

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7713 of 2024

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Shubh Lata Pandey wife of Sri Shankar Lal Loona, resident of Village-
Aongari, P.S. Akangarsarai and District- Nalanda, at present residing at
Village- Newtapur, P.S. Bodh Gaya, District- Gaya.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, New Delhi.
2. The Director General, Central Industrial Security Force(CISF), Ministry of Home Affairs, New Delhi.
3. The Dy.Inspector General, AP(E and NE), CISF NE Zone, Head Quarter at Kolkata(WB)-700107.
4. The Deputy Commandant, CASO K Ausub Unit, ASG, Gaya Airport, Gaya-823004.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Sinha, Sr. Advocate
Mr. Ravi Shankar, Advocate
Mr. Bhola Kumar, Advocate
For the U.O.I. : Mrs. Punam Kumari Singh, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 12-12-2024

Heard Mr. Alok Kumar Sinha, learned Senior
Counsel assisted by Mr. Ravi Shankar and Mr. Bhola Kumar,
learned counsels appearing on behalf of the petitioner and Mrs.
Punam Kumari Singh, learned C.G.C. for the Union of India.

2. The petitioner in paragraph no. 1 of the present writ



petition has sought *inter alia* following relief(s), which is reproduced hereinafter:

"A. For issuance of a writ of certiorari quashing the order dated 22.03.2024 contained in Letter No.E-24014/CRPF/ASG (Ga)/Dasta/ Leave/2024-1082 dated 22.03.2024 whereby application for grant of maternity leave for the period of 180 that is from 13.03.2024 to 04.09.2024 has been refused(Annexure-P/4).

B. For directing the respondents concerned to grant maternity leave to the petitioner with full salary and allowances for the period of 13.03.2024 to 04.09.2024.

C. For passing any other order/direction/s or appropriate Writ/s which Your Lordships deem fit and proper in the facts and circumstances of the instant Case."

BRIEF FACTS:

3. Brief facts of the case are that the petitioner was appointed as Constable (GD) No. 071530103 in the Central Industrial Security Force and at present, she is posted as Constable (GD) at Gaya Airport at Gaya. The petitioner had applied for maternity leave before the respondent no. 3 on 05.03.2024 for the period of 13.03.2024 to 04.09.2024 as her tentative date of delivery was given by the doctor 25.05.2024, which was rejected by the respondent no. 3 on the ground that a female Government servant with less than two surviving child may be granted maternity leave for the period of 180 days and the same was communicated to the petitioner by the respondent no. 4 vide Letter No. E-24014/CRPF/ASG(Ga)/Dasta/Leave/2024-1082 dated 22.03.2024. Aggrieved by the same, the petitioner has filed the



present writ petition.

SUBMISSION MADE ON BEHALF OF THE PARTIES:

4. Learned senior counsel appearing on behalf of the petitioner submitted that the application of the petitioner seeking maternity leave has been rejected by the respondent no.3 and the same has been communicated to the petitioner by the respondent no.4 vide Letter No.E-24014/CRPF/ASG(Ga)/Dasta/Leave/2024-1082 dated 22.03.2024. The rejection of the application submitted by the petitioner, on the ground of two surviving child is not applicable in her case as she had not taken maternity leave at any point of time prior to the present application, as she has been appointed in the year 2007 and her two female child were born in July, 2005 and March,2006 respectively. Learned senior counsel further submitted that the petitioner has been granted a decree of divorce with her first husband in the month of April, 2022 thereafter, she is re- married with Sri Shankar Lal Loona and now she is living with him happily and maintaining her two daughters. Now, she is expecting a baby from his present husband thus, she is seeking maternity leave for the first time in her entire service period thus, Central Civil Services (Leave)Rules, 1972(For short the Rules) cannot come in the



way of the claim of the petitioner as she had two surviving daughters prior to joining her service. He further submitted that the Hon'ble Supreme Court has held in the case of ***Deepika Singh (2022 AIR SC 4108)*** that woman's spouse had two biological children from her first marriage would not impinge upon entitlement to avail maternity leave for her sole biological child from the present legally wedded husband. The petitioner is also covered with Section-3(c) of Maternity Benefit Act and Article-15(3) of the Constitution of India.

5. Learned senior counsel relying on the law laid down by the Apex Court in the case of ***Deepika Singh v. Central Administrative Tribunal, & Ors. in Civil Appeal No. 5308 of 2022 (Arising out of SLP (C) No. 7772 of 2021)*** judgment dated 16.08.2022, submitted that the Apex Court, dealing with the facts of the said case, in which, the husband of the appellant was having two children from his first marriage, which ended as a result of death of his first wife, the maternity leave of the appellant was rejected on the ground that as per the provision of Rule 43(C) of Central Civil Services (Leave) Rules, 1972, Child Care Leave is granted on the ground that maternity leave as contained in Rule 43 is applicable to only two children and the appellant having availed maternity leave for two



children, doesn't deserve the maternity leave for third children. In the said background, the matter was considered by the Apex Court.

6. *Per contra*, learned counsel appearing on behalf of Union of India referring to Rule-43 of Central Civil Services (Leave) Rules, 1972 framed under the proviso to Article 309 of the Constitution of India, submitted that an information has been given in sub-paragraph no. 11 of paragraph no. 5 of the counter affidavit that the petitioner was enrolled in CISF on 16.06.2007 and before she came into the service, she had two children namely, Ms. Khushi Pandey, whose date of birth is 09.07.2005 and Ms. Puja Pandey, whose date of birth is 12.03.2006. She further informs that petitioner has already availed/granted full child care leave for 730 days for taking care of her both the children and, as such, her maternity leave application dated 12.03.2024 for her third child does not meet the eligibility criteria. On this ground, she has supported the Letter No. 1082 dated 22.03.2024 communicated to the petitioner by ASG Gaya office.

ANALYSIS & CONCLUSION:

7. Heard the parties.

8. The Apex Court has first proceeded to analyse the



object of the rules, which was enacted as per the mandate of Article 309 of the Constitution of India and holding the same to be beneficial legislation held that the same should be given liberal approach. Referring to several decisions of the Apex Court in this regard, I find it gainful to decide the present case as well i.e. ***KH Nazar v. Mathew K Jacon***, reported in **(2020) 14 SCC 126, *Prenn v. Simmonds [Prenn v. Simmonds, (1971) 1 WLR 1381 : (1971) 3 ALL ER 237 (HL)]***. and ***Badshah v. Urmila Badshah Godse*** reported in **(2014) 1 SCC 188**. The Apex Court concluded that social justice, which is also known as "social context adjudication" as mere "adversarial approach" may not be very appropriate. "The adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the Judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice."

9. The Apex Court further analysing the very fact that the law which regulates relationship between people in case of *Badshah (Supra)* held as under:

"16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes



change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.”
(emphasis supplied)

10. Further dealing with the mandate of Articles 14, 15, 39, 42 and 43 of the Constitution of India, as well as, India's international obligations under the Universal Declaration of Human Rights, 1948 and Article 11 of the Convention on the Elimination of all forms of discrimination against women to extent benefits under the Act of 1962 to workers engaged on a casual basis or on muster roll on daily wages by the Municipal Corporation of Delhi and scheme were formulated to entrench and enhance the objects of Article 15 of the Constitution and the other relevant constitutional rights and protections. I find it apt to reproduce paragraphs no. 21 and 22 of the said judgment, which *inter alia* are reproduced hereinafter:

"21. Under Article 15(3) of the Constitution, the State is empowered to enact beneficial provisions for advancing the interests of women. The right to reproduction and child rearing has been recognized as an important facet of a person's right to privacy, dignity and bodily integrity under Article 21. 11 Article 42 enjoins the State to make provisions for securing just and humane conditions of work and for maternity relief.

22. In this context, regard may also be had to several international conventions of the United Nations that India has ratified. Article 25(2) of the UDHR provides that 2000 (3) SCC 224 "UDHR" "CEDAW" Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1; Suchita Srivastava v. Chandigarh Administration (2009) 9 SCC 1 motherhood and



childhood are entitled to special care and assistance. Article 11(2)(b) of CEDAW requires states “to introduce maternity leave with pay or comparable social benefits.” The relevant provision of Article 11 of CEDAW states that:

“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.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.” (emphasis supplied)

11. To conclude the object of the provision of 1972



Rules, the Apex Court held that "unless a purposive interpretation were to be adopted in the said case, the object and intent of the grant of maternity leave would simply be defeated. The grant of maternity leave under Rules of 1972 is intended to facilitate the continuance of women in the workplace. It is a harsh reality that but for such provisions, many women would be compelled by social circumstances to give up work on the birth of a child, if they are not granted leave and other facilitative measures. No employer can perceive child birth as detracting from the purpose of employment. Child birth has to be construed in the context of employment as a natural incident of life and hence, the provisions for maternity leave must be construed in that perspective."

12. If that is the object and the law laid down by the Apex Court, which provides right to a citizen, who bears a child and the child requires proper care, at the same time, the woman, who has conceived the child is compelled by social circumstances to even give up the work on the birth of the child, I find that the order dated 22.03.2024 contained in Letter No.E-24014/CRPF/ASG (Ga)/Dasta/ Leave/2024-1082, is required to be revisited by the Authority concerned and pass a necessary order in light of the observation made by the Apex Court in case



of *Deepika Singh (Supra)*.

13. With aforesaid observations/directions, the present writ petition stands disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	17.12.2024
Transmission Date	N/A

