

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

WRIT PETITION NO.3741 OF 2017

Rekha Govindrao Sonkamble ... Petitioner.

Versus

The State of Maharashtra
and others. ... Respondents.

...
Mr.I.D.Maniyar, advocate for the petitioner.
Miss.R.R. Gaur, A.G.P. for the State.

...

**CORAM : S.V.GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

Date : 02.05.2017.

PER COURT :

1. The petitioner assails the order, thereby rejecting the application for maternity leave.

2. The learned counsel relies on Rule 74 of the Maharashtra Civil Services (Leave) Rules, 1981. The said Rule reads as under :

"74. Maternity leave.

(1) A competent authority may, subject to the provisions of this rule, grant to a female Government servant in permanent employ, who does not have three or more living children on the date of the application, maternity leave for a period of (ninety days) from the date of its commencement. During such period she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave. Such leave shall not be debited to the leave account.

(2) A female Government servant not in permanent employ who has put in at least one year of continuous service shall also, subject to the provisions of this rule, be eligible for maternity leave referred to in sub-rule (1), subject to the condition that the leave salary admissible during the period of maternity leave shall be regulated as follows, that is to say :-

(a) In the case of a female Government servant who has put in two or

more years continuous service, the leave salary admissible shall be as provided in sub-rule (I) of the 70 of these rules; and

(b) In the case of a female Government servant who has put in continuous service for a period exceeding one year, but less than two years the leave salary admissible shall be as provided in sub-rule (2) of rule 70 of these rules.

(3) The application for maternity leave should invariably be supported by medical opinion as to the probable date of confinement, and an undertaking to the effect that the Government servant shall report the date of confinement supported by a medical certificate. In case of a Class IV Government servant in which insistence on a regular medical certificate is likely to cause hardship, the authority competent to grant leave may accept such certificate as it may deem sufficient.

(4) A female Government servant may be allowed leave of the kind due, including commuted leave, if she so desires, in continuation of the maternity leave, up to maximum of 60 days without production of a medical certificate.

(5) Leave under this rule shall be admissible in a case of miscarriage or abortion, including abortion induced under the Medical Termination of Pregnancy Act, 1971, subject to the following conditions :-

(a) the leave does not exceed six weeks, and

(b) the application for the leave is supported by a medical certificate.

(6) Heads of Departments may subject to the provisions of this rule, grant to a female Government servant borne on the workcharged establishment or remunerated by piece rates or daily wages who does not have three or more living children on the date of application, maternity leave for (90) days from the

date of its commencement, subject to the provisions of sub-rule (3) and (5) above, subject to the following further conditions :

(a) She must have put in continuous service for at least 33 months (inclusive of any period of authorised leave) previous to the date of requiring the maternity leave and must furnish a guarantee with at least one security that she will return to duty for a period of at least 6 months after the expiry of the leave if her services are required.

(b) The leave salary admissible shall be equal to the emoluments drawn for the month immediately before proceeding on leave."

3. Learned counsel for the Respondent is also heard.

4. It is submitted that the petitioner has only two living children on the date of the application. One son born earlier has died. As

such has only two living children on the date of application. In view of that, Rule 74 as quoted above would squarely apply.

5. In light of the above, the impugned order is quashed and set aside. The Respondent shall consider the case of the petitioner for maternity leave considering Rule 74 as stated above and pass orders afresh expeditiously, preferably within two (2) months from today.

6. The Writ Petition is disposed of. No costs.

(SANGITRAO S. PATIL, J.)

(S.V.GANGAPURWALA, J.)

asp/office/wp3741.17

