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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 955 OF 2016

Dr. Shrishti Prabhudessai,
Age 32 years, Indian National,
r/o SHIVAM, 148/C, Opp. 3-MTR
Gate, Rawanfond, Margao, Goa,
403 707

...PETITIONER

VERSUS

1. The State of Goa,
Through the Secretary (Health), having
Office at Secretariat, Porvorim, Goa.

2. The Dean,
Goa Medical College,
Bambolim, Goa.

3. The Additional Secretary
(Finance), Government of Goa,
Secretariat, Porvorim, Goa.

... RESPONDENTS

Mr. Vibhav Amonkar, Advocate for the Petitioner.

Mr. Pravin Faldessai, Additional Government Advocate for
Respondents.

**CORAM:- M. S. KARNIK &
NIVEDITA P. MEHTA, JJ.**

DATED :- 04th March, 2025

JUDGMENT (Per Nivedita P. Mehta, J.)

1. Rule. Rule is made returnable forthwith. With the consent of

parties heard finally.

2. The petitioner has approached the Court seeking the following reliefs which are reproduced as under:-

a) Grant a writ of certiorari or a writ in the nature of certiorari or appropriate writ, order or direction quash and set aside the Goa (Appointment to the post Residents in the Goa Medical College) (Second Amendment) Rules 2013 (impugned rules) to the extent that said impugned rules provides for maternity leave without pay and extends the tenure of the female Senior Resident equivalent to the maternity leave availed by her;

b) Grant a writ of certiorari or a writ in the nature of certiorari or appropriate writ, order, or direction to quash and set aside first and second impugned orders dated 16.3.2016 issued by Respondent no. 2, impugned Corrigendum dated 16.06.2016 issued by Respondent no.2, impugned Memorandum dated 20.02.2016 issued by Respondent no. 2 and the impugned note dated 14.09.2016 issued by Jt. Director of Accounts of Respondent no. 2 and thereby restrain Respondent no.2 from making any further deductions to the salary of the petitioner;

c) Grant a writ of mandamus or writ in the nature of mandamus or appropriate writ, order direction to the respondents to restrain from acting pursuant to the first impugned order dated 16.03.2016, impugned Memorandum dated 20.06.2016 and the impugned Note dated 14.09.2016;

d) Grant a writ of mandamus or writ in the nature of mandamus or appropriate writ, order direction to the respondents to refund the entire amount which has already been deducted by the Respondent pursuant to the first impugned order dated 16.3.2016, impugned Memorandum dated 20.06.2016 and the impugned Note dated 14.09.2016 along with interest at the rate of 12% per annum.

FACTS:

3. The petitioner herein, Dr. Shrishti Prabhudessai is a medical doctor with a postgraduate degree in ophthalmology granted by respondent no.2. At the time of admission, the petitioner signed an agreement which as per Clause 1 stipulated that on completion of her education, she shall serve as junior/senior/resident/medical officer or in any other capacity with respondent no.2 for a three-year period commencing within six months of the completion of her

degree. The petitioner completed her postgraduate degree on 20.06.2013. Subsequently, on 09.12.2013, the petitioner received an order of temporary appointment from respondent no. 2 and joined as a Senior Resident in the Department of Ophthalmology.

4. In January 2015, the petitioner applied for maternity leave for 6 months. On 23.02.2015, the petitioner was granted sanction of paid maternity leave for 180 days from 19.01.2015 to 17.07.2015. During this period, the petitioner continued to receive her monthly remuneration.

5. Well after the conclusion of the maternity leave, the petitioner received order dated 16.03.2016 (hereinafter referred to as “first impugned order”) whereby respondent no. 2 directed the payment of Rs.3,85,771/- (Rupees Three lakhs eighty-five thousand seven hundred seventy-one only) within seven days. The order made a reference to Rule 7(g) of the impugned rules. On the same day the petitioner received another order (hereinafter referred to as “second impugned order”) which extended her tenure as a Senior Resident in the Department of Ophthalmology by six months with effect from 20.11.2016 to 20.05.2017 in furtherance of rule 7(i) of the impugned rules.

6. Subsequently, the petitioner addressed a representation to the Joint Secretary of Public Health Department and sent copies to the respondent no.1 and respondent no. on 29.03.2016. While awaiting a response to the representation, the petitioner received a Corrigendum dated 16.06.2016 to the order granting maternity leave dated 23.02.2015. Thereafter, the petitioner received a Memorandum dated 29.03.2016 addressed by respondent no 2 informing her that the aforesaid representation has not been acceded to by the Joint Secretary of Public Health Department. Further, this memorandum directed the petitioner to make payment of Rs. Rs. 3,85,771/- (Rupees Three lakhs eighty-five thousand seven hundred seventy-one only) within a period of one month failing which the amount would be recovered from her salary.

7. Aggrieved by the first and second impugned orders, corrigendum dated 16.06.2016, memorandum dated 20.06.2016, the petitioner addressed a representation to the Hon'ble Minister for Health requesting their intervention to stop the recovery from her salary under Rule 63 of the Central Civil Services (leave) Rules, 1972 on 01.07.2016. The petitioner has not received a response to this representation.

8. On 14.09.2016, the petitioner received another note dated 14.09.2016 from the Joint Director of Accounts of Goa Medical College referring to a memorandum dated 04.08.2016 issued by respondent no. 2, informing the petitioner that Rs. 3,85,771/- (Rupees Three lakhs eighty-five thousand seven hundred seventy-one only) will be recovered from her monthly salary from 01.07.2016, continuing till the entire amount is recovered.

9. Aggrieved by this, the petitioner, by way of the instant Writ Petition has sought relief against the orders issued under the amended Act. A challenge to the insertion of clause (g), clause (h) and clause (i) of Goa (Appointment in the Post Residents in Goa Medical College) (Second Amendment) Rules, 2013, (hereinafter referred to as impugned rules) constitutes the basis of this Writ Petition. The petitioner submits that the impugned rules are perverse, illegal and arbitrary for the reasons considered hereunder.

10. Per Contra, it is submitted by Mr. Faldessai learned Additional Government for the respondents, that the nature of the appointment of the petitioner was in the nature of a temporary appointment vide letter dated 09/12/2013. As a natural consequence of this, Senior Residents for a tenure of 3 years are treated as temporary Government Servants (Group 'C') and governed by the

Central Civil Services (Temporary Service) Rules, 1965 and are not entitled to benefits under the Central Civil Services (Leave) Rules, 1972.

11. Respondents oppose the contention that the impugned rules are in contravention of any provisions of the law and state that their actions were based on the impugned rules as the statutory provisions in effect.

12. Mr. Amonkar learned counsel for the petitioner submits that the impugned rules violate the fundamental rights of the petitioner as guaranteed under Articles 14, 19(1)(g) and 21 of the Constitution of India. According to the learned counsel, the impugned rules are prima facie contrary to the provisions of the Maternity Benefit Act 1961, specifically, section- 5 of the Maternity Benefit Act, 1961 which provides that every woman shall be liable for payment of maternity benefits at the rate of average daily wage for the period of actual absence.

13. Further the learned counsel for petitioner submits that they are entitled to the benefits as given under the Central Civil Services (Leave) Rules, 1972. Under Rule 43 of the Central Civil Services (Leave) Rules, 1972, female government servants with less than two surviving children may be granted maternity leave for 90 days from

the date of its commencement. During such period, she shall be paid a leave salary equal to the pay drawn immediately before proceeding on leave. The petitioner is entitled to benefits under Central Civil Services (Leave) Rules, 1972.

14. It is further submitted that the impugned rules make an unreasonable classification between Senior Residents including the petitioner and other female doctors in the employment of respondent no.2, depriving only the former of the benefit of paid maternity leave. Therefore, such classifications are arbitrary and unreasonable and hence untenable in law.

15. The learned Counsel appearing on behalf of the petitioner further advanced the argument that the rules are contrary to the directive principles of state policy as given in Article 42 of the Constitution of India which provides that the State shall make provisions for Maternity Leave for Citizens. It is further submitted that the Hon'ble Supreme Court has pronounced in numerous judgments that the Maternity Benefit Act, 1961 applies to all women employees, irrespective of whether they are employed on the casual basis or the muster roll of daily wages.

16. The counsel for the petitioner submits what the State Government cannot do directly in the exercise of its executive power

under Article 154 of the Constitution of India cannot do it indirectly. In support of this contention, the counsel for the petitioner submits that the power to frame rules concerning service benefits and imposing service conditions is contained within an entry found in the Concurrent List (List III). The rules have not been framed by the Central Legislature in the exercise of its powers. It is submitted that if the State Government had framed the rules under the powers contained in the aforesaid list, the impugned rules would have been repugnant to the central legislature, i.e. Maternity Benefits Act, 1961 as it is the prevailing legislation, squarely covering the entire field.

17. The learned counsel for the petitioner placed reliance on the following judgments in support of his case.

(i) Dr. Kavita Yadav Vs. Secretary Ministry of Health and Family Welfare Department, (2024) 1 SCC 421;

(ii) MCD Vs. Female Workers (Muster Roll), 2000 (3) SCC 224;

(iii) Archana Dahifale Vs. State of Maharashtra, 2019 (2) Mh.L.J. 697.

18. The learned counsel for the petitioner submits that in view of the statement of the learned counsel for the respondent on 19.10.2016, that no recovery will be effected from the respondent,

money recovered prior to the Order dated 19.10.2016 should be recovered with 12% simple interest per annum.

19. Mr. Faldessai learned Additional Government Advocate appearing on behalf of the respondents argued that the petitioner signed an agreement with the Goa Medical College on a bond period of three years. The petitioner was offered a temporary appointment vide letter dated 09.12.2013 as a Senior Resident in the Department of Ophthalmology, Goa Medical College which is governed by Goa (Appointment in the Post Residents in Goa Medical College) (Second Amendment) Rules, 2013. Further, it has been argued that Senior Residents are treated as temporary Government Servants (Group C) and are governed by the CCS (Temporary Service) Rules, 1965.

20. The learned counsel for the respondents further contended that the Rules of 1965 were amended in the year 2013 which were notified in the Official Gazette on 27.06.2013 whereby clauses (g), (h), and (i) in Rule no.7 were inserted. He further contended that the petitioner applied for maternity leave in January 2015 for a period of six months and in terms of the provisions for the maternity leave, was granted for the period from 19.01.2015 to 17.07.2015 without pay.

21. The learned counsel for respondents contended that the Senior Resident appointed in Goa Medical College and Hospitals are granted upon completion of Bond Tenure, Encashment of Earned leave balance to his/her Credit, Earned Leave for 30 days in a year, Half pay Leave/ Commuted leave for 10 days, Casual Leave, Restricted Holiday and Special leave as admissible under CCS (Leave) Rules 1972, subject to exigencies of public service leaves and also Leave Travel concession as per CCS (LTC) Rules, 1988. Therefore, according to the learned counsel the reliefs as prayed for by the petitioner cannot be granted in view of the Goa (Appointment in the post Residents in Goa Medical College) (Second Amendment) Rules, 2013.

22. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

ANALYSIS & CONCLUSION

23. It is pertinent at this juncture for properly appreciating the controversy in the instant petition, to reproduce the contents of the impugned rules as given hereunder:

Notification

13/138/88-II-PHD

The Government of Goa is hereby pleased to make the following rules to further amend the Goa (Appointment to the post Residents in the Goa Medical College) Rules, 1998, as follows, namely:

1. Short title and commencement. — (1) These rules may be the Goa (Appointment to the post Residents in the Goa Medical College) (Second Amendment) Rules, 2013.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. Amendment of rule 7. In rule 7 of the Goa (Appointment to the post Residents in the Goa Medical College) Rules, 1998, after clause (f), the following clauses shall be inserted, namely: —

"(g) The female Senior Resident may be granted Maternity Leave for a maximum period of 180 days without pay, only once during the period of her tenure;

(h) During the period any female Senior Resident is on Maternity Leave, the locum post may be filled up by appointing a candidate possessing requisite qualifications as specified in rule 4 or rule 5, as the case may be, so as to ensure smooth functioning of the Department.

(i) The concerned female Senior Resident availing Maternity Leave shall work for an extra period

equivalent to the period of Maternity Leave availed by her, after completion of three years of Senior Residency, in order to be eligible to get three years teaching experience."

By order and in the name of the Governor of Goa.

*D. G. Sardesai,
Additional Secretary (Health).
Porvorim, 19th June, 2013.*

23. First impugned order dated 16.03.2016 directing the payment of the pay received in the subsistence of the maternity leave has been extracted hereunder:

*No.5/1962/2013/EI/GMC/9187
Office of the Dean,
Goa Medical College,
Bambolim-Goa.*

Dated: - 16/03/2016

ORDER

*Read order No. 5/1962/2013/EI/GMC/10607 dated
23/02/2015.*

Whereas, Dr. Srishti Prabhudesai, Senior Resident in Department of Ophthalmology, GMC was granted Maternity Leave for the period of 180 days from 19/01/2015 to 17/07/2015 and an amount of Rs. 3,85,771/- (Rupees three lakhs eighty five thousand seven hundred seventy one only), was paid to her for the said period as pay and allowances.

*And whereas, as per provision of clause (g) of Rule 7 of the Goa (Appointment to the post Resident in the Goa Medical College) Rules, 1998, the female Senior Resident may be granted Maternity Leave for a maximum period of 180 days **without pay**, only once during the period of her tenure. In view of this, Dr. Srishti Prabhudesai, Senior Resident was not entitled to draw this pay and allowances for the period she was on Maternity Leave.*

Now, therefore, Dr. Srishti Prabhudesai, Senior Resident is hereby directed to make payment of Rs. 3,85,771/- in the treasury of this office within a period of 7 days, failing which further steps for recovery of the said amount will be initiated.

*sd/-
(Dr. Pradeep. Naik)
DEAN
Goa Medical College & Hospital
Bambolim Goa.*

24. The second impugned order for extension of the tenure dated 16.03.2016 has been reproduced hereunder:

*No.5/1962/2013-EI/GMC/9188
Dated: 16/03/2016*

ORDER

*Ref: Order No.6/79/98-EI/GMC/Vol.XIII/6404 dated
9/12/2013.*

In continuation to the above order, the tenure of Dr. Srishti Prabhudesai, Senior Resident in the Department of

Ophthalmology is extended for a further period of six months w.e.f. 20/11/2016(F.N.) to 20/05/2017(A.N.) (Equivalent to the period of Maternity Leave availed by her) as per provision of clause (i) of Rule 7 of the Goa (Appointment to the post Residents in the Goa Medical College) Rules, 1998.

Sd/-

(Dr. Pradeep. Naik)

DEAN

*Goa Medical College & Hospital
Bambolim Goa.*

25. In ***Deepika Singh v. Central Administrative Tribunal And Ors.; (2023) 13 SCC 68***, the Hon'ble Supreme Court has advanced its view on the legislative intent that is espoused by the Maternity Benefits Act, 1961. Relevant portion of the judgment have been extracted hereunder:

“19. Sub-section (1) of Section 5 confers an entitlement on a woman to the payment of maternity benefits at a stipulated rate for the period of her actual absence beginning from the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day. Sub-section (3) specifies the maximum period for which any woman shall be entitled to maternity benefit. These provisions have been made by Parliament to ensure that the absence of a woman away from the place of work occasioned by the delivery of a child

does not hinder her entitlement to receive wages for that period or for that matter for the period during which she should be granted leave in order to look after her child after the birth takes place.

20. The 1961 Act was enacted to secure women's right 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. In MCD v. Female Workers (Muster Roll)¹⁵ a two-Judge Bench of this Court placed reliance on the obligations under Articles 14, 15, 39, 42 and 43 of the Constitution, and India's international obligations under the Universal Declaration of Human Rights, 1948 ("UDHR") and Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") to extend benefits under the 1961 Act to workers engaged on a casual basis or on muster roll on daily wages by the Municipal Corporation of Delhi. The Central Civil Services (Leave) Rules, 1972, it is well to bear in mind, are also formulated to entrench and enhance the objects of Article 15 of the Constitution and other relevant constitutional rights and protections."

26. On perusal of the observation of the Hon'ble Supreme Court reproduced hereinabove, it is clear that the Maternity Benefits Act,

1961, was enacted with a multi-faceted approach towards protection to women in the course of their pregnancy and beyond. It is pertinent to note that with regards to the Central Civil Services (Leave) Rules, 1972, the Hon'ble Supreme Court has opined that the same have been framed with a view to advance the object and protection under constitutional rights and protections.

27. In *MCD v. Female Workers (Muster Roll)*, (2000) 3 SCC 224, the Hon'ble Supreme Court has opined that applicability of the provisions of the Maternity Benefits Act, 1961 would encompass benefits granted to female workers on the muster roll. The Hon'ble Supreme Court ruled that no distinction could be drawn between women that were employed on a regular basis as opposed to women who were on the muster roll on daily wage basis in terms of the benefits guaranteed under the Act. The relevant paragraph of the judgement has been extracted hereunder:

“27. The provisions of the Act which have been set out above would indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other articles, specially Article 42. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of

the foetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery. We have scanned the different provisions of the Act, but we do not find anything contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis or on muster roll on daily-wage basis.” (emphasis supplied)

28. In light of the ratio laid down in the aforementioned authorities, it is clear that a denial of benefit to the petitioner on the ground that the appointment of the petitioner was temporary in nature is illegal and unfair.

29. In ***Dr. Kavita Yadav v. Secretary, Ministry of Health and Family Welfare Department and Others ((2024) 1 SCC 421)***, the Hon’ble Supreme Court considering the language of section 27 of the Maternity Benefit Act, 1961, noted that as the semantic implication overrides any agreement or contract of service inconsistent with the Maternity Benefit Act, 1961, and the employer could not use any rules framed by them in the exercise of their executive powers to restrict the petitioner’s entitlement to maternity benefit. The Hon’ble Supreme Court concluded that the Maternity Benefit Act, 1961, creates a fiction of continued employment by

treating the women to be in employment solely to avail her maternity benefits entitlement.

30. A perusal of the contents of Section 27 of the Maternity Benefit Act, 1961, as reproduced hereunder is useful:

27. Effect of laws and agreements inconsistent with this Act.- (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act:

Provided that where under any such award, agreement, contract of service or otherwise, a woman is entitled to benefits in respect of any matters which are more favourable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that she is entitled to receive benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed to preclude a woman from entering into an agreement with her employer for granting her rights or privileges in respect of any matter which are more favourable to her than those to which she would be entitled under this Act.

31. Section- 27 of the Maternity Benefit Act, 1961 states that the provisions contained in the Act will prevail over any laws and agreements that are inconsistent therewith. Therefore, this Court finds itself compelled to hold that maternity benefits under the Maternity Benefits Act, 1961, be granted to the petitioner notwithstanding the impugned rules. Submissions made to state that the petitioner would be precluded from claiming benefits under this Act in view of any agreed-upon terms of appointment in effect would not survive at the threshold of this Section. The Petitioner cannot, in any terms, be denied the protection as envisaged by this Act.

32. Learned counsel for the petitioner in support of his submissions placed reliance upon the ruling of a Division Bench of this Court in *Archana Dahifale v. State of Maharashtra* (2019 (2) *Mh. L.J.* 697). The ratio of the judgment propounds upon the principles that dictate the grant of maternity benefits and holds that benefits under the Maternity Benefits Act, 1961, cannot be denied under the defense that an employee's appointment is ad-hoc or temporary in nature. Further no such differentiation cast upon a female employee based on the nature of the employment as

temporary can prohibit them from seeking benefit under the benevolent intent of the Maternity Benefit Act, 1961.

33. Without prejudice to the applicable rules, it is clarified that regardless of whether the employment is permanent or temporary and notwithstanding any rule to the contrary contained under rules framed in exercise of executive power, the benefit of maternity leave is a legislative mandate as clarified by the Hon'ble Supreme Court in a myriad of pronouncements that will override any such rule.

34. First impugned order, second impugned order, corrigendum to the first impugned order dated 16.06.2016, memorandum dated 20.06.2016 are hereby set aside. The petitioner to be transferred the amount recovered from her prior to 19.10.2016 with a simple interest of 9% per annum until realisation.

35. The petition is allowed in terms of prayer clauses (b) and partly in terms of prayer clause (d).

36. Rule is partly made absolute in aforesaid terms. No order as to cost.

NIVEDITA P. MEHTA, J.

M. S. KARNIK, J.