

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 11TH DAY OF DECEMBER 2018 / 20TH AGRAHAYANA, 1940

WP(C).No. 5507 of 2018

PETITIONER:

RASITHA C.H.,
AGED 35 YEARS, W/O.BIJU P M,
SURYAKANTHI HOUSE, MEPPAYIL PO,
VADAKARA, KOZHIKODE, PIN-673105.

BY ADVS.
SRI.B.MUHAMMED SHAHEEL
SRI.RUBEN GEORGE ROCK

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY PRINCIPAL SECRETARY
TO GOVERNMENT, HIGHER EDUCATION DEPARTMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM-695001.
 - 2 CALICUT UNIVERSITY
REPRESENTED BY ITS REGISTRAR,
UNIVERSITY OF CALICUT, CALICUT UNIVERSITY P O,
MALAPPURAM (DISTRICT) KERALA, PIN-673635.
 - 3 DIRECTOR
DIRECTORATE OF SELF FINANCING COURSES,
TAGORE NIKETHAN, CALICUT UNIVERSITY P O, KERALA-
673635.
 - 4 DIRECTOR
SCHOOL OF HEALTH SCIENCES,
UNIVERSITY OF CALICUT, CALICUT UNIVERSITY P O,
MALAPPURAM (DISTRICT) KERALA, PIN 673635.
- BY ADV. SRI.P.C.SASIDHARAN, SC, CALICUT UNIVERSITY
SMT.G. RANJITHA, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11.12.2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Petitioner, Smt. Rasitha C.H., is working as Assistant Professor in Medical Microbiology on contract basis at the School of Health Sciences, in Calicut University.

2. She was appointed as lecturer in Medical Microbiology and Medical Biochemistry at Centre for Health Sciences, Calicut University Campus on contract basis from 14.07.2008. Her period of service with the University is as follows:

*“14.07.2008 to 13.07.2009, 17.07.2009 to 16.07.2010
21.07.2010 to 20.07.2011, 25.07.2011 to 24.07.2012
28.07.2012 to 27.07.2013, 01.08.2013 to 31.07.2014
05.08.2014 to 04.08.2015, 10.08.2015 to 09.08.2016
16.08.2016 to 14.08.2017”*

On expiry of the last contract, she was re-engaged w.e.f. 17.08.2017 for a period of one year. This would show that petitioner has been engaged from time to time on contract basis for past one decade.

3. The present issue is in regard to the claim for maternity benefits, which was denied by the University. University submits that in terms of the agreement

petitioner is not entitled to such benefits. University specifically refers Clause 11 of agreement which reads thus:

“Clause 11: The party of the first part will not be entitled to any claim for future appointment in the University service whether permanent/temporary/contract by virtue of this engagement on contract.”

4. The maternity benefit is not merely a statutory benefit or a benefit flowing out of an agreement. This court consistently held that it is attached with the dignity of a woman. This Court, in **Mini Vs. Life Insurance Corporation of India** [2018 (1) KLT 530] and **Rakhi P.V. and Others V. State of Kerala & Another** [2018 (2) KHC 251] held that a women cannot be compelled to choose between motherhood and employment.

5. In **Rakhi's** case (*supra*) this Court has specifically referred to the claim of maternity leave due to women employees who are working under contract and this court held that such women cannot be denied the maternity benefits. It is submitted in the Bar that the judgment in **Rakhi's** case (*supra*) was affirmed by the Division Bench as well.

6. The learned counsel for the University submitted that the petitioner, being a contract employee, can at best claim only 15 days casual leave during the period of one year and also permitted to abstain from duty on account of medical conditions of maternity.

In **Rakhi's** case (*supra*) it was held that a woman employee cannot be denied maternity benefits merely because her status is a contractual employee. Therefore, the University is bound to grant such benefits notwithstanding anything contained in the agreement of contract.

In such circumstances, the University is directed to pay the maternity benefits due to the petitioner as applicable in the case of other employees of the University, within a period of two months.

The writ petition is disposed of as above.

sd/-

A. MUHAMED MUSTAQUE

JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 THE TRUE COPY OF THE ORDER SANCTIONING THE APPOINTMENT OF THE PETITIONER ISSUED BY THE 2ND RESPONDENT DATED 1/9/2008
- EXHIBIT P2 A TRUE COPY OF THE LETTER DATED 26/8/2017 ISSUED BY 2ND RESPONDENT REGARDING RE-ENGAGEMENT OF PETITIONER
- EXHIBIT P3 THE TRUE COPY OF THE ORDER SANCTIONING THE RE-ENGAGEMENT OF THE PETITIONER ISSUED BY THE 2ND RESPONDENT DATED 19/10/2017
- EXHIBIT P4 A TRUE COPY OF THE LEAVE APPLICATION DATED 26/10/2017 SUBMITTED BY PETITIONER
- EXHIBIT P5 A TRUE COPY OF THE LETTER DATED 15/11/2017 ISSUED BY 3RD RESPONDENT TO THE 4TH RESPONDENT.

RESPONDENTS' EXHIBITS: NIL