The instant writ petition has been preferred under Article 226 of the Constitution of India with the following prayer:-

"by an appropriate writ, order or direction the impugned judgment dated 22.10.2019 may kindly be quashed and set aside."

2. The respondent no.1, who was student of IInd Year B.Ed Course in the petitioner College remained absent from 19.7.2018 on account of ill health due to pregnancy. The respondent no.1 delivered a child on 16.10.2018. The respondent no.1 after one month appeared before the respondents for continuing her with the said Course and for allowing her in the Main Examination for the year 2018-19. On account of inaction of the petitioner of the petitioner College, the respondent no.1 preferred an application No.04/2019 before the Permanent Lok Adalat, Bikaner. After hearing both the parties, the Permanent Lok Adalat, Bikaner passed judgment dated 22.10.2019 while allowing the application of the respondent no.1 with a direction to allow the respondent no.1 to participate in the examination and thereafter declare the result as well with a further direction of compensation of Rs.10,000/- on account of mental and physical harassment.

3. Learned counsel for the petitioner submitted that the Permanent Lok Adalat failed to consider that the respondent no.1 chose to expand her family but she cannot take that advantage for wriggling out of the terms and conditions of the regular academic Course. Learned counsel for the petitioner also



submitted that the respondent no.1 will be entitled to continue Second Semester in the following year and also would be permitted to appear in the Main Examination but only after securing the requisite attendance and, thus, the judgment passed by the Permanent Lok Adalat is *dehors* the Rules whereby it is mandatory for a student to obtain 80% and 90% attendance in the respective session.

4. None present for the respondent no.1.

5. This Court finds that the Permanent Lok Adalat, Bikaner had granted interim order in favour of the respondent no.1, based on which, the petitioner no.1 permitted her to continue Internship and allowed the respondent no.1 to sit in the Main Examination of IInd Year B.Ed Course. The respondent no.1 has successfully passed the IInd Year Main Examination and her result was directed to be declared by the Permanent Lok Adalat. The respondent no.1 had duly Passed the Ist Year Main Examination and it is an admitted fact that the respondent no.1 fulfilled the requisite benchmark of having 80% and 90% attendance in the Ist Year B.Ed Course and the respondent no.1 could not attend the classes of IInd Year B.Ed Course on account of her advanced pregnancy.

6. This Court further observes that India has ratified the Convention on the Elimination of all Forms of Discrimination against Women and as per Article 12(2) of the Convention on the Elimination of all Forms of Discrimination against Women, it is necessary to grant maternity leave to pregnant women and



thus, in order to avoid any discrimination, shortage of attendance is required to be condoned. Relevant portion of the Article 12(2) of the Convention on the Elimination of all Forms of Discrimination against Women (hereinafter referred to as CEDAW for short) is reproduced hereunder:-

"Article 12(2).

Notwithstanding the provisions of paragraph 1 of this article, States Parties 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."

7. Article 42 of the Constitution of India provide for just and humane conditions of work and maternity relief and the same is obligatory upon the state, though, the said provision as laid down under Part-IV of the Constitution of India, is not enforceable by any Court but, it shall be the duty of the State to apply these principles while making the laws. Article 42 of the Constitution of India is reproduced hereinbelow:-

"Article 42 in The Constitution Of India -

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"

8. The Maternity Benefit Act, 1961 has been enacted with an object to regulate the employment of women in certain establishment for certain period before and after child birth and to provide for maternity benefit and certain other benefits.





There is no doubt that the Maternity Benefit Act, 1961 is applicable only where there is a relationship of an employee and an employer but, this fact cannot be ignored that in order to extend several benefits to a pregnant woman in their respective work field and to avoid any discrimination, such act has been enacted.

9. This Court is conscious of the fact that every educational institution has its own rules and regulations regarding attendance of the students in the classes in order to ensure that there is a regular attendance by the students attending theory or practical knowledge which can be acquired, but in the present case, on account of pregnancy and the delivery of a child by the petitioner, the petitioner was unable to attend the classes of the B.Ed. Course.

10. This Court finds that in the case of **Vandana Kandari Vs. University of Delhi** reported in **MANU/DE/1614/2010**, the student whose shortage of attendance on account of advance stage of pregnancy was not condoned by the University, filed a writ petition before the Delhi High Court and after referring to the decision of Hon'ble High Court of Madras in the case of **Nithya Vs. University of Madras & Ors.** reported in **AIR 1995 MAD 164** and also the decision of the Delhi High Court in **Neera Gupta Vs. University of Delhi** reported in **1996 IVAD Delhi 337** taking note of Articles 15(3) & 42 of the Constitution of India, the Delhi High Court held that a female student cannot be deprived of her right to take examination,



when her shortage of attendance is due to advanced stage of pregnancy and that such students deserve relaxation under the mandate of the Constitution so that the natural biological process does not act as a hindrance to the education and employment of women. Therefore, depriving the petitioner from sitting in the examination on account of shortage in the attendance occasioned due to pregnancy cannot be taken to be in consonance with Article 14 and 21 of the Constitution of India.

The Hon'ble Apex Court in the case of **Air India Limited Vs. Nergesh Meerza (1981) 4 SCC 335** has held that retiring an Air Hostess upon attaining age of 35 years or on marriage taking place within a period of four years of service or on first pregnancy whichever occurs earlier is discriminatory and is in violation of Articles 14, 15, 15(1), 16, 16(2) and 19 of the Constitution of India.

11. Thus, in view of the above discussion, this Court is of the firm view that a female student like the respondent no.1 cannot be deprived of undertaking examinations on account of shortage in the attendance due to the fact that she could not attend the classes due to her advanced pregnancy. The respondent no.1 deserves relaxation under the mandate of the Constitution and the action of the petitioner in not permitting the respondent no.1 to attend the IInd Year B.Ed Classes and the IInd Year Main Examination is declared illegal, arbitrary, unjust and against the mandate of the Constitution of India.



12. Thus, this Court deems it appropriate to uphold judgment dated 22.10.2019 passed by the Permanent Lok Adalat, Bikaner partly to the extent of finding the petitioner as entitled for exemption on medical grounds in her minimum presence on account of delivery and based on such exemption finding the respondent no.1 as eligible for sitting in the examination and declaring result of the said examination. The judgment dated 22.10.2019 passed by the Permanent Lok Adalat, Bikaner in Application No.04/2019 is quashed and set aside to the extent of granting compensation of Rs.10,000/- towards mental, physical and financial loss and Rs.5,000/- towards complaint expenses in favour of respondent no.1.

13. Consequently, the writ petition is partly allowed.

14. Stay application as well as all other pending applications, if any, stand dismissed.

(DR. NUPUR BHATI),J

155-158 Sanjay-