



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

**D.B. Special Appeal Writ No. 376/2021**

1. State Of Rajasthan, Through The Principal Secretary, Department Of Education, Jaipur.
2. The Director, Department Of Secondary Education, Bikaner.
3. The District Education Officer (Head Quarter), Secondary Education, Bikaner.
4. The Block Development Officer, Primary Education Department, Nokha, Dist. Bikaner.

----Appellants

Versus

Smt. Neeraj W/o Rupa Ram, Aged About 34 Years, Resident Of  
47, Village Sindhpora, Post Hirani Via Kuchaman, District Nagaur.

----Respondent

---

For Appellant(s)	:	Mr. Pankaj Sharma AAG assisted by Mr. Deepak Chandak
For Respondent(s)	:	Mr. Bhavit Sharma

---

**HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY  
HON'BLE MR. JUSTICE VINIT KUMAR MATHUR**

**Judgment**

**04/08/2021**

The present appeal has been filed by the appellant-State challenging the order dated 07.12.2020 passed by learned Single Judge in S.B. Civil Writ Petition No. 4384/2020, whereby the writ petition preferred by the respondent- petitioner was allowed and it was declared that a female Government Servant is entitled to avail maternity leave if she joins within the period of confinement i.e. 15 days before to three months after the birth of child irrespective of the fact that the child was born prior to the date of joining or



before issuance of appointment in service. The respondent-petitioner was allowed all consequential benefits.

Heard learned counsel for the parties.

The facts are not disputed in the present case as the respondent-petitioner gave birth to a child on 15.05.2016 and in pursuance of the appointment order issued for the post of Physical Training Instructor (PTI), Grade III on 04.06.2016, she joined on 06.06.2016. After joining, she applied for maternity leave on 21.06.2016. The case of the respondent-petitioner for maternity leave and confirmation was decided by the appellants vide orders dated 13.08.2018 and 17.07.2019.

Learned Additional Advocate General vehemently submitted that benefits of maternity leave are not available to the respondent on account of fact that the respondent delivered a child prior to the joining of her services. He further submits that as per Rule 103 of the Rajasthan Service Rules, 1951 (hereinafter referred to as 'the rules'), a female government servant is entitled for maternity leave only if she is in service. In the present case, since the respondent was not a Government Servant on the date on which she delivered the child, she was not entitled to maternity leave as per Rule 103 of the Rules. He argues that for being entitled for the maternity leave, a person should be in the services of the State Government then only there will be applicability of Rule 103 of the Rules and therefore, the learned Single Judge was not right in extending the benefit to the respondent in the present case. He submits that the competent authorities of the Department have rightly rejected the application of the respondent-petitioner for grant of maternity leave and other consequential benefits.



Learned counsel strongly contended that the benefit of Rule 103 of the Rules can be extended only to a female government servant, if she is in service and since, the petitioner-respondent was not on the roll of the Government on the date of birth of her child, the benefit of maternity leave could not be extended to her.

Per contra, learned counsel for the respondent has supported the judgment passed by learned Single Judge and submitted that since it is a beneficial legislation and it is a fact that the respondent-petitioner had delivered a child on 15.05.2016 i.e. 19 days before the joining period, the benefit of maternity leave cannot be denied to her.

We have considered the submissions made at the Bar and have gone through the judgment dated 07.12.2020 as well as other relevant records of the case.

The fact that the respondent delivered a child on 15.05.2016 just before the joining period is not disputed by the parties. It is undisputed that after the delivery of a child, the mother needs rest and a certain period for fulfilling the natal needs of the child. It is of common knowledge that if an employee who has delivered child needs some time to recover from the post delivery issues and to take care of the new born baby. It is precisely for this reason the legislature thought it proper to insert a provision in the shape of Rule 103 of the Rajasthan Service Rules, 1951. The view taken by the learned Single Judge thus, is quite natural and to give a complete meaning and purpose to the legislative intent so that the needs of a female employee are taken care of at the time of delivery of a child.

The argument of the learned Additional Advocate General that Rule 103 of the Rules is applicable only to the serving



Government servant is noted to be rejected for the reason that Rule 103 of the Rajasthan Service Rules, 1951 has a nexus with the object sought to be achieved by the legislature i.e. for facilitating the female to overcome the problems and issues at the time of the delivery. Therefore, if a female government servant delivers a child before joining the services but within the confinement period, she will be entitled to get the benefit of Rule 103 of the Rajasthan Service Rules, 1951.

We are gainfully supported by the observations of the Kerala High Court on this issue in the case of **Mini K.T. v. Senior Divisional Manager, Life Insurance Corporation of India in Writ Petition No. 22007 of 2012 decided on 21.12.2017,**

which read as under:-

1. "Motherhood is the mother of all civilization. Family as a social institution is considered as the backbone of the society. Family is the first model of political society (Rosseau on the Social Contract). When people settled down and started living as a commune, the family was the foundation of such commune, and women was the center of such family. No civilization passed without recognising the power of mother and often figuratively projected her as Goddess. (See our own glorious past, as described by Jasodhara Bagchi, a feminist writer in her book, "Interrogating motherhood"):

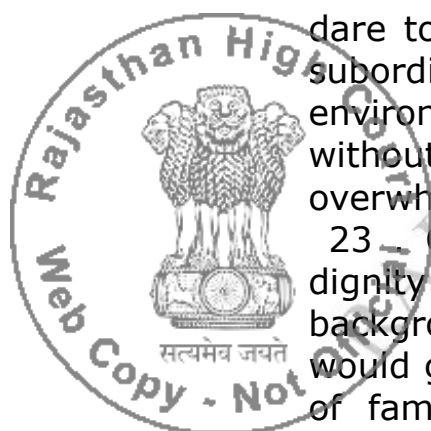
*"The celebration of motherhood has happened in most cultures in the world, and Indian culture is no exception. The oldest available cultural artifacts in the pre-Aryan civilization in Mohenjo-daro and Harappa bear testimony to the mother cult. The principle of fertility represented by the embodiment of mother is the oldest testimony to the sense of continuity of the species. Not just birthing but the process of nurturance that makes it incumbent upon homo sapiens to recognize the value of the mother."*

A child born to a family sees the world first through the eyes of his mother and develops his cognitive skills through the vision of his family. In earlier centuries,



predominantly, in agrarian society, the role of woman was limited to taking care of children, household and family. Social conditions of modern family underwent transformation due to industrialisation and urbanisation. As a result, the social and legal concept related to the society also got changed. Motherhood then has become a contentious issue in the modern society, particularly, in economic frontier, as the competing market interests override notions of culture and social justice like gender equity. Identity of a woman is often tangled within the patriarchal structure of a commercially or profit motivated enterprise which dare to see mothering or family responsibility remain subordinate to their interest. Complexity of working environment as above is designed by an architecture without adhering to rules of gender equality; often overwhelmingly to suit men."

23 – Coming back to the question of dignity, those dignity has to be understood in the societal background. Indian cultural and traditional practices would go to show that motherhood is an essential part of family responsibility. International Human Rights Law thus protect dignity of woman and also family. The Constitution thus demand interpretation of its provisions in that background. Person-hood of a woman as mother is her acclaim of individuality essentially valued as liberty of her life. This was so designed by culture, tradition and civilisation. Mother's role in taking care of the child has been considered as an honour; she enjoyed such status because of her position in respect of the child. If on any reason she could not attend her workplace due to her duties towards child (compelling circumstances), the employer has to protect her person-hood as "mother". If not that, it will be an affront to her status and dignity. No action is possible against a woman employee for her absence from duty on account of compelling circumstances for taking care of her child. No service Regulations can stand in the way of a woman for claiming protection of her fundamental right of dignity as a mother. Any action by an employer can be only regarded as a challenge against the dignity of a woman. Motherhood is not an excuse in employment but motherhood is a right which demands protection in given circumstances. What employer has to consider is whether her duty attached to mother prevented her from attending employment or not. As already adverted above, motherhood is an inherent dignity of woman, which cannot be compromised.





We are in complete agreement with the view taken by the learned Single Judge that since it is a beneficial legislation and if a female government servant is giving birth to a child within the stipulated period of confinement i.e. 15 days before to three months after the birth of the child, she will be entitled to maternity leave. The argument of the learned Additional Advocate General that the respondent was not a Government Servant at the time of delivery of a child has no merit and therefore, the same is liable to be rejected in the light of the discussions made hereinabove. It is reiterated that the purpose and intention of the rule-making authority is to facilitate the female government employees by extending the benefit of maternity leave at the time of delivery of the child.

In view of the discussions made above, the judgment dated 07.12.2020 passed by learned Single Judge is upheld and the appeal is dismissed being bereft of merit.

**(VINIT KUMAR MATHUR),J (INDRAJIT MAHANTY),CJ**

43-Anil/payal/-

सत्यमेव जयते