

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
AURANGABAD BENCH, AT AURANGABAD.**

**Writ Petition No. 6737 of 2015**

Dr. Smt. Alaknanda Madhavrao Dodkey  
alias Dr. Mrs. Alaknanda w/o. Shyam  
Supekar, Age : 55 years,  
Occupation : Service, R/o. C-4, Saitara,  
Shrirang Park Apartment,  
Vedantnagar, Aurangabad,  
District : Aurangabad.

.. Petitioner.

**versus**

1. The State of Maharashtra,  
through its Secretary,  
Higher and Technical Education  
Department, Mantralaya, Mumbai.
2. The Director of Higher Education,  
Maharashtra State, Pune.
3. The Joint Director of Higher  
Education, Aurangabad Division,  
Aurangabad.
4. Shri Saraswati Bhuwan Education  
Society, Aurangabad, through its  
President.
5. The Principal,  
Shri Saraswati Bhuwan Education  
Society's College of Science,  
Aurangabad.

.. Respondents.

.....

*Mr. S.R. Barlinge, Advocate, for the petitioner.*

*Mr. S.K. Kadam, Assistant Government Pleader,*

*for respondent nos.1 to 3.*

*Mr. V.P. Golewar, Advocate, holding for*

*Mr. A.R. Joshi, Advocate, for respondent nos.4 and 5.*

.....

**CORAM : S.S. SHINDE &  
A.M. BADAR, JJ.**

**DATE : 12TH OCTOBER 2015**

**ORAL JUDGMENT (Per S.S. Shinde, J.) :**

1. Rule. Rule made returnable forthwith. By consent of the learned Counsel for the parties, heard finally.
2. At the outset, the learned Counsel for the petitioner, on instructions, does not press prayer clause "B", at this stage.
3. Prayer clause "A" of the petition reads as follows :-

[A] By a writ of mandamus, or any other appropriate writ, or order or directions in the like nature, the respondent Nos.4 and 5 be directed to consider the leave availed by the petitioner for the period from 28-10-2014 to 22-1-2015 as maternity leave and grant her all the consequential benefits.

4. The question which is raised in this petition, whether a mother is entitled for maternity leave though she begets child through surrogacy, has been answered by a Division Bench of this Court at Nagpur Bench, in unreported judgment delivered in Writ Petition No. 3288 of 2015 [Dr. Mrs. Hema Vijay Menon Vs. The State of Maharashtra & others] dated 22nd July 2015. In the said case, after elaborate discussion, the Division Bench has reached to the conclusion that the petitioner therein was entitled to the maternity leave for a period of one year from the date of birth of the child.

It is not in dispute, that the facts in the case of Dr. Mrs. Hema Vijay Menon (supra) and the facts of the present case are similar inasmuch as the petitioner applied for the maternity leave for the period from 28th October 2014 to 22nd January 2015. However, leave has been refused on the ground that the reason which is assigned in the application, for that reason, leave cannot be granted since there is no provision under the Rules.

5. In the light of above, for the same reasons which are assigned by the Division Bench in the case of Dr. Mrs. Hema Vijay Menon (supra) and more particularly, in paras 7 and 8 of the said judgment, we allow the present petition. The impugned communication dated 14-11-2014 (Exhibit "B") is quashed and set aside and it is declared that the petitioner is entitled to the maternity leave for the period from 28-10-2014 to 22-1-2015.

It is needless to observe, that the respondents - State Authorities shall take further steps after receiving the proposal from respondent nos.4 and 5.

6. Rule is made absolute in the above terms. There shall be no order as to costs.

**( A.M. BADAR )**  
**JUDGE**

**( S.S. SHINDE )**  
**JUDGE**

.....