[2025] 5 S.C.R. 2704 : 2025 INSC 781

K. Umadevi
v.
Government of Tamil Nadu & Ors.

(Civil Appeal No. 2526 of 2025)

23 May 2025

[Abhay S. Oka and Ujjal Bhuyan,* JJ.]

Issue for Consideration

The Division Bench of the High Court held that appellant was not entitled to the benefit of maternity leave.

Headnotes†

Constitution of India – Art.21 – Maternity Leave – Appellant is stated to have two children from the first wedlock – First marriage was dissolved – Then appellant married MR – Due to conceivement from her second marriage, appellant applied for grant of maternity leave to the authorities for the period from 17.08.2021 to 13.05.2022 – The third respondent *vide* order dated 28.08.2021 rejected the prayer of the appellant that as per Fundamental Rule (FR) 101(a) maternity leave is available to women state government employees having less than two surviving children – Writ petition – Single Judge of the High Court *vide* the judgment and order dated 25.03.2022 held that appellant was entitled to grant of maternity benefit – However, the Division Bench of the High Court found the judgment of the Single Judge to be unsustainable – Correctness:

Held: In the instant case, 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 – 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

* Author

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 – Accordingly, the judgment and order of the Division Bench of the High Court dated 14.09.2022 is set aside and it is declared that appellant shall be granted maternity leave under FR 101(a). [Paras 34, 35, 37]

Maternity Leave – Universal Declaration of Human Rights – International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) – Maternity Protection Convention:

Held: Maternity leave is integral to maternity benefits – Reproductive rights are now recognized as part of several intersecting domains of international human rights law *viz.* the right to health, right to privacy, right to equality and non-discrimination and the right to dignity. [Para 28]

Constitution of India – Art.21 – Judicial Interpretation:

Held: By judicial interpretation, it has been held that life under Article 21 means life in its fullest sense; all that which makes life more meaningful, worth living like a human being – Right to life includes all the finer graces of human civilization, thus rendering this fundamental right a repository of various human rights – Right to life also includes the right to health – Right to live with human dignity and the right to privacy are now acknowledged facets of Article 21. [Para 13.1]

Constitution of India – Arts. 21, 42, 51(c) – Maternity leave – Maternity benefit – Reproductive rights – Discussed.

Maternity leave – International developments had its impact on Indian law – Discussed. [Paras 29-33.4]

Case Law Cited

Deepika Singh v. Central Administrative Tribunal **[2022] 7 SCR 557 : (2023) 13 SCC 681;** *B. Shah v. Presiding Officer, Labour Court, Coimbatore* **[1978] 1 SCR 701 : AIR 1978 SC 12;** *Suchita Srivastava v. Chandigarh Administration* **[2009] 13 SCR 989 : (2009) 9 SCC 1;** *Devika Biswas v. Union of India* **[2016] 5 SCR 773 :**

(2016) 10 SCC 726; *X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi* **[2022] 7 SCR 686 : (2023) 9 SCC 433 – referred to.**

Commissioner of Police v. Raveena Yadav, **MANU/DE/4823/2024 – referred to.**

List of Acts

Constitution of India; Maternity Benefit Act, 1961; Universal Declaration of Human Rights, 1948.

List of Keywords

Maternity leave; Maternity benefit; Reproductive rights; Right to health; Right to privacy; Right to equality and non-discrimination; Right to dignity; Article 21 of Constitution of India.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2526 of 2025

From the Judgment and Order dated 14.09.2022 of the High Court of Judicature at Madras in WA No. 1442 of 2022

Appearances for Parties

Advs. for the Appellant:
K. V. Muthu Kumar, Ms. Sarita Kanwar.

Advs. for the Respondents:
Joseph Aristotle, Sr. Adv., Sabarish Subramanian.

Judgment / Order of the Supreme Court

Judgment

Ujjal Bhuyan, J.

This civil appeal by special leave takes exception to the judgment and order dated 14.09.2022 passed by the Division Bench of the High Court of Judicature at Madras (High Court) in W.A. No. 1442 of 2022.

2. By the aforesaid judgment and order dated 14.09.2022 (impugned judgment), Division Bench set aside the judgment and order dated

25.03.2022 passed by a learned Single Judge of the High Court in W.P. No. 22075 of 2021 (*K. Umadevi Vs. Government of Tamil Nadu and Others*) whereby direction was issued to the State to sanction maternity leave to the appellant. By reversing the aforesaid decision, Division Bench held that appellant was not entitled to the benefit of maternity leave as claimed by her.

3. Relevant facts may be briefly noted.

4. Appellant married A. Suresh in the year 2006. From the said wedlock, two children were born: first one in 2007 and the second one in 2011. She entered government service in December, 2012 as English Teacher in Government Higher Secondary School, P. Gollapatti, Dharmapuri District in the State of Tamil Nadu. Marriage between the two was dissolved in the year 2017. It is stated that the two children born out of the said wedlock are in the custody of the former husband.

   4.1. On 12.09.2018, appellant married M. Rajkumar. Due to conceivement from her second marriage, appellant applied for grant of maternity leave to the authorities for the period from 17.08.2021 to 13.05.2022 (nine months) which was inclusive of both pre-and-post-natal periods.

   4.2. The third respondent *vide* order dated 28.08.2021 rejected the prayer of the appellant. It was stated that as per Fundamental Rule (FR) 101(a) which is applicable to state government employees of Tamil Nadu, maternity leave is available to women state government employees having less than two surviving children. There is no provision for grant of maternity leave for the third child on account of appellant's re-marriage.

   4.3. Aggrieved by rejection of her request for grant of maternity leave, appellant preferred a writ petition before the High Court which was registered as W.P. No. 22075 of 2021. A learned Single Judge of the High Court *vide* the judgment and order dated 25.03.2022 held that appellant was entitled to grant of maternity benefit. Therefore, rejection of her claim for grant of such benefit was illegal. As such, order dated 28.08.2021 was set aside. Respondents were directed to sanction maternity leave to the appellant as admissible in terms of the latest G.O.Ms. No. 84 of the Personnel and Administrative Reforms

(FR-III) Department dated 23.08.2021. Consequential decision was directed to be taken within a period of two weeks from the date of receipt of a copy of the said judgment. Writ petition was accordingly allowed.

4.4. Government of Tamil Nadu and its officers filed intra-court appeal being W.A. No. 1442 of 2022. A Division Bench of the High Court *vide* the impugned judgment and order dated 14.09.2022 found the judgment of the learned Single Judge to be unsustainable. Division Bench held that the appellant was not entitled to maternity relief as claimed by her. Accordingly, the judgment and order of the learned Single Judge dated 25.03.2022 has been set aside. Consequently, the writ appeal has been allowed.

5. This came to be assailed before this Court in the related special leave petition. Notice was issued by this Court on 28.11.2022. In the hearing held on 11.02.2025, leave was granted.

6. Learned counsel for the appellant submits that the Division Bench was not at all justified in reversing the decision of the learned Single Judge. Division Bench erred in holding that maternity benefit could not be provided to the appellant. Prior to her entry into service, she had begotten two children from her first marriage but their custody is with the father. Conceivement of a child out of her re-marriage which, in fact, is her first child from the present wedlock cannot be treated as her third child, thus, disentitling her from availing the benefit of maternity leave.

6.1. Learned counsel submits that the issue raised in this case is squarely covered by the decision of this Court in *Deepika Singh Vs. Central Administrative Tribunal*[1]. However, the Division Bench misdirected itself in observing that the said decision is not applicable to the facts of this case; rather supports the case of the respondents. He submits that the decision of this Court in *Deepika Singh* (supra) is squarely applicable to the facts of this case. Division Bench of the High Court is bound by the dictum of law laid down in *Deepika Singh* (supra). To that extent, impugned judgment and order suffers from perversity.

1 (2023) 13 SCC 681

6.2. Learned counsel further submits that view of the Division Bench that grant of maternity leave is not a fundamental right is totally unsustainable. Right to have maternity leave is a facet of reproductive right of a woman which is traceable to Article 21 of the Constitution of India, he submits.

6.3. He further submits that though the Maternity Benefit Act, 1961 may not be directly applicable to the state government employees, nonetheless for the purpose of adopting an approach which would further the legislative intent, certainly guidance can be derived from the provisions of the Maternity Benefit Act, 1961 (referred to hereinafter as the 'Maternity Benefit Act').

6.4. In any view of the matter, he submits that view taken by the Division Bench cannot be sustained. Learned Single Judge was justified in holding that appellant is entitled to maternity leave. Therefore, the impugned judgment should be set aside and direction be issued to the respondents to grant maternity leave to the appellant or regularize any leave taken by the appellant relatable to her pregnancy as maternity leave of the appellant.

7. *Per contra*, learned counsel for the respondents submits that the entire object of maternity benefit is to protect the dignity of motherhood by providing complete care to a woman employee and her children when she is unable to perform her duty on account of her pregnancy. By extending such benefit, the State has made an attempt to provide the women employees with a level playing field.

7.1. He, however, submits that the said policy is subject to fiscal responsibility and human resources management. Any deviation from the established policy of not extending the benefit of maternity leave to women employees having more than two children would create precedents that could potentially overwhelm the exchequer and impact administrative efficacy. Even in *Deepika Singh* (supra), this Court highlighted that statutory rights and service conditions must align. Therefore, personal circumstances cannot override established policy, especially where fiscal implications are significant.

7.2. He also submits that it is the policy of the State to espouse the cause of small family which is in sync with the policy of Government of India on population control. If the reliefs sought for by the appellant is granted, it would amount to incentivizing

breach of population control norms and may have severe and adverse impact on government's policy of managing small family norms as a population control measure.

7.3. Learned counsel has referred to FR 101(a) and submits that the same bars grant of maternity benefit beyond the second child. Permanent married women government servants and non-permanent married women government servants may be granted maternity leave with less than two surviving children or with two surviving children born as twins in the first delivery. Insofar the present case is concerned, appellant already has two children from her first marriage. Therefore, she is not entitled to maternity benefit for the third child. That apart, provisions of the Maternity Benefit Act are not applicable to state government employees like the appellant. However, benefits extended to government employees of Tamil Nadu as social welfare measures are more beneficial than under the Maternity Benefit Act.

7.4. Learned counsel submits that appeal of the appellant is without any merit and, therefore, the same is liable to be dismissed.

8. We have considered the rival submissions of the learned counsel representing the parties.

9. Let us first deal with the order dated 28.08.2021 passed by the third respondent under the heading: Proceeding of Dharmapuri District Chief Educational Officer. By the aforesaid order, request of the appellant for maternity leave was rejected on the ground that there is no provision in the Tamil Nadu Fundamental Rules for grant of maternity leave for third child through re-marriage. Order dated 28.08.2021 reads thus:

> On the above subject matter, the letter in the reference cited was received on 18.08.2021 in this office. Smt. K. Umadevi had two children by her first marriage. After getting divorced for personal reason, she remarried and through remarriage she has now applied for maternity leave for the third child from 17.08.2021.
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> Since as per Rule 101 (a) of the Tamil Nadu Fundamental Rules, maternity leave can be granted to a woman government servant with less than two living children only, the request of the individual to sanction maternity leave

to her third child may be rejected by informing that there is no provision in the Tamil Nadu Fundamental rules for grant of maternity leave for third child through remarriage.

10. When this was challenged before the High Court, learned Single Judge referred to various case laws and also relied upon the Maternity Benefit Act and held that provisions of the Maternity Benefit Act have overriding effect on any other law inconsistent therewith. It was held that the rule providing cap on the number of children for entitlement of maternity benefit is repugnant to the Maternity Benefit Act which is a central enactment. Further, two surviving children must mean children in lawful custody of the mother. Appellant was not having the custody of children born from the first wedlock. A semantic construct of the expression 'having surviving children' must mean that the woman government employee seeking maternity benefit should have custody of the children. The thrust should be on grant of the benefit by adopting a liberal interpretation. Learned Single Judge also noted that the State Government had issued G.O.Ms. No. 84 dated 23.08.2021 enhancing maternity leave from 9 months to 12 months underlying the importance of maternity leave. Therefore, learned Single Judge concluded that rejection of the claim of the appellant for maternity leave was wholly unjustified. *Vide* the judgment and order of the learned Single Judge dated 25.03.2022, order dated 28.08.2021 was set aside. Respondents were directed to sanction maternity leave to the appellant for the period from 11.10.2021 to 10.10.2022 as admissible in terms of the latest G.O.Ms. No. 84 dated 23.08.2021.

11. When the aforesaid judgment and order of the learned Single Judge was assailed in intra-court appeal, Division Bench noted that insofar policy of the State is concerned it restricts benefit of maternity leave to two children. Therefore, appellant was not entitled to benefit of maternity leave for the third child. Grant of maternity leave is not a fundamental right. It is either a statutory right or a right which flows from the conditions of service. Insofar the decision of this Court in *Deepika Singh* (supra) is concerned, Division Bench observed that the said decision supports the case of the State, particularly paragraph 17 thereof. In the circumstances, Division Bench *vide* the impugned judgment held that appellant was not entitled to the relief as claimed by her. Consequently, while allowing the writ appeal, judgment and order of the learned Single Judge has been set aside.

12. We need to examine the correctness or otherwise of the decision of the Division Bench in the light of constitutional and statutory framework as well as in the backdrop of international developments.

13. Article 21 of the Constitution of India though at first blush appears to be a colourless article, it is a potent provision pregnant with wide width and scope having received extensive and liberal construction at the hands of this Court. Article 21 reads thus:

> **21. Protection of life and personal liberty.** – No person shall be deprived of his life or personal liberty except according to procedure established by law.

13.1. By judicial interpretation, it has been held that life under Article 21 means life in its fullest sense; all that which makes life more meaningful, worth living like a human being. Right to life includes all the finer graces of human civilization, thus rendering this fundamental right a repository of various human rights. Right to life also includes the right to health. Right to live with human dignity and the right to privacy are now acknowledged facets of Article 21.

14. Article 42 of the Constitution of India which is one of the directive principles of State policy mandates that the State shall make provisions for securing just and humane conditions of work and for maternity relief. Article 42 is as follows:

> **42. 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.

15. Another directive principle is contained in Article 51 of the Constitution of India. Amongst others, it says through Article 51(c) that the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with one another.

16. We may now refer to FR 101(a) as applicable to the State of Tamil Nadu. For ready reference, the same is extracted hereunder:

> Rule 101 (a) - maternity leave to female Government servants.

Instructions under Rule 101 (a) – Maternity leave.

1. (i) A competent authority may grant maternity leave on full pay to permanent married women Government servants and to non-permanent married women Government servants, who are appointed on regular capacity, for a period not exceeding 365 days, which may spread over from the pre-confinement rest to post confinement recuperation at the option of the Government servant. Non-permanent married women Government servants, who are appointed on regular capacity and join duty after delivery shall also be granted maternity leave for the remaining period of 365 days after deducting the number of days from the date of delivery to the date of joining in Government service (both days inclusive) for the post confinement recuperation.

(ii) Non-permanent married women Government servants, who are appointed under the emergency provisions of the relevant service rules should take for maternity purposes, the earned leave for which they may be eligible. If, however, such a Government servant is not eligible for earned leave or if the leave to her credit is less than 365 days, maternity leave may be granted for a period not exceeding 365 days or for the period that falls short of 365 days, as the case may be. Non-permanent married women Government servants employed under the emergency provisions should have completed one year of continuous service including leave periods, if any, to become eligible for the grant of maternity leave.

Provided that the maternity leave referred in (i) or (ii) above shall be granted to a married woman Government servant with less than two surviving children.

Provided further 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.

17. As per the first proviso to clause (ii) of FR 101(a), maternity leave referred to clauses (i) or (ii) shall be granted to a married woman

Government servant with less than two surviving children. The second proviso says 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.

18. Though provisions of the Maternity Benefit Act *per se* are not applicable to the State Government employees, nonetheless, we may make a reference to certain relevant provisions thereof for useful guidance. Section 5 of the Maternity Benefit Act is as under:

> **5. Right to payment of maternity benefit.**—(1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.
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> Explanation.—For the purpose of this sub-section, 'the average daily wage' means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 (11 of 1948), or ten rupees, whichever is the highest.
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> (2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery:
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> Provided that the qualifying period of eighty days aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.
>
> Explanation.—For the purpose of calculating under this sub-section the days on which a woman has actually worked in the establishment, the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages, during

> the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.
>
> (3) The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the date of her expected delivery :
>
> Provided that the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery :
>
> Provided further that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:
>
> Provided also that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery, for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.
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> (4) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.
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> (5) In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.

19. A careful perusal of the above provision would reveal that grant of maternity benefit is *per se* not denied to a woman employee having more than two children. Following amendment in the year 2017, a restriction has been introduced in Section 5 by inserting a proviso under sub-section (3) as to the entitlement of the period of maternity

leave. A woman employee having less than two surviving children is entitled to a maximum period of benefit i.e. 26 weeks and for a woman employee having two or more than two surviving children, the benefit is restricted to 12 weeks. Thus, there is no ceiling or cap on the number of children to claim maternity benefit. Only thing is that in case of a woman employee having two or more than two surviving children seeking maternity leave, period of the benefit is reduced: from a maximum period of 26 weeks to a maximum of 12 weeks.

20. Section 27 of the Maternity Benefit Act is also relevant. It deals with effect of laws and agreements inconsistent with the Maternity Benefit Act and declares that provisions of the Maternity Benefit Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in terms of any award, agreement or contract of service, whether made before or after the coming into force of the Maternity Benefit Act.

21. The objective of maternity leave has been expounded by this Court in the case of *B. Shah Vs. Presiding Officer, Labour Court, Coimbatore*[2]. This Court observed that maternity leave legislation is intended to achieve the object of doing social justice to women workers. It enables a woman worker not only to subsist but also to make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output.

22. We may now deal with relevant provisions contained in international treaties and conventions dealing with maternity benefits.

23. Universal Declaration of Human Rights was adopted by the United Nations in the year 1948. Article 25 thereof has got two sub-articles. Sub-article (1) says that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family. This includes food, clothing, housing, medical care etc. However, Article 25(2) is relevant which is as under:

> 2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

2 AIR 1978 SC 12

23.1. Thus, Article 25(2) of the Universal Declaration of Human Rights recognizes that motherhood and childhood are entitled to special care and assistance. This principle acknowledges State intervention and support for maternity related entitlements.

24. International Covenant on Economic, Social and Cultural Rights was adopted by the General Assembly of the United Nations on 16th December, 1966. India ratified the said covenant in the year 1979. Article 10(2) recognizes that special protection should be accorded to mothers for a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits. Under Article 12 all the States who are signatories to the aforesaid covenant acknowledged the steps to be taken to achieve the full realization of the right to enjoy the highest attainable standard of physical and mental health. This would include provisions for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child.

25. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was held in 1979 under the aegis of the United Nations. As a matter of fact, CEDAW was adopted by the United Nations General Assembly on 18th December, 1979. This convention was the culmination of more than 30 years of work by the United Nations Commission on the Status of Women, established in the year 1946, monitoring the situation of women around the world and to promote women's rights. Thrust of CEDAW is maximum participation of women on equal terms with men in all fields of life to ensure full and complete development of a country. CEDAW is the most comprehensive international convention focused on eliminating discrimination against women. India ratified CEDAW in 1993.

25.1. Article 11 emphasizes that appropriate measures should be taken by all nations to eliminate discrimination against women in the field of employment. Article 11(2) says that in order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, the States shall take appropriate measures. As per clause (b), signatory States are under an obligation to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances. Article 12(1)

obligates States to take all appropriate measures to eliminate discrimination against women in the field of healthcare including access to healthcare services particularly those related to family planning. On the other hand, Article 12(2) says that notwithstanding the provisions of Article 12(1), signatory States 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.

25.2. Article 16(1)(e) affirms the right of a woman to decide freely and responsibly on the number and spacing of children and to have access to the information, education and means to do so. Article 16(1)(e) reads thus:

> **Article 16**
>
> 1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
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> *** *** *** ***
>
> (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.
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26. In its 20th session held in 1999, CEDAW adopted several recommendations. General recommendation No.24 pertains to women and health. Such recommendation emphasized on the need to ensure access to adequate healthcare facilities particularly in respect of family planning, protection of women's health and safety in working conditions, including safeguarding of the reproductive function, special protection from harmful types of work during pregnancy and with the provision for paid maternity leave. It was also emphasized that women should have the same rights as men to decide freely and responsibly on the number and spacing of their children.

27. A Maternity Protection Convention was held on 30th May, 2000 at Geneva under the aegis of the International Labour Organization. General Conference of the International Labour Organization adopted the proposals of the said Convention on 15th June, 2000. International labour standards have long recognized maternity protection as essential for promoting workplace equality and safeguarding maternal and child health. This Convention applies to all employed women including those in atypical forms of dependent work. Article 4 of this convention deals with maternity leave. As per clause (1), a woman to whom the said convention applied shall be entitled to a period of maternity leave of not less than 14 weeks. As per clause (4), maternity leave shall include a period of 6 weeks compulsory leave after childbirth for the protection of the health of the mother and that of the child. Clause (5) clarifies that the prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reduction in any compulsory portion of postnatal leave.

    27.1. Under Article 8(1), it shall be unlawful for an employer to terminate the employment of a woman during her pregnancy. As per clause (2), a woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

28. Thus, as can be seen from the above, through various international conventions, the world community has recognized the broad spectrum of reproductive rights which includes maternity benefits. Maternity leave is integral to maternity benefits. Reproductive rights are now recognized as part of several intersecting domains of international human rights law *viz.* the right to health, right to privacy, right to equality and non-discrimination and the right to dignity.

29. Such international developments had its impact on Indian law. In *Suchita Srivastava Vs. Chandigarh Administration*[3], a three-Judge Bench of this Court in the context of the Medical Termination of Pregnancy Act, 1971 acknowledged the right of a woman to make reproductive choices and held that such a right is a facet of Article 21 of the Constitution. This Court held thus:

3 (2009) 9 SCC 1

> **22.** There is no doubt that a woman›s right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children.
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30. This Court in *Devika Biswas Vs. Union of India*[4] observed that the need to respect and protect reproductive rights and reproductive health of a person has been recognized. Reproductive right is an aspect of personal liberty under Article 21 of the Constitution. This decision was rendered in the backdrop of the sterlisation campaign carried out by the State. In *Devika Biswas* (supra), this court observed as under:

> **106.** The manner in which sterilisation procedures have reportedly been carried out endanger two important components of the right to life under Article 21 of the Constitution—the right to health and the reproductive rights of a person.
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> *** *** *** ***
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> **109.** That the right to health is an integral part of the right to life does not need any repetition.

4 (2016) 10 SCC 726

> **110.** Over time, there has been recognition of the need to respect and protect the reproductive rights and reproductive health of a person. Reproductive health has been defined as "the capability to reproduce and the freedom to make informed, free and responsible decisions. It also includes access to a range of reproductive health information, goods, facilities and services to enable individuals to make informed, free and responsible decisions about their reproductive behaviour". The Committee on Economic, Social and Cultural Rights in *General Comment No. 22 on the Right to Sexual and Reproductive Health* under Article 12 of the International Covenant on Economic, Social and Cultural Rights observed that "The right to sexual and reproductive health is an integral part of the right of everyone to the highest attainable physical and mental health."
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> **111.** This Court recognised reproductive rights as an aspect of personal liberty under Article 21 of the Constitution in *Suchita Srivastava* v. *Chandigarh Admn.* The freedom to exercise these reproductive rights would include the right to make a choice regarding sterilisation on the basis of informed consent and free from any form of coercion.
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31. Elaborating on the contours of reproductive rights, this Court in *X Vs. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi*[5] observed that the ambit of reproductive rights is not restricted to the right of women to have or not to have children. It also includes the constellation of freedoms and entitlements that enable a woman to decide freely on all matters relating to her sexual and reproductive health. This Court observed that although human dignity inheres in every individual, it is susceptible to violation by external conditions and treatment imposed by the State. The right of every woman to make reproductive choices without undue interference from the State is central to the idea of human dignity. Deprivation of access to reproductive healthcare or emotional and physical

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well-being also injures the dignity of women. This Court referred to Article 51 of the Constitution which urges the State to foster respect for international law and treaty obligations. Relevant extract of the said decision reads thus:

> **101.** The ambit of reproductive rights is not restricted to the right of women to have or not have children. It also includes the constellation of freedoms and entitlements that enable a woman to decide freely on all matters relating to her sexual and reproductive health. Reproductive rights include the right to access education and information about contraception and sexual health, the right to decide whether and what type of contraceptives to use, the right to choose whether and when to have children, the right to choose the number of children, the right to access safe and legal abortions, and the right to reproductive healthcare. Women must also have the autonomy to make decisions concerning these rights, free from coercion or violence.

32. In a recent decision, Delhi High Court in *Commissioner of Police Vs. Raveena Yadav*[6] explained the purpose of maternity benefit. It 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. Women now constituting a sizable portion of the work force in our country, must be treated with honour and dignity at places where they work to earn their livelihood. The High Court went on to explain the impact of pregnancy on the physiological and psychological state of a woman employee undergoing pregnancy. 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 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.

33. In *Deepika Singh* (supra), appellant at the material time was working as a nursing officer in the Post Graduate Institute of Medical Education

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and Research, Chandigarh (PGIMER). Her spouse had two children from his first marriage. After his first wife passed away he married the appellant. In official record she declared the two children of her spouse from the first marriage as her children. On 04.06.2019 she had her first biological child from her marriage. She applied for maternity leave in terms of Rule 43 of the Central Services (Leave) Rules, 1972 ('1972 Rules' hereinafter) which rules are applicable to PGIMER. Request of the appellant for grant of maternity leave was rejected on the ground that she had two surviving children and had availed of child care leave earlier for the two children born from the first marriage of her spouse. Her first biological child was considered as the third child. Therefore her request for grant of maternity leave was found to be inadmissible in terms of the 1972 Rules.

33.1. Appellant challenged the said decision before the Central Administrative Tribunal, Chandigarh Bench (Tribunal). However, her original application was dismissed by the Tribunal. When the appellant moved the High Court calling into question the decision of the Tribunal, High Court also dismissed the same on the ground that there was no perversity or illegality in the judgment of the Tribunal.

33.2. Thereafter, the matter travelled to this Court. This Court referred to Rule 43 of the 1972 Rules which deals with maternity leave. As per Rule 43(1), only a female Government servant with less than two surviving children may be granted maternity leave. This Court opined that provisions of Rule 43(1) must be imbued with a purposive construction. Since it is a beneficial legislation, it has to be construed with a purpose oriented approach and must receive a liberal construction to promote its objects. The courts must bridge the gap between law and society through the use of purposive interpretation. Though this Court acknowledged that the Maternity Benefit Act has no application to PGIMER as an establishment, 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. After an exhaustive analysis of Section 5 of the Maternity Benefit Act, this Court observed that the said 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. Thereafter, this Court referred to the various international treaties and conventions.

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.

38. Appeal is accordingly allowed. However, there shall be no order as to cost.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan