HIGH COURT OF MADHYA PRADESH, JABALPUR

//MEMORANDUM//

No. C/1484
III-18-81/15

Jabalpur, dated 03.4.2017

To,

1. The District and Sessions Judge,
(All in the State),

2. The Principal Registrar,
High Court of M.P.,
Benches at INDORE and GWALIOR and

3. The Registrar (Administration),
High Court of M.P.
JABALPUR

Please find enclosed herewith the copy of the order dated 02.3.2017, passed by Hon'ble the High Court of M.P. in W.P. No. 17004/2015, Mrs. Priyanka Gujarkar Shrivastava vs. Registrar General & another for information.

03.4.2017

(Vivek Saxena)
OSD (DE)

HIGH COURT OF MADHYA PRADESH AT JABALPUR

W.P. No.17004/2015

Mrs. Priyanka Gujarkar Shrivastava

VERSUS

Registrar General & another

Present : Hon'ble Shri Justice Rajendra Menon,
Acting Chief Justice and
Hon'ble Smt. Justice Anjuli Palo, J.

Shri Raghvendra Kumar, learned counsel for the petitioner.
Shri Akshay Dharmadhikari, learned counsel for the respondents.

(O R D E R)

Passed on: 02.03.2017

Per : Justice Rajendra Menon

Petitioner who is working as a Court Manager on contract basis under the administrative control of the District & Sessions Judge, Chhindwara has filed this writ petition under Articles 226 and 227 of the Constitution challenging an order dated 21.08.2015 passed by respondent no.1 rejecting her claim seeking grant of maternity leave in accordance to the leave rules and the benefit granted to regular woman employees working under the administrative control of respondent no.1 & 2.

02. Petitioner was appointed after a due process of examination, selection and interview conducted by the High Court as

a Court Manager, however, the appointment was made on contract basis on a consolidated salary of Rs.50,000/- per month and this appointment was made in pursuance to the recommendations made by 13th Finance Commission for the purpose of better administration of the justice system and for development of infrastructures in various Courts throughout the country. The post was sanctioned and payment was also made in accordance to the recommendations made by the 13th Finance Commission but the appointment was made after a due process of selection initiated by the High Court which consisted of preliminary examination, final examination and an interview by the Board constituted by the Chief Justice of the High Court. The appointment of the petitioner after following this process vide Annexure P/3 on 03.10.2012 was on contract basis and even though, the contract appointment was initially for a period during which the 13th Finance Commission recommendation was applicable but we can take judicial notice of the fact that the appointment still continue on the requirement of the Court Manager is perennial in nature. The matter of creating a regular cadre and regularizing the service etc. are pending on the administrative side with the High Court and the State Government.

03. Be that as it may for the present suffice is to indicate that petitioner being on her family way filed an application seeking

benefit of 180 days maternity leave in accordance to the provisions of the Maternity Benefit Act, 1961 (hereinafter refer to as the Act of 1961) and consequential amendment made to the same, so also based on the notification and Circular issued by the State Government vide Annexure P/10 on 29 February, 1996, implementing the benefit of certain leave rules to temporary and casual employee working in the establishment of the State Government. However, the respondents rejected the same by holding that in view of Clause 10 of the terms and conditions of her appointment as she is only entitled to 13 days' casual leave and 03 days' optional leave and in accordance to the terms and conditions of the benefit cannot confer upon her. Subsequent, representation made to respondent no.1 having also been rejected, petitioner has filed this writ petition.

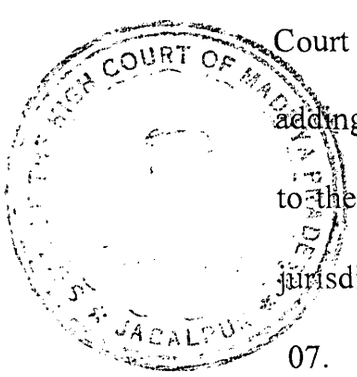
04. Shri Raghvendra Kumar, learned counsel appearing for the petitioner took us to the provisions of the Maternity Benefit Act of 1961, the provisions of Section 27 thereof and argued that in view of the aforesaid provision merely because of the stipulation contained in Clause 10 of the contract of appointment the benefit of the Act of 1961 cannot be denied to the petitioner. He thereafter, invited our attention to Clause 7 of the contract of appointment and argued that even to a contract employee the provisions of the Madhya Pradesh Civil Services Conduct Rules, 1965, the Disciplinary and Appeal Rules, 1966 and the General Conditions of

Service Rules are made applicable. Only the leave rules are not made applicable but by a notification issued by the State Government on 29.02.1996 vide Annexure P/10 the State Government has notified that a temporary or a casual employee working in the State Government has also been entitled to all the leave rules as applicable to the regular employee working in the cadre of the State Government.

05. Accordingly, submitting that the provisions of the Act of 1961 along with the terms of the contract and the Notification Annexure P/10 dated 29.02.1996 should be read in totality and in furtherance to the intention of the legislature in enforcing and bringing into force the Act of 1961 the benefit should be granted to the petitioner, he places reliance on a judgment of the Hon'ble Supreme Court in this regard rendered in the case of **Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) and another (2000) Volume 3 SCC at page 224** in support of his contention. He took us through the observations made by the Hon'ble Supreme Court in the case of Delhi Municipal Corporation from para 32 onwards and emphasised the concern expressed by the Hon'ble Supreme Court, the concept of social justice and the declaration made by the United Nations with regard to convention for elimination of all forms of discrimination against women Article 11 of the convention as applied by the Hon'ble Supreme Court and

submitted that the petitioner is liable to be granted the benefit and he prays for consideration of the matter in the back drop of the aforesaid submission.

06. Refuting the aforesaid contention Shri Akshay Dharmadhikari invited our attention to Clause 10 of the terms and conditions of the appointment of the petitioner. Definition of the word "establishment" as defined in Section 3(e) of the Act of 1961 and argued that the Act of 1961 cannot be applied to an establishment like the District & Sessions Court and once the contract of employment contains a specific stipulation with regard to the nature of leave admissible to the petitioner, no mandamus in contravention to the terms and conditions of appointment can be issued by this Court and according to him the same would amount to modifying or adding a condition to the contract of service which is not acceptable to the employer and therefore, this is not permissible by exercising jurisdiction in a petition under Article 226 of the Constitution.



07. He submits that creation of a new contract of employment when one of the parties to the contract namely the respondents are not willing is not permissible under law. He also invites our attention to various statutory rules applicable in the State of Madhya Pradesh and argues that these rules particularly the leave rules are applicable only to regular employees who fall within the

definition of "civil servants" and not to a daily wages, a casual employee or a contract employee like the present petitioner.

08. We have learned counsel for the parties at length and considered the facts as have been narrated here-in-above who found that the submissions made or correct and they do not require any clarification. However, the moot question is as to whether the benefit of maternity leave to the women employee, like the petitioner, who is working on contract basis can be granted in the facts and circumstances of the present case, posed with the aforesaid question, when we proceed to answer the same in the back drop of the facts as narrated herein above we find that answers to all these questions are available in the judgment rendered by the Hon'ble Supreme Court itself in the case of **Female Workers (Muster Roll)** (Supra). That being so, it would be appropriate to take note of the judgment rendered by the Supreme Court in the aforesaid case.

09. Female workers who were employed on Muster Roll to perform various duties under the administrative control of Municipal Corporation, Delhi claimed maternity benefit under the Act of 1961 and certain rules and regulations applicable in the establishment of Municipal Corporation, Delhi. When the benefit was denied to them a dispute was raised by an association of the employees and failing conciliation the matter was referred to the Industrial Tribunal for adjudication and the point of adjudication that was referred to the

Industrial Tribunal as is evident from the judgment rendered by the Hon'ble Supreme Court was as to **"whether the Female Workers working on muster roll should be given maternity benefit if so what directions are necessary in this regard"**. The question was answered by the Industrial Tribunal on a dispute sponsored by the Delhi Municipal Workers Union by award passed on 02.04.1996, the Tribunal allowed the claims of the employees. Corporation challenged the award by filing a writ petition before the Delhi High Court which was dismissed. Thereafter, a Letter Patent Appeal was filed by the Delhi Municipal Corporation before a Division Bench which was also dismissed on the ground of delay and finally the matter travelled to the Supreme Court as detailed herein above and before the Supreme Court, we find that a two fold contention was advanced. The first contention was that the establishment of Municipal Corporation of Delhi is not an "establishment" within the meaning of Section 3(e) of the Act of 1961 and therefore, in directing for grant of benefit under the Act of 1961, an error has been committed by the Tribunal. Thereafter, it was also canvassed that the Municipal Corporation of Delhi is not an industry and by applying the provisions of Maternity Benefit Act by treating the Delhi Municipal Corporation to be an "industry", an error has been committed by the Tribunal. That part, certain other submissions were

also made for canvassing a contention that the Tribunal committed an error in passing the award in favour of the employees.

10. Be that as it may, we find from the judgment rendered by the Hon'ble Supreme Court that each and every aspect of the matter, have been considered and has been answered in favour of the respondent employee and as far as the present dispute before us is concerned, we may take note of the observations and principles discussed and laid down by the Supreme Court from Paragraph 32 onwards.

11. While answering the submission made on behalf of the Municipal Corporation to say that in making applicable the provisions of the Act of 1961 and directing implementation of the said provisions to the establishment of the Municipal Corporation, the Tribunal has committed an error. Hon'ble Supreme Court proceeds to hold that this is a narrow way of looking at the problem which is essentially a human problem and any one acquainted with the working of the Constitution of India, its aim and object for providing social and economic justice would outrightly reject such a contention. Thereafter, reliance are placed on two earlier judgments of the Supreme Court in the case of **Crown Aluminium Works Vs. Workmen [AIR 1958 SC 30]** and **J.K. Cotton Spinning Mill Vs. Labour Appellate Tribunal [AIR 1964 SC 737]** and the observations

made by Hon'ble Justice Gajendra Gadkar in the case of J.K.Cotton Spinning Mill is reproduced which reads as under :-

> "Indeed", the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claims of social justice in dealing with industrial disputes. The concept of social justice is not narrow, one-sided, or pedantic, and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basis ideal of socio-economic equality and its aim is to assist the removal of socio-economic disparities and inequalities; nevertheless, in dealing with industrial matters, it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions, but adopts a realistic and pragmatic approach."

The observations made by Justice Gajendra Gadkar based on socio-economic equality and the concept of adopting a realistic and pragmatic approach is carried forward by the Hon'ble Supreme Court in Paragraph 33 of the judgment in the case of **Female Workers (Muster Roll) (Supra)** the following observations are made :

> "33. A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the

fear of being victimised for forced absence during the pre or post-natal period.

12. If we take note of the aforesaid principle laid down by the Hon'ble Supreme Court, it is crystal clear that the Supreme Court has expressed its concern in the matter of treatment given to women and goes to observe that women constitute half the segment of our society. They have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties or avocation, in the place where they work, they must be provided with all facilities to which they are entitled to. If the anxiety expressed by the Hon'ble Supreme Court is taken note of, we find that the Hon'ble Supreme Court does not approve the act of discriminating a woman based on the place where she works and the nature of avocation and the nature of duties performed by her. The Hon'ble Supreme Court says that all facilities available to a woman should be provided irrespective of the place where their work, the nature of duties performed by them which would also include the nature of appointment provided to them. Hon'ble Supreme Court goes on to say that this is more so necessary because she becomes a mother, which is the most natural phenomena of life of a woman and for the same and for giving birth to a child she needs all the facilities which are to be provided to her and therefore, the employer while doing so has to be considered and sympathetic towards her. The employer should be more realistic to the physical disabilities which a woman has to face

when on family way and therefore taking note of all these aspects, the conclusion arrived at is that for a woman irrespective of the place where she is working, the benefit of Maternity Benefit Act should be conferred as the aim of this law is to provide all facilities to a working women in a dignified manner so that she can overcome the state of motherhood honorably, feasibly and without any clear victimization or without being a victim of forced absence from her place of work. If we analyse each and every word and the anxiety expressed by the Hon'ble Supreme Court in the judgment, we have no hesitation in holding that in the case of a woman irrespective of the place where she is working and irrespective of capacity of her appointment, the nature and tenure of her appointment and the duties performed by her, when it comes to granting her the benefit of facilities required to give birth to a child the employer is duty bound under the Constitution to provide her all the benefits and that is why it has been held by the Hon'ble Supreme Court that the benefit of Maternity Benefit Act, 1961 should be conferred to even muster role employees working in the Delhi Municipal Corporation and if the aforesaid principle is applied in the present case, we see no reason as to why the benefit of Maternity Benefit Act should not be given to a woman contractual employee even if she is working in the establishment of the District and Sessions Judge.

13. Finally, if we analyse the judgment further we find that in paragraph 37, the universal declaration of Human Rights as adopted by United Nations on 10.12.1948 is taken note of and the "Convention on the Elimination of all Forms of Discrimination Against Women" which was adopted by the United Nations on 18.12.1979 is taken note of and Article 11 of the aforesaid Convention has been reproduced. Article 11 of the Convention for the sake of convenience reads as under :

> "Article 11
> 1. States/Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular;
> (a) The right to work as an inalienable right of all human beings;
> (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
> (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
> (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
> (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave.
> (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction."

14. If we go through the aforesaid provision, we find that in the matter of imposition of sanction there is a total prohibition in the matter of discrimination or denial of benefit on grounds of pregnancy or maternity leave to a woman employee. On the contrary, the United Nation Convention mandate that there should be introduced a maternity leave with pay or with compatible social benefit without loss of former employment to every woman working in the World. It is after taking note of all these factors that the Hon'ble Supreme Court has allowed the writ petition in the case of Female Muster Roll Employees of the Delhi Municipal Corporation and if we apply the principle laid down by the Hon'ble Supreme Court in the aforesaid case, as we have held herein above, we have no hesitation in holding that in the case of the present petitioner and other female employees working in the establishment of the respondents, be in whatever capacity they are, as far conferral of maternity benefits are concerned, they are entitled to all the benefit that is given to a regular employee in the establishment of the State Government for the purpose of maternity leave and other connected benefits.

15. We find that vide notification (Annexure P/10) dated 29.02.1996, the State Government has made all the leave rules applicable to a regular employee of the State Government, applicable to casual employees and temporary employees working in the State of Madhya Pradesh, it that be so, we are of the considered view that the

petitioner would be entitled to maternity leave at par with a regular employee working in the establishment of the respondents or in any other establishment of the State Government and in rejecting the claim of the petitioner on account of the fact that she was only a contract employee an error has been committed by the respondents which has to be remedied by us in this petition.

16. Identical issue of granting maternity leave to women employees appointed on contract basis or on adhoc or temporary basis have been considered by the Allahabad High Court, the Rajasthan High Court, the Punjab & Haryana High Court and the Uttarakhand High Court and based on the law laid down by the Supreme Court in the case of **Female Workers (Muster Roll) (Supra)**, petitions have been allowed and directions issued to grant benefit to the employees. The Division Bench of the Allahabad High Court in the case of **Dr. Parul Mishra Vs. State of U.P**. decided on 27th January, 2010 in the case of a Lecturer working as Government and Post Graduate College on contract basis, after applying the laid down in the Supreme Court **Female Workers (Muster Roll) (Supra)** held that the employees therein was entitled to avail maternity benefit as is applicable to regularly lecturer in the Government College and identical contention of the State Government counsel to say that contractual employees are not entitled for maternity benefit was rejected. It was held by the learned High Court that the maternity leave

does not change with the nature of employment. It is concerned with human right of a women and the employer and the Courts are bound under the constitutional scheme guaranteeing right to life, a right to live with dignity and protect the health of both mother and child, and after taking note of identical principle, petitions have been allowed. Similarly, the Rajsthan High Court in various writ petitions has directed for granting benefit to contract and temporary employees who are also claiming identical benefit in the cases of **Civil Writ No.1598/2017 – Meenakshi Rao Vs. State of Rajasthan & others** decided on 14th February, 2017 following earlier an judgment of the Rajasthan High Court rendered by Division Bench in the case of **Neetu Choudhary Vs. State of Rajasthan & others (2008) Vol.-II RNW page 1404 (Raj)**. The Punjab & Haryana High Court has also granted similar benefit and allowed identical writ petition in the case of **Anima Goel Vs. Haryana State Agricultural Development Corporation (2007) Vol.III LLJ page 64,** Punjab & Haryana and the Uttarakhand High Court has allowed a writ petition on identical terms in the case of **Smt. Nidhi Choudhary Vs. State of Uttarakhand Writ Petition No.1866/2016** decided on 27.09.2016. Copies of all these judgments available in the website of Indian Kanoon Organization have been produced before us for perusal and we find that in all these cases after applying the law laid down by the Supreme Court as detailed here-in-above, identical writ petitions have been

allowed and contractual employees have been directed to be granted the benefit of maternity leave at par with regular employees and we see no reason to take different view.

17. Accordingly, we allow this petition, quash the impugned order dated 21.08.2015 and direct the respondents to grant to the petitioner the maternity leave as claimed for and as applicable to the regular employees working in the establishment of District & Sessions Court or the High Court.

With the aforesaid, the petition stands allowed and disposed of.

(RAJENDRA MENON)
ACTING CHIEF JUSTICE

(SMT. ANJULI PALO)
JUDGE

RJ