

Dr Shanti Mehra vs State Of Uttarakhand And Others on 15 December, 2016

Author: Alok Singh

Bench: Rajiv Sharma, Alok Singh

Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
Writ Petition No. 99 of 2015 (S/B)

Dr. Shanti MehraPetitioner

Versus
State of Uttarakhand & others Respondents

Mr. Sanjay Raturi, Advocate for the petitioner.
Mr. Pradeep Joshi, Standing Counsel with Mr. H.M. Bhatia, Brief Holder for the State/respondents.

Dated: 15th December, 2016.
Coram: Hon'ble Rajiv Sharma, J.

Hon'ble Alok Singh, J.

Per: Hon'ble Rajiv Sharma, J. (Oral) Petitioner was appointed as a Doctor in the Community Health Center, Gangolihat, Pithoragarh in Ayush Wing on contractual basis w.e.f. 18.06.2008. Her contract was renewed every year. The honorarium of the petitioner was enhanced from Rs.15,000/- per month to Rs. 24,000/- per month. Petitioner has gone on leave. She applied for maternity leave w.e.f. 01.01.2014 to 31.03.2014, however, the same was not granted to her. The petitioner also made representation on 11.12.2014.

2. No counter affidavit has been filed by the State but learned counsel on behalf of the State has vehemently argued that since, the petitioner was appointed on contractual basis, she was not entitled for maternity leave.

3. However, the fact of the matter is that maternity leave was not sanctioned and feeling aggrieved, she approached this Hon'ble Court for grant of maternity leave w.e.f. 01.01.2014 to 31.03.2014.

4. It would be apt at this stage to reproduce Section 5 of the Maternity Benefit Act, 1961.

"5. Right to payment of maternity benefit- [(1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the

actual day of her delivery and any period immediately following that day.] Explanation.-- For the purpose of this sub- section, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, [the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 or ten rupees, whichever is the highest.] (2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than (eighty days) in the twelve months immediately preceding the date of her expected delivery.

Provided that the qualifying period of (eighty days) aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

Explanation.--For the purpose of calculating under this sub-section the day on which a woman has actually worked in the establishment, [the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages] during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

(3) [The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery:] Provided that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

[Provided further that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for the entire period but if the child also dies during the said period, then, for the days up to and including the date of death of the child.]"

5. Rule 153 of the U.P. Fundamental Rules, as applicable to the State of Uttarakhand, reads as under:

153 *. Maternity leave on full pay which a female government servant, whether permanent or temporary, may be drawing on the date or proceeding on such leave may be granted to her by the head of the department or by a lower authority to whom power may be delegated in this behalf subject to the following:--

(1) In cases of confinement the period of maternity leave may extend up to the end of three months from the date of the commencement of leave:

Provided that such leave shall not be granted for more than three times during the entire service including temporary service:

Provided also that if any female government servant has two or more living children, she shall not be granted maternity leave even though such leave may otherwise be admissible to her. If, however, either of the two living children of the female government servant is suffering from incurable disease or is disabled or crippled since birth or contracts some incurable disease or becomes disabled or crippled later, she may, as an exception, be granted maternity leave till one more child is born to her subject to the overall restriction that maternity leave shall not be granted for more than three times during the entire service.

Provided further that no such leave shall be admissible until a period of at least two years has elapsed from the date of expiry of the last maternity leave granted under this rule.

(2) In cases of miscarriage, including abortion, the period of maternity leave may extend up to a total period of six weeks on each occasion, irrespective of the number of surviving children of the female Government servant concerned, provided that the application for leave is supported by a certificate from the Authorised Medical Attendant:

NOTE--(1) Deleted.

NOTE--(2) In the case of a person to whom the provisions of Employees' State Insurance Act, 1948, apply, leave salary payable under this rule shall be reduced by the amount of benefit admissible under the said Act for the corresponding period.

NOTE--(3) Abortion induced under the Medical Termination of pregnancy Act, 1971, should also be considered as a case of 'abortion' for the purpose of 'granting' 'Maternity leave' under this rule.

6. Initially the period of maternity was 135 days' but the same has been increased to 180 days' vide letter dated 24.08.2009. The petitioner though, appointed on contractual basis is entitled to maternity leave as per Section 5 of the Maternity Benefit Act read in conjunction with Rule 153 of U.P. Fundamental Rules.

7. The legal issue raised in this petition is no more res integra.

8. Their Lordships of Hon. Apex Court in (1987) 2 SCC 165 in the case of 'Vincent Panikurlangara v. Union of India & others', have held that in a welfare State, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health. Maintenance and improvement of public health have to be ranked high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society

which the Constitution - makers envisaged. Their Lordships, in paragraph nos.13 and 16, have held as under: -

"13. The issues raised in this petition are of vital importance as they relate to maintenance of approved standards of drugs in general; the writ petition involves the claim for withdrawal of 7000 fixed dose combinations and withdrawal of licences of manufacturers engaged in manufacture of about 30 drugs which have been licensed by the Drugs Control authorities; the issues that fall for consideration are not only relating to technical and specialised matters relating to therapeutic value, justification and harmful side effect of drugs but also involve examination of the correctness (sic) of action taken by the Respondents 1 and 2 on the basis of advice; the matter also involves the interest of manufacturers and traders of drugs as also the interest of patients who require drugs for their treatment.

16. A healthy body is the very foundation for all human activities. That is why the adage "Sariramadyam Khaludharma Sadhanam". In a welfare State, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health. This Court in Bandhua Mukti Morcha v. Union of India² aptly observed: (SCC p. 183, para 10) "It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in Francis Mullin case³ to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of the workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State -- neither the Central Government nor any State Government -- has the right to take any action which will deprive a person of the enjoyment of these basic essentials."

While endorsing what has been said above, we would refer to Article 47 in Part IV of the Constitution. That article provides:

"The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

This article has laid stress on improvement of public health and prohibition of drugs injurious to health as one of the primary duties of the State. In Akhil Bharatiya Soshit Karamchari Sangh v. Union of India⁴ this Court has pointed out that: (SCC pp. 308-09, para

123) "The fundamental rights are intended to foster the ideal of a political democracy and to prevent the establishment of authoritarian rule but they are of no value unless they can be enforced by resort to courts. So they are made justiciable. But, it is also evident that notwithstanding their great importance, the Directive Principles cannot in the very nature of things be enforced in a court of law.... It does not mean that directive principles are less important than fundamental rights or that they are not binding on the various organs of the State."

In a series of pronouncements during the recent years this Court has culled out from the provisions of Part IV of the Constitution these several obligations of the State and called upon it to effectuate them in order that the resultant pictured by the Constitution Fathers may become a reality. As pointed out by us, maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. Attending to public health, in our opinion, therefore, is of high priority -- perhaps the one at the top."

9. Their Lordships of Hon. Apex Court in (1996) 4 SCC Page 37 in the case of 'Paschim Banga Khet Mazdoor Society & others v. State of W.B. & another', have held that the Constitution envisages the establishment of a welfare State at the federal level as well as at the State level. In a welfare State, the primary duty of the Government is to secure the welfare of the people.

10. Their Lordships of Hon. Apex Court in 2000 (3) SCC 224 in the case of 'Municipal Corporation of Delhi Vs. Female Workers(Muster Roll) and another', have held that 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 the society have to be honoured and treated with dignity at cases where they work to earn their livelihood. To become a mother is the most natural phenomenon 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 realize the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in a womb or while rearing up the child after birth.

"6. Not long ago, the place of a woman in rural areas has been traditionally her home; but the poor illiterate women forced by sheer poverty now come out to seek various jobs so as to overcome the economic hardship. They also take up jobs which involve hard physical labour. The female workers who are engaged by the Corporation on muster roll have to work at the site of construction and repairing of roads. Their services have also been utilised for digging of trenches. Since they are engaged on daily wages, they, in order to earn their daily bread, work even in advance stage of pregnancy and also soon after delivery, unmindful of -detriment to their health or to the health of the new-born. It is in this background that we have to look to our Constitution which, in its Preamble, promises social and economic justice. We may first look at the Fundamental Rights contained in Chapter III of the Constitution. Article 14 provides that the State shall not deny to any person equality before law or the equal protection of the laws within the territory of India. Dealing with this Article vis-a-vis the Labour Laws, this Court in Hindustan Antibiotics Ltd. v. Workmen, has

held that labour to whichever sector it may belong in a particular region and in a particular industry will be treated on equal basis. 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 provides as under:

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

11. It is in the background of the provisions contained in Article 39, specially in Articles 42 and 43, that the claim of the respondents for maternity benefit and the action['] of the petitioner in denying that benefit to its women employees has to be scrutinized so as to determine whether the denial of maternity benefit by the petitioner is justified In law or not."

33.A just social order can be achieved only when inequalities are obliterated and everyone is provided what, is legally due. When 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 victimized for forced absence during the pre or post-natal period."

11. Maternity benefit is a social insurance. There should be a system for breast feeding/ nursing care at the workplace. The maternity leave is key for maternal and child health and family support. The maternity leave is of utmost importance to fight against social injustice, poverty and gender inequality.

12. The 44th Session of Indian Labour Conference (ILC) has also recommended for enhancing maternity leave under Maternity Benefit Act, 1961. This recommendation was reiterated in 45th and 46th Session of ILC.

13. A male government servant is also entitled paternity leave for a period of at least three weeks to enable the father to look after the mother and child. A female employee appointed on regular basis, contractual basis, ad hoc/tenure or temporary basis is also entitled to child adoption leave for a period of 135 days' in case of valid adoption of child below the age of one year.

14. A female government employee is also entitled to Child Care Leave (CCL), as per the recommendation of the 6th Central Pay Commission of 730 days' during the entire service. However, it will not be admissible, if the child is 18 years of age or older. The women employees shall be paid leave salary equal to the pay drawn immediately before proceeding on leave. It can be

availed of in more than one spell. As per the Government of India, Department of Personnel and Training order dated 11.09.2008, it can be combined with leave of the kind due and admissible.

15. It would be apt at this stage to reproduce Articles of Maternity Protection Convention, 2000 held at Geneva by the Governing Body of the International Labour Office, in its 88th Session on 30th May, 2000, which read as under:

Article 1 For the purposes of this Convention, the term woman applies to any female person without discrimination whatsoever and the term child applies to any child without discrimination whatsoever.

Article 2

1. This Convention applies to all employed women, including those in atypical forms of dependent work.

2. However, each Member which ratifies this Convention may, after consulting the representative organizations of employers and workers concerned, exclude wholly or partly from the scope of the Convention limited categories of workers when its application to them would raise special problems of a substantial nature.

3. Each Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organization, list the categories of workers thus excluded and the reasons for their exclusion. In its subsequent reports, the Member shall describe the measures taken with a view to progressively extending the provisions of the Convention to these categories.

HEALTH PROTECTION Article 3 Each Member shall, after consulting the representative organizations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child. MATERNITY LEAVE Article 4

1. On production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth, a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks.

2. The length of the period of leave referred to above shall be specified by each Member in a declaration accompanying its ratification of this Convention.

3. Each Member may subsequently deposit with the Director- General of the International Labour Office a further declaration extending the period of maternity leave.

4. With due regard to the protection of the health of the mother and that of the child, maternity leave shall include a period of six weeks' compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organizations of employers and workers.

5. The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reduction in any compulsory portion of postnatal leave.

LEAVE IN CASE OF ILLNESS OR COMPLICATIONS Article 5 On production of a medical certificate, leave shall be provided before or after the maternity leave period in the case of illness, complications or risk of complications arising out of pregnancy or childbirth. The nature and the maximum duration of such leave may be specified in accordance with national law and practice.
BENEFITS Article 6

1. Cash benefits shall be provided, in accordance with national laws and regulations, or in any other manner consistent with national practice, to women who are absent from work on leave referred to in Articles 4 or 5.

2. Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.

3. Where, under national law or practice, cash benefits paid with respect to leave referred to in Article 4 are based on previous earnings, the amount of such benefits shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits.

4. Where, under national law or practice, other methods are used to determine the cash benefits paid with respect to leave referred to in Article 4, the amount of such benefits shall be comparable to the amount resulting on average from the application of the preceding paragraph.

5. Each Member shall ensure that the conditions to qualify for cash benefits can be satisfied by a large majority of the women to whom this Convention applies.

6. Where a woman does not meet the conditions to qualify for cash benefits under national laws and regulations or in any other manner consistent with national practice, she shall be entitled to adequate benefits out of social assistance funds, subject to the means test required for such assistance.

7. Medical benefits shall be provided for the woman and her child in accordance with national laws and regulations or in any other manner consistent with national practice. Medical benefits shall include prenatal, childbirth and postnatal care, as well as hospitalization care when necessary.

8. In order to protect the situation of women in the labour market, benefits in respect of the leave referred to in Articles 4 and 5 shall be provided through compulsory social insurance or public funds, or in a manner determined by national law and practice. An employer shall not be individually liable for the direct cost of any such monetary benefit to a woman employed by him or her without that employer's specific agreement except where::

(a) such is provided for in national law or practice in a member State prior to the date of adoption of this Convention by the International Labour Conference; or

(b) it is subsequently agreed at the national level by the government and the representative organizations of employers and workers.

Article 7

1. A Member whose economy and social security system are insufficiently developed shall be deemed to be in compliance with Article 6, paragraphs 3 and 4, if cash benefits are provided at a rate no lower than a rate payable for sickness or temporary disability in accordance with national laws and regulations.

2. A Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of this Convention under article 22 of the Constitution of the International Labour Organization, explain the reasons therefor and indicate the rate at which cash benefits are provided. In its subsequent reports, the Member shall describe the measures taken with a view to progressively raising the rate of benefits. **EMPLOYMENT PROTECTION AND NON-DISCRIMINATION Article 8**

1. It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.

2. A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

Article 9

1. Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including - notwithstanding Article 2, paragraph 1 - access to employment.

2. Measures referred to in the preceding paragraph shall include a prohibition from requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment, except where

required by national laws or regulations in respect of work that is:

(a) prohibited or restricted for pregnant or nursing women under national laws or regulations; or

(b) where there is a recognized or significant risk to the health of the woman and child.

BREASTFEEDING MOTHERS Article 10

1. A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.

2. The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks and the procedures for the reduction of daily hours of work shall be determined by national law and practice. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly.

PERIODIC REVIEW Article 11 Each Member shall examine periodically, in consultation with the representative organizations of employers and workers, the appropriateness of extending the period of leave referred to in Article 4 or of increasing the amount or the rate of the cash benefits referred to in Article 6.

IMPLEMENTATION Article 12 This Convention shall be implemented by means of laws or regulations, except in so far as effect is given to it by other means such as collective agreements, arbitration awards, court decisions, or in any other manner consistent with national practice. FINAL PROVISIONS Article 13 This Convention revises the Maternity Protection Convention (Revised), 1952.

Article 14 The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 15

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 16

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 17

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 18 The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 19 At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 20

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
 - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 16 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 21 The English and French versions of the text of this Convention are equally authoritative.

16. The International Labour Organization (ILO) has conducted the survey for maternity and paternity at work (Law and practice across the world) in 2014. The survey has covered the period w.e.f. 1994-2013 for duration of maternity leave across the world, maternity cash benefits, finance of maternity cash benefits, scope and eligibility requirements. The survey has also been undertaken for paternity, parental and adoption leave as well as protection of employment during maternity and non-discrimination in employment in relation to maternity, healthy arrangement of working time and arrangement of nursing breaks.

17. We are required to make labour laws in conformity with the recommendations made by the International Labour Organization read with Article 42 of the Constitution of India.

18. According to the Article 42 of the Constitution of India, "the State is required to make provision for securing just and humane conditions of work and for maternity relief."

19. The objective of ILO to conduct the survey was to promote motherhood and child care as well as to promote gender equality. Every female employee and male employee whether appointed on regular basis, contractual basis, ad hoc/tenure or temporary basis have a fundamental right to reasonable duration of maternity leave as well as paternity leave, child care leave (CCL) and adoption leave to promote motherhood and child care under Article 21 of the Constitution of India read with Article 42 of the Constitution of India.

20. The learned Single Judge of this Court, after rightly construing the provisions of Section 5 of the Maternity Benefit Act and Rule 153 of the U.P. Fundamental Rules in Writ Petition No.826 of 2012 (S/S) vide judgment dated 08.07.2013 has come to the absolute right conclusion that the benefits of maternity leave with full salary could not be denied to a female employee appointed on contractual basis. The judgment dated 08.07.2013 is affirmed.

21. Thus, the petitioner cannot be denied the maternity leave w.e.f. 01.01.2014 to 31.03.2014 with full pay. The decision to deny the maternity leave to the petitioner was arbitrary, thus, violative of Articles 14 and 16 of the Constitution of India.

22. Accordingly, the writ petition is allowed with the following mandatory directions:-

a.) Respondents are directed to grant maternity leave to the petitioner with full pay w.e.f. 01.01.2014 to 31.03.2014 within eight weeks from today.

- b.) The respondent-State is also directed to grant maternity leave to all the female employees with full pay for 180 days, even working on contractual basis, ad hoc/tenure or temporary basis.
- c.) The State Government is further directed to grant at least 60 days' maternity leave to the daily wage female employees working for more than 240 days' in a block of 12 months calendar with full wages.
- d.) The State Government is directed to provide every establishment to have the facility of crèche having 50 or more than 50 employees with liberty reserved to the mother to visit the crèche/nursing care at least four times daily, including the interval for rest allowed to the employees.
- e.) The State Government is also directed to grant Child Care Leave (CCL) of 730 days' to all the female employees, whether appointed on regular basis, contractual basis, ad hoc/tenure or temporary basis having minor children with a rider that the child should not be more than 18 years of age or older. The female employees shall be entitled to paid leave equal to the pay drawn immediately before proceeding on leave. CCL can be combined with leave of the kind due and admissible.
- f.) The State Government is also directed to grant 15 days' paternity leave to a male employee appointed on regular basis, contractual basis, ad hoc/tenure or temporary basis to enable the father to look after the mother and child. This leave can be combined with leave of any other kind.
- g.) The State Government is also directed that a female employee appointed on regular basis, contractual basis, ad hoc/tenure or temporary basis, with fewer than two surviving children, on valid adoption of a child below the age of one year be granted child adoption leave for a period of 135 days' immediately after the date of valid adoption.
- h.) The State Government shall not dismiss, terminate, remove any female employee whether appointed on contractual basis, ad hoc/tenure or temporary basis immediately before her delivery and thereafter to deprive her of maternity leave, adoption leave and child care leave etc. i.) The Chief Secretary shall personally be responsible to comply with these mandatory directions in letter and spirit.

(Alok Singh, J.)

15.12.2016

(Rajiv Sharma, J.)

Nishant