



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.10589 of 2025
Date of Decision: 30.07.2025

Archana SharmaPetitioner
Versus
State of H.P. and OthersRespondents

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? ¹ Yes.

For the Petitioner: Mr. Karan Kapoor, Advocate.
For the Respondents: Mr. Rajan Kahol, Mr. Vishal Panwar and Mr. B.C. Verma, Additional Advocates General, with Mr. Ravi Chauhan, Deputy Advocate General, for State.

Sandeep Sharma, Judge (oral):

Petitioner herein, who at present is serving as Staff Nurse at Civil Hospital, Paonta Sahib, is aggrieved of order dated 10.07.2025 (Annexure R-3), issued by Senior Medical Officer, Incharge, Civil Hospital, Paonta Sahib, District Sirmaur, whereby representation filed by the petitioner for grant of maternity leave for a period of 180 days came to be rejected on the ground that at the time of delivery of child, petitioner had two surviving children.

2. Precisely, the facts of the case, as emerge from the pleadings adduced on record by respective parties are that marriage of the petitioner was solemnized in the year 2016 and thereafter, she gave birth to two children. In the year 2019, petitioner came to be selected as Staff Nurse on batch-wise basis and since then, she had been working in afore capacity at Civil Hospital, Paonta Sahib. On 05.03.2025, petitioner delivered a child at

¹Whether the reporters of the local papers may be allowed to see the judgment? Yes.

Civil Hospital, Paonta Sahib. On 06.03.2025, petitioner moved an application for grant of maternity leave w.e.f. 06.03.2025, however, such prayer of her was not considered and as such, she was compelled to approach this Court by way of CWP No.9854 of 2025, which came to be disposed of vide order dated 19.06.2025 with the direction to respondents to decide the application of the petitioner qua grant of maternity leave within one week, however, nothing was done and as such, petitioner again approached this Court through instant petition. While issuing notice vide order dated 03.07.2025, this Court specifically asked learned Additional Advocate General to have instructions that why till date, representation of the petitioner in terms of order dated 19.06.2025, passed in CWP No.9854 of 2025 has not been decided.

3. Pursuant to afore order passed by this Court, respondents before filing reply to the petition, passed order dated 10.07.2025 (Annexure R-3), thereby rejecting the claim of the petitioner for grant of maternity leave in terms of Rule 43(1) of CCS (Leave) Rules, 1972, which provides for maternity leave to female Government servant with less than two surviving children for a period of 180 days. Vide aforesaid communication, petitioner herein came to be apprised that since she has two surviving children, she is not entitled to maternity leave for third child, in terms of Rule, as detailed hereinabove. Since afore order never came to be supplied to petitioner, prior to filing the petition at hand, she was unable to lay challenge to the same in the instant petition, however, once afore order has been adduced

on record by way of filing reply, validity, if any, of the same can be seen in the instant proceedings.

4. Respondents in their reply have nowhere disputed factum with regard to solemnization of marriage of the petitioner in the year 2016 and thereafter, birth of two children, prior to her being appointed as Staff Nurse at Civil Hospital, Paonta Sahib. Claim of the petitioner, as put forth in the petition at hand, has been attempted to be defeated on the ground that Rule 43(1) of CCS (Leave) Rules, 1972, nowhere permits grant of maternity leave qua birth of third child, especially when, female intending to seek such maternity leave is having two surviving children. At this stage, it would be apt to take note of Rule 43(1) of CCS (Leave) Rules, 1972, which reads as under:

“43. Maternity Leave

(1) A female Government servant (including an apprentice) with less than two surviving children may be granted maternity leave by an authority competent to grant leave for a period of (180 days) from the date of its commencement.”

4.1. Though, having carefully perused aforesaid Rule, there appears to be merit in the contention raised at the behest of respondents/State, but question, which needs to be determined in the case at hand is that **“whether female Government employee, who joins Government service after her having given birth to two children, can be denied benefit of maternity leave on the birth of third child under the garb of Rule 43(1) of CCS (Leave) Rules, 1972 or not?”**

5. Issue, as has been formulated hereinabove, is no more *res integra* as Hon’ble Apex Court in almost similar facts and circumstances, in

Civil Appeal No.2526 of 2025, titled as ***K. Umadevi Vs. Government of Tamil Nadu and Others***, decided on 23.05.2025, directed State of Tamil Nadu to grant maternity leave to female Government employee, who had given birth to third child, after her remarriage and two children from her previous marriage were in custody of her ex-husband. In afore case before the Hon'ble Apex Court, similar plea was taken by the State of Tamil Nadu that Rule 43(1) of CCS (Leave) Rules, 1972, nowhere permits the female Government employee to avail maternity leave on the birth of third child. While negating aforesaid plea taken at the behest of State of Tamil Nadu, Hon'ble Apex Court observed that in the context of employment, child birth has to be construed as a natural incident of life and, hence, provisions for maternity leave must be construed in that perspective. Observing that when Courts are confronted with such situations, they would do well to attempt to give effect to the purpose of the law in question rather than to prevent its application.

6. Though in afore judgment, Hon'ble Apex Court while agreeing with State of Tamil Nadu that provisions of Maternity Benefit Act, 1961, shall not be applicable in the case of petitioner in that case, but observed that certainly her prayer for grant of maternity leave qua third child deserves to be considered in light of Rule 101 of Fundamental Rules. Since aforesaid provision of Fundamental Rules has been already taken note by the Hon'ble Apex Court in judgment, referred hereinabove, there appears to be no justification for this Court to reproduce the same here. Though having perused aforesaid provision, especially proviso to clause (ii) of FR 101(a),

this Court finds that maternity leave referred to in clauses (i) or (ii), shall be granted to a married woman Government servant with less than two surviving children, but second proviso to afore provision provides that in the case of a woman Government servant with two surviving children born as twins in the first delivery, maternity leave shall be granted for one more delivery. Hon'ble Apex Court, having taken note of its earlier judgment in case titled as **Deepika Singh Vs. Central Administrative Tribunal**, (2023) 13 SCC 681, acknowledged that the Maternity Benefit Act has no application to PGIMER as an establishment (institution in the State of Tamil Nadu), yet for the purpose of adopting an approach which furthers legislative policy, referred to the provisions of the Maternity Benefit Act to derive some guidance therefrom. It further proceeded to observe that afore Act was enacted to secure women's right to maternity leave and to afford women with as much flexibility as possible to live an autonomous life, both as a mother and as a worker. In afore judgment, Hon'ble Apex Court while appreciating the policy of the State to arrest population growth by resorting to various population control measures, also observed that object of having two child norm is part of the measures to control population growth in the country and the object of providing maternity benefit to women employees including maternity leave in circumstances such as in the present case are not mutually destructive and that two must be harmonized in a purposive and rational manner to achieve the social objective. Relevant Paras of judgment passed in **K. Umadevi** (supra) read as under:

"33.3. In the facts of that case, this Court observed that spouse of the appellant had a prior marriage which had ended as a result of the death of his wife after

which the appellant married him. However, what is relevant and important is the following declaration of this Court:

24.The fact that the appellant's spouse had two biological children from his first marriage would not impinge upon the entitlement of the appellant to avail maternity leave for her sole biological child.....

33.4. Thus, this Court was categorical in declaring that the factum of appellant's spouse having two biological children from his first marriage would not impinge upon the entitlement of the appellant to avail maternity leave for her sole biological child. Grant of child care leave to the appellant for the two children of her spouse from his previous marriage cannot be used to disentitle her to maternity leave under Rule 43 of the 1972 Rules. In the context of employment, child birth has to be construed as a natural incident of life and, hence, provisions for maternity leave must be construed in that perspective. Observing that when courts are confronted with such situations, they would do well to attempt to give effect to the purpose of the law in question rather than to prevent its application.

34. Insofar the present case is concerned it is true that appellant has two biological children out of her first wedlock. But that was before entry into her service. Post entry into service and from her subsisting marriage, this is her first child. It has come on record that the two children out of her first wedlock are not residing with her but with their father, who is having their custody.

35. Policy of the State to arrest population growth by resorting to various population control measures is certainly a laudable objective. So is the objective of granting maternity benefit to women employees. The object of having two child norm as part of the measures to control population growth in the country and the object of providing maternity benefit to women employees including maternity leave in circumstances such as in the present case are not mutually exclusive. The two must be harmonized in a purposive and rationale manner to achieve the social objective.

36. In the circumstances, we are unable to agree with the view taken by the Division Bench of the High Court. Though learned Single Judge had granted the relief to the appellant, we are also unable to persuade ourselves to the line of reasoning of the learned Single Judge.

37. We accordingly set aside the judgment and order of the Division Bench of the High Court dated 14.09.2022 and declare that appellant shall be granted maternity leave under FR 101(a). Maternity benefits which are admissible to the appellant shall be released to her within a period of two months from today."

6.1. In afore case before the Hon'ble Apex Court, though Hon'ble Apex Court acknowledged that petitioner in that case has two biological

children out of her first wedlock, but yet proceeded to grant benefit of maternity leave to petitioner in that case qua the child which she delivered after remarriage on the ground that two children out of her first wedlock are not residing with her, but with their father.

7. In the case at hand, petitioner herein had given birth to two children prior to her induction in service but her prayer to grant her maternity leave, though may be qua third child of her during service, came to be made for first time. If it is so, prayer made on her behalf for grant of maternity leave deserves to be allowed, especially in view of law laid down by Hon'ble Apex Court in **K. Umadevi** (supra), wherein judgment passed by Delhi High Court in Writ Petition (Civil) No.9270/2024, titled as **Commissioner of Police Vs. Raveena Yadav**, decided on 22.07.2024, has been taken note of, whereby it has specifically explained the purpose of maternity benefit. Hon'ble Apex Court has categorically held that very purpose of maternity leave is to ensure that a working lady may overcome the state of motherhood honourably, peaceably and undeterred by the fear of being victimized for forced absence from work during pre and post natal periods. Most importantly, Hon'ble Apex Court has observed that it is not just motherhood but also childhood, that requires special attention and 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 fulfillment whereof the State is bound to act.

6. Consequently, in view of the above, this Court finds merit in the present petition and accordingly the same is allowed. Impugned order dated 10.07.2025 (Annexure R-3), issued by Senior Medical Officer, Incharge, Civil Hospital, Paonta Sahib, District Sirmaur, is quashed and set-aside with the direction to respondents to grant maternity leave to the petitioner in terms of Rule 43(1) of CCS (Leave) Rules, 1972, forthwith.

The present petition is disposed in the above terms, so also the pending miscellaneous application(s), if any.

**(Sandeep Sharma),
Judge**

July 30, 2025
(Rajeev Raturi)