

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No.1065/2022

CM No.3200/2022 c/w

Reserved on: 24.07.2025

Pronounced on: 25.08.2025

1. **Basu Magotra**, Aged 35 years
W/O Arjun Khajuria
R/O H.No.252, Sector 6,
Channi Himmat, Jammu.
2. Isha Sudan, Aged 32 years
D/O Mr. Anil Sudan,
R/O H.No.197, Ward No.19,
J&K Board Line, Shiva Nagar,
Kathua.
3. Bintul Hudda, Aged 31 years
W/O Feroz Ali Mir,
R/O Khandah Budgam
At present Quarter No.13, Block-D
Police Housing Colony, Sidhra,
Jammu.

..... Petitioner(s)

Through: Mr. Amit Gupta, Advocate.

Vs

1. Jammu & Kashmir Bank Ltd.,
Corporate Headquarters,
M. A. Road, Srinagar
Through its Chairman.
2. President (HR),
Jammu & Kashmir Bank Ltd.,
Zonal Headquarter
Zonal Office, Rail Head Complex,
Jammu.
3. Vice President (HR)
Jammu & Kashmir Bank Ltd.,
Zonal Headquarter
Zonal Office, Rail Head Complex,
Jammu.
4. Executive (HR),
Jammu & Kashmir Bank Ltd.,
Zonal Headquarter
Zonal Office, Rail Head Complex,
Jammu

..... Respondent(s)

Through: Mr. Abhinav Sharma, Sr. Advocate with
Mr. Akash Gupta, Advocate.

WP(C) No.2314/2023
CM No.5390/2023

Tanu Gupta (Age 33 years)
D/O Sh. Ramesh Kumar Gupta
R/O H.No.276, Lane No.5,
Talab Tillo, Jammu

..... Petitioner(s)

Through: Mr. Rajiv Kumar Sharma, Advocate.

Vs

1. Jammu & Kashmir Bank Ltd.,
Corporate Headquarter,
M. A. Road, Srinagar
Through Chairman.
2. President (HR),
Jammu & Kashmir Bank Ltd.,
Zonal Headquarter
Zonal Officer, Rail Head Complex,
Jammu.
3. Vice President (HR)
Jammu & Kashmir Bank Ltd.,
Zonal Headquarter
Zonal Officer, Rail Head Complex,
Jammu.
4. Executive (HR),
Jammu & Kashmir Bank Ltd.,
Zonal Headquarter
Zonal Officer, Rail Head Complex,
Jammu

..... Respondent(s)

Through: Mr. Abhinav Sharma, Sr. Advocate with
Mr. Akash Gupta, Advocate.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

1. Both these Writ Petitions involving common questions of facts and law on a consensus of the learned counsel for the parties, at this admission stage, are proposed to be disposed of by this common judgment.

WP(C) No.1065/2022

2. The petitioners, through the instant petition, seek the following reliefs:-

- i) Writ of Certiorari quashing Order No. JKB/HRD/Rectt/2020-511 dated 20.03.2021 to the extent it regularizes the services of petitioner No.1 as Banking Associate w.e.f. 04.02.2021 instead of when she completed two years of service.
- ii) Writ of Certiorari quashing Order No. JKB/HRD/Rectt/2021-115 dated 22.06.2021 to the extent it regularizes the services of petitioner No.2 w.e.f. 13.05.2021 instead of when she completed two years of service.
- iii) Writ of Certiorari quashing Order No. JKB/HRD/Rectt/2021-59 dated 30.04.2021 to the extent it regularizes the services of petitioner No.3 w.e.f. 05.02.2021 instead of when she completed two years of service.
- iv) An appropriate writ, order or direction in the nature of writ of mandamus to the respondents to extend all the benefits to the petitioners pursuant to Circular No.752 dated 12.03.2021 including revised pay scale, adjustment pay/variable pay etc. w.e.f. the date the same have been given to similarly situated Banking Associates appointed alongside the petitioners, along with all the retrospective consequential benefits including arrears of differential amount of salary, allowances, seniority, promotion etc.

FACTUAL MATRIX

3. The petitioners came to be engaged in the services of respondent no.1- Bank as Banking Associates on contractual term of two years, vide individual orders dated 06.11.2018. Pursuant to their appointment orders, the petitioners joined the services on 08.11.2018, 06.11.2108 and 07.11.2018 respectively by submitting their respective joining reports before the different Branch heads of

the respondent-J&K Bank Limited, where they were posted by the respondent-Bank.

4. The petitioners being females claimed that they during the contractual term of two years, applied for maternity leaves which were duly sanctioned in their favour by the respondents; that the petitioner no.1 availed maternity leave w.e.f. 29.10.2019 to 19.01.2020 (83 days), whereas petitioner no.2 w.e.f. 05.11.2019 to 02.05.2020 (180 days) and petitioner no.3 availed maternity leave w.e.f. 06.02.2019 to 31.07.2019 (175 days).

5. A number of incumbents appointed as Banking Associates alongwith the petitioners herein in November, 2018, on their successful completion of two years of contractual term, were regularized by the respondent no.3, vide Order No.JKB/HRD/Rectt/2020-511 dated 20.03.2021, as such services of as many as 72 Banking Associates were regularized.

6. Petitioners no.1 had joined the services as Banking Associate pursuant to her engagement on 08.11.2018, therefore, her services were required to have been regularized on completion of two years, whereas her services were regularized w.e.f. 04.02.2021 vide order impugned dated 20.03.2021 due to the reason that the petitioner no.1 had remained on maternity leave for 83 days. Similarly the petitioner no. 2 and 3 joined the services as Banking Services on 06.11.2018 and 07.11.2018 respectively, their services were required to be regularized on completion of two years, but their services were regularized w.e.f. 13.05.2021 and 05.2.2021 respectively vide impugned orders dated 22.06.2021 and 30.04.2021.

7. The period spent by the petitioners on maternity leave has been excluded by the respondents from their two years contractual term and regularized the services of the petitioners after the petitioners rendered 83, 180 and 175 days respectively more service.

8. It is further stated in the petition that after regularizing the services of the petitioners w.e.f. 04.02.2021 13.05.2021 and 05.02.2021 respectively, they were put on probation for a period of six months. On successful completion of six months' probation period reckoned w.e.f. the date of their regularizations, the services of petitioner no.1 and 3 were confirmed vide order dated 16.10.2021 w.e.f. 01.09.2021, whereas the service of the petitioner no.2 have been confirmed w.ef. 01.12.2021 vide order dated 08.12.2021; that the respondents have erroneously excluded the period of maternity leave granted to the petitioners while considering the petitioners' contractual term of two years;

9. Petitioners would plead that due to exclusion of period spent by the petitioners on maternity leave, not only their regularization was deferred corresponding to the period of their respective maternity leaves but they were put on six months' probation correspondingly, with utmost delay and benefits pursuant to Circular no.752 dated 12.03.2021 including revised salary, adjustment pay/variable pay etc. has also been denied to the petitioners, which has the cascading impact on the entire service careers of the petitioners, as the petitioners have been rendered junior to their counterparts who were engaged alongside the petitioners on the same day; that availing of maternity leave by the

petitioners during the course of their employment does not disentitle them to get their services regularized after completion of the period of two years.

10. Petitioners, in the backdrop of the aforesaid facts and circumstances of the cases are aggrieved of action of the respondents in regularization their services after rendering more than 2 years of contractual term by excluding the period spent by the petitioners on maternity leave, therefore, they seek to challenge the aforesaid impugned action of the respondents on the ground that the action of the respondents in excluding the period spent by the petitioners on maternity leave and regularizing their services beyond the period of two years is totally illegal, arbitrary and contrary to the provisions of law; that maternity leave is duly provided under the 11th Bipartite Settlement dated 11.11.2020, wherein every female Banking Associate in the services of the Bank has been held entitled to maternity leave not exceeding 6 months on any one occasion and 12 months during the entire period of her service. The respondents keeping in view the aforesaid provision of clause 30 of BPS are not legally justified to exclude the period of maternity leave and/or extend the contractual term of two years of the petitioners beyond the period of two years keeping in view availing of maternity leave by them owing to exigency which was beyond their control; that the services of the petitioners being Banking Associates are governed by Sastry Award which also reiterates a similar provision in Clause 490. Therefore, the respondents are under legal obligation not to exclude the period of maternity leaves.

11. Objections stand filed in WP(C) No.1065/2022 wherein it is averred that the petitioners, having accepted the terms and conditions of their engagements and sanction of extraordinary leave during their engagement as Contractual Banking Associates, cannot turn around and challenge the same; that since the petitioners have efficacious alternative statutory remedy under Industrial Dispute Act, as such, this Court may not entertain and adjudicate the subject matter in exercise of its extra ordinary writ jurisdiction; that no right of the petitioners much less a fundamental right has been violated by the answering respondents; that the respondent No. 1 Bank is not a “State” within the meaning of Article 12 of the Constitution of India as it is not the creation of a statute and does not fulfill the criteria as has been laid down in catena of judgments passed by the Hon’ble Apex Court and more particularly the law laid down by our own High Court; that Bank has sanctioned extraordinary leave in favour of the petitioners during their contractual service as Banking Associates and once the petitioners have accepted the terms and conditions of the said sanction of leave and accordingly availed the said leave, as such, they are estopped from challenging the same at this point of time; that as per the said sanction it is clear that the petitioners proceeded on extraordinary leave with the condition that their contractual period will be extended by the applicable leave period.

12. Respondents next averred that petitioners along with 579 similarly situated candidates were offered the post of Contractual Banking Associates for a period of 2 years. The candidates who were offered contractual appointment were subject to regularization only after successful completion of 2 years and

assessment of employee performance during the required contractual term. Subsequently the employees who had performed their duties in contractual capacity for a total of 2 years were recommended for regularization by their respective Branch Head/In-Charge. Accordingly the Contractual Banking Associates who served the required term of 2 years were regularized in the services of the Bank and remaining Contractual Banking Associates were subsequently regularized as and when they completed 2 years of contractual services after due extension, on account of extraordinary leaves availed by them.

13. Further stand taken by the respondents in their objections is, that J&K Bank's Board vide Resolution No.7 dated 26.04.2021 resolved that the Variable Pay and Platinum Jubilee Pay (linked to Basic Pay) of all regular employees on the rolls of the Bank as on 31.12.2020 be frozen (based on the revised pay scales) with effect from 01.01.2021 and termed as Adjustment Pay, payable only to those regular employees who were drawing it as a salary component as on 31.12.2020. Accordingly as per the terms of Circular No. 752 dated 12-03-2021 the employees appointed / recruited on and after 31.12.2020 the component of Adjustment Pay was not made a part of their salary. It is further stated in the objections that the inference tried to be drawn from the respective Rules, Agreements and Judgments is totally misplaced and are not applicable to the facts of the present case and the Acts as has been referred to in the grounds are not applicable to respondent Bank; that petitioners have been regularized strictly in terms of the rules and regulations governing the subject matter and cannot claim anything dehors the Rules. However it is reiterated that Contractual

Banking Associates were mandatorily required to perform their duties for a period of 2 years and subject to the assessment of performance of these employees, the regularization was effected.

14. Lastly, it is further submitted by the respondents, that since the petitioners availed extraordinary leave for 83 days, 181 days and 176 days respectively during their contractual term and consequently did not perform their duties for the required contractual term of two years and therefore were regularized only after the petitioners served the required 2 years contractual term as the period spent on leave cannot be considered for assessment of performance; that the 11th Bipartite Settlement dated 11.11.2020 and Sastry Award are not applicable to Contractual Banking Associates; that the petitioners cannot claim to be regularized and entitled to pay and allied benefits in contravention of the rules and regulations governing the subject matter and the same would result in blatant violation of Articles 14 & 16 of the Constitution. Further, since the petitioners have efficacious alternative statutory remedy under Industrial Dispute Act, as such, the Hon'ble Court may not entertain and adjudicate the subject matter, in exercise of its extra ordinary writ jurisdiction.

WP(C) No.2314/2023

15. The petitioner, through the instant petition, seeks the following reliefs:-

- i) To issue directions to the respondents to regularize the services of the petitioner as Banking Associate from the date when the petitioner had completed two years of service as Banking Associate (contractual) by issuance of writ of mandamus;

- ii) To issue direction to the respondents to treat the period spent by the petitioner on maternity leave as continuous service as Banking Associate (contractual) by issuance of writ of mandamus;
- iii) To issue direction to the respondents to pay all the benefits to the petitioner pursuant to Circular No.752 dated 12.03.2021 including revised pay scale, adjustment pay/variable pay etc. w.e.f. the date the same have been given to similarly situated Banking Associates appointed alongside the petitioner, along with all the retrospective consequential benefits including arrears of differential of salary, amount of allowances, seniority, promotion etc by issuance of writ of mandamus;
- iv) To declare, not to consider the period spent by the petitioner on maternity leave as service of the petitioner and excluding the said period for giving benefit of service are ultra virus, illegal, arbitrary, unconstitutional, unjust and contrary to the provisions of law and Rules and against the provisions of principles of natural justice, by issuance of writ of mandamus.

16. The petitioner came to be engaged in the services of respondent no.1-Bank as Banking Associate on contractual term of two years along with the other individuals vide order dated 06.11.2018. Pursuant to her appointment order, the petitioner joined the services on 08.11.2018 by submitting her joining report before the Branch where she was posted by the respondents. The petitioner is female and during the contractual term of two years, applied for maternity leave which was duly sanctioned in her favour by the respondents. The petitioner because of pregnancy complicacy had to undergo bed rest w.e.f. 20.03.2019 to 31.03.2019 and 03.06.2019 to 17.06.2019 and thereafter availed maternity leave w.e.f. 24.10.2019 to 23.01.2020 (total 122 days). It is pertinent

to mention that a number of incumbents were appointed as Banking Associates along with the petitioner herein, in November, 2018. On successful completion of two years of contractual term by various Banking Associates, the respondent no.3 vide Order No. JKB/HRD/Rectt/2020-511 dated 20.03.2021 regularized the services of as many as 72 Banking Associates when they completed two years of contractual term. The petitioner had joined the services as Banking Associates pursuant to her engagement on 07.11.2018, therefore, her services were required to be regularized on completion of two years, whereas her services have been regularized w.e.f. 10.03.2021 vide Order No. JKB/HRD/Rectt/2021-59, dated 30.04.2021, due to the reason that the petitioner had remained on bed rest/maternity leave for 122 days.

17. It is pertinent to mention that period spent by the petitioner on maternity leave has been excluded by the respondents from her two years contractual term and regularized the services of the petitioner after the petitioner rendered 122 days more service. Suffice it to say that the respondents have erroneously excluded the period of maternity leave granted to the petitioner while considering the petitioners' contractual term of two years. After regularizing the services of the petitioner w.e.f. 10" March 2021 she was put on probation for a period of six months. On successful completion of six months' probation period reckoned w.e.f. the date of her regularization, the services of petitioner was confirmed vide Order dated 16.10.2021 w.e.f. 01.09.2021. Due to exclusion of period spent by the petitioner on maternity leave, not only her regularization was deferred, corresponding to the period of her maternity leave, but she was put on

six months' probation correspondingly with utmost delay and benefits pursuant to Circular No.752 dated 12.03.2021 including revised salary, adjustment pay/variable pay etc. has also been denied to the petitioner, which has the cascading impact on the entire service career of the petitioner, as the petitioner has been rendered junior to her counterparts who were engaged alongside the petitioner on the same day. Availing of maternity leave by the petitioner during the course of her employment does not disentitle her to get her services regularized after completion of the period of two years, as such, not considering the said period of the petitioner is ultra vires, illegal, arbitrary, unconstitutional, unjust and contrary to the provisions of law and Rules and against the principles of natural justice.

18. Objections have not been filed to this petition WP(C) No. 2314/2023. Learned senior counsel, appearing for the respondents, however, would submit that the objections, filed in the connected matter, be read as objections in this case as well, in view of identical factual background.

19. Learned counsel for the parties, vehemently argued their versions in line with their pleadings.

20. The common question of law, as emerges from the pleadings in both the cases, is as to whether it is permissible for an employer to exclude the period availed as maternity leave by the female officers/officials from the period required for regularization. In the instant cases, periods availed by the petitioners as maternity leaves were deducted from the minimum period of two years to be eligible for regularization. All the petitioners were refused to be

regularized on completion of two years, unlike their other colleagues and the female staff, who were regularized on completion of two years, from the date of their initial appointment/engagement. This practice adopted by the respondent-Bank, allegedly caused not only monetary loss but also impacted their promotional prospects

21. The Apex Court while explaining the rights of the women in employment and labour in a case titled **Municipal Corporation of Delhi v. Female Workers (Muster Roll) & Ors** reported as (2000) 3 SCC 224, in para 30 observed as follows:

“30.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.”

22. Article 14 of the Constitution of India provides that the State shall not deny to any person equality before law or the equal protection of laws within the territory of India. Dealing with this Article vis-à-vis the labour laws, the Apex Court in ‘**Hindustan Antibiotics Ltd. V. Workmen**’ reported as 1967 ILLJ

114 SC, held that labour at whichever sector it may belong in a particular region and in a particular nature will be treated on equal basis.

23. Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Clause (3) of this Article further provides that nothing in this Article shall prevent the State from making any special provision for women and children. Article 38 of the Constitution of India dealing with the Directive Principles of State Policy provides that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life. Sub-clause (2) of this Article mandates that the State shall strive to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities. Article 39 of the Constitution of India which is rather more important inter alia provides that the State shall, in particular, direct its policy towards security to the citizens, men and women equally, have the right to an adequate means of livelihood; that there is equal pay for equal work for both men and women; that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 42 of the Constitution of India specifically speaks of just and humane conditions of work and maternity relief, the validity of an executive or administrative action in denying enforceable at law, is nevertheless available for determining the legal efficacy of the action complained of.

24. The Parliament has already enacted the Maternity Benefits Act, 1961, of which, Section 2 deals with the applicability of the Act, whereas Section 3, contains definitions of the word 'child' which includes still-born child, 'delivery' meaning the birth of child; Maternity Benefits meaning the payment referred to in Sub-section (1) of Section 5; 'Woman' has been defined in Clause (o) as 'a woman employed, whether directly or through any agency, for wages in any establishment'. 'Wages' have been defined in Clause (h) of Section 3 which provides that wages means all remunerations paid or payable in cash to a woman.

25. Hon'ble the Punjab and Haryana High Court on 26.07.2021 in a case CWP No. 13098/2021 titled '**Bank of India V. Labour Commissioner-cum-Appellate Authority under the Maternity Benefits Act, 1961 & Ors**', while considering the identical situation and taking note of Articles 14, 15 and 39 of the Constitution of India, observed that the object of the Maternity Benefits Act, is to ensure that the woman employee at the time of advanced pregnancy is not compelled to work, as it would be detrimental to her health and also to the health of the foetus.

26. The Apex Court in '**Dr. Kavita Yadav V. The Secretary, Ministry of Health and Family Welfare Department & Ors**' reported in (2024) 1 SCC 421 relying upon its earlier judgment in the case of '**Deepika Singh V. PGI MER, Chandigarh**, reported in (2023) 13 SCC 681 held that the Maternity Benefits Act, 1961 was enacted to secure women's rights to pregnancy and 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, if they so desire. The Court held that once the employee fulfills entitlement criteria specified in Section 5(2) of the 1961 Act, she would be eligible for full maternity benefits, even if, such benefits exceed the duration of the contract.

27. The Hon'ble High Court of Madras in a case WP No.27556/2018 titled **'MRB Nurses Empowerment Association v. The Principal Secretary & Ors.** decided on 18.10.2024 held that by virtue of Section 27 of the Act, the provisions of the 1961 Act will prevail over contractual conditions denying or offering less favourable maternity benefits, holding further that the reliance by the respondents on Condition no.6 of the Appointment and Posting Order to deny maternity benefits is untenable. It was a case of NHRM Nurses Employed on contractual basis.

28. Considered the submissions of both the sides. In these cases the petitioners were not regularized on completion of two years of their contractual period by excluding the periods of their maternity leaves, availed by them, having been duly sanctioned, during their contractual service. To be a mother is a right of a woman and therefore the State being a welfare and progressive State has guaranteed the maternity leave of 180 days to every woman employee. The contractual or probation period should not be a preventive factor or obstacle for a woman who wants to be a mother during this period. The seniority of such female employee should not go below her colleague of the same batch on the ground that she was absent on account of maternity leave. Discounting of the maternity leave period, which was availed by each of the petitioners after having

been duly sanctioned by the competent authority, having regard to their statutory right under the Maternity Benefits Act, 1961, being discriminatory on the basis of sex, is not constitutionally permissible, as it offends the provisions of Articles 14 and 15 of the Constitution of India, which guarantee equal protection to men and women.

29. Having regard to the legal position as discussed in the preceding paras, in view of law laid down in the aforesaid judgments, and reverting to the factual background of the case on hand applying purposive interpretation, this Court has no doubt in its mind that the contractual terms cannot limit the statutory rights of the petitioners to be entitled to the benefits of the maternity leaves. Independent of the above, it may also be noted that the respondents cannot resort to discriminatory acts while considering the requisite period of two years for regularization of the petitioners vis-à-vis their other colleagues, on discounting the maternity leave availed by the petitioners, being female workers.

30. In this view of the matter, the petitions are **allowed**. The impugned orders are hereby quashed and the respondents are directed to treat the period spent by the petitioners on maternity leave as continuous service, without discounting these periods, for their assessment on completion of two years, from their joining dates. They shall also extend all the benefits to the petitioners pursuant to Circular No. 752 dated 12.03.2021 including revised pay scale, adjustment pay/variable pay etc as have been given to similarly situate Banking Associates appointed alongside the petitioners, along with consequential benefits, with

retrospective effect. Copies of this judgment shall be placed across the files of both the cases. No order as to costs.

31. The writ petitions are disposed of along with connected application(s).

**(M A Chowdhary)
Judge**

Jammu
25.08.2025
Raj Kumar

Whether order is speaking? : **Yes/No.**
Whether order is reportable? : **Yes/No.**