IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 10TH DAY OF MAY 2022 / 20TH VAISAKHA, 1944

WP(C) NO. 26904 OF 2021

PETITIONERS:

1 NAZIYA.B.,
W/O.DEEPU.P.V.,
PADINJARETAL HOUSE, WEST VELLANIKKARA,
P.O.MADAKKATHRA, THRISSUR, KERALA,
PIN-680 651.

2 DHANYA.M.S.,
W/O.SUMESH MADHAVAN,
HOUSE NO.165, ASHTAPATHY, HARITHA NAGAR,
THRISSUR.

3 JINCY P.FRANCIS,
W/O.PRINCILIN K.PETER,
KIDANGAN KUTTUKKARAN HOUSE,
ELOTH TEMPLE ROAD, P.O.MANAKODY,
THRISSUR, PIN-680 012.

BY ADVS.
M.R.VENUGOPAL
DHANYA P.ASHOKAN
S. MUHAMMAD ALIKHAN

RESPONDENTS:

1 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT
FINANCE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695 001.

2 KERALA UNIVERSITY OF HEALTH SCIENCES,
REPRESENTED BY THE REGISTRAR,
MEDICAL COLLEGE P.O., THRISSUR, PIN-680 596.

BY ADVS.
ADVOCATE GENERAL OFFICE KERALA
SHRI.P.SREEKUMAR, SC, KERALA UNIVERSITY OF HEALTH SCIENCES

SMT.ANIMA, GOVT.PLEADER.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR HEARING ON 24.3.2022, THE COURT ON 10.5.2022 DELIVERED THE FOLLOWING:

"CR"

JUDGMENT

The petitioners herein while working as Programmers (IT) at the Kerala University of Health Sciences on a Contract basis were denied Maternity Benefits. They have approached this Court with this Writ Petition filed under Article 226 of the Constitution of India challenging the stand taken by the respondents.

2. Bare facts are as under.

The 1st petitioner was appointed as a Programmer in the 2nd respondent University with effect from 25.6.2012 for a period of 12 months. After the expiry of the said period, the 2nd respondent has extended the contract by 179 days at a time by giving an artificial break of two days. As per the last appointment order, a copy of which is produced as Ext.P1, the 1st petitioner has been appointed for a period of 179 days with effect from 23.6.2021 on a consolidated pay of Rs.35300/- per mensem. The 2nd petitioner joined the services of the 2nd respondent as a Programmer with effect from 2.7.2012. Her contract was regularly renewed for 179 days at a time and as per Ext.P1, the contract was for the period from 24.6.2020 to

18.6.2021 on a consolidated pay of Rs.35300/- per mensem. The 3rd petitioner joined the services of the 2nd respondent on a contract basis with effect from 21.8.2017 on a consolidated pay of Rs.30000/- per mensem. The original appointment was for a period of 179 days. Later, her service was periodically extended for 179 days at a time by giving an artificial break of two days between consecutive contracts. As per Ext.P2 appointment order, she was granted fresh appointment order for a period of 179 days with effect from 18.8.2021.

3. While working as aforesaid, the petitioners have all applied for maternity leave and the same was granted by the 2nd respondent. However, the petitioners were denied any allowance.

4. The materials produced before this Court shows that the 1st petitioner had applied for maternity leave during her contract period from 27.12.2018 to 21.12.2019. The 2nd respondent was granted maternity leave without allowance for a period of 155 days starting from 19.1.2019 to 22.6.2019. The 2nd petitioner applied for maternity leave for the period of 174 days commencing from 24.12.2020 to 15.6.2021 and the 2nd respondent has granted the same without allowance. The 3rd petitioner requested

maternity leave for the period from 15.3.2019 to 14.8.2019 and the same was granted by the 2nd respondent, however, without allowance.

5. The petitioners contend that the request for maternity leave with benefits was rejected by the 2nd respondent by Ext.P3 order initially on the ground that the contract period was for a period of 179 days which is less than one year. It was on the premise that the benefit provided under Rule 100 and 101 of Part I of the KSR could be extended only to those contract employees whose tenure of contract is for a minimum period of one year.

6. Later, the Government has issued G.O.(P) No 2/2021/Fin dated 4.1.2021, wherein, taking note of the law laid down by this Court in **Rakhi P.V. and Others v. State of Kerala** (2018 (2) KLT 864), the Government took a decision to extend the benefit of maternity leave on full pay in terms of Rule 100, Part I of the Kerala Service Rules up to a period of 180 days or till the expiry of the existing contract whichever is earlier to female officers, appointed on contract basis, irrespective of the tenure of the contract, subject to the condition that the leave will not be admissible from a date before 3 weeks from the expected date of confinement as certified by the medical officer. By the aforesaid order, leave on full pay as per Rule 101, Part I Kerala service Rules was also extended to female officers appointed on a contract

basis, irrespective of the tenure of contract, up to a period of 6 weeks or till the expiry of the existing contract whichever is earlier, subject to the condition that the application for leave is supported by a Certificate from the medical officer. However, as per clause (4) of Ext.P4 order, a clause was incorporated to the effect that "*no officer shall be entitled to the above benefits unless she has actually worked under the employer for a period of not less than eighty days immediately preceding her expected date of delivery or date of miscarriage*". It was mentioned in the order that the order would take effect from 27/2/2018.

7. Taking note of the benefit granted to persons such as the petitioners by Exhibit P4 Government Order, they submitted separate applications before the 2nd respondent. However, by Ext.P6, P7 and P8 memos, their requests were rejected on the ground that each period of contract has to be considered a separate posting. The respondents proceeded to deny the benefits to petitioners 1 and 3 on the ground that they had not completed the stipulated 80 days of contract service prior to the date of confinement. Insofar as the 2nd petitioner is concerned, the 2nd respondent took the view that her application for maternity leave cannot be considered since her delivery took place on 19.12.2020, a day, which was a break period

between her two contracts. Being aggrieved, they have approached this Court seeking the following reliefs:

> (i) To issue a Writ of certiorari, or any other appropriate Writ, order or direction quashing Ext.P6, P7 and P8 so far as it denies maternity benefit to the petitioners.
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> (ii) To issue a Writ of mandamus, order or direction directing the respondents to disburse forthwith the maternity benefits due to the petitioners during the maternity leave granted by the respondents.

8. In the counter affidavit filed by the 1st respondent, it is stated that in view of the provisions in Rule 2 Appendix VIII of Part I of the KSR, maternity leave is admissible to provisional female recruits only when they continue beyond one year. Relying on the provisions of the Maternity Benefit Act, 1961 it is stated that a woman is entitled to benefits only if she has worked for a period of not less than 80 days in the 12 months immediately preceding the date of her expected delivery. In the case of the petitioners, separate contracts have been executed with break-in and hence, the petitioners can be treated only as fresh recruits. The 1st and 3rd petitioners worked only for 23 and 25 days respectively during that particular period of contract and the 2nd petitioner's delivery took place during the break-in period between the two contracts. Each engagement of the writ petitioners can be treated only as a free or separate engagement. It is stated that as per Ext.P4 Government Order, a female officer ought to have completed not less

than 80 days of actual service immediately preceding her date of delivery. It is stated that the request made by the petitioners was rightly rejected and no interference is warranted.

9. Smt. Dhanya P. Asokan, the learned counsel appearing for the petitioner submitted that the Maternity Benefit Act, 1961 was enacted by the Parliament to regulate the employment of women for certain periods before and after childbirth and to provide for maternity benefits and certain other benefits. According to the learned counsel, Article 42 of the Constitution of India which falls in Part IV of the Constitution containing the Directive Principles of State Policy requires the State to make provisions for securing just and humane conditions of work and for maternity relief. Relying on the judgment of the Apex Court in **Municipal Corporation of Delhi v. Female Workers (Muster roll) and Another** [AIR 2000 SC 1274], it is submitted by the learned counsel that when Article 42 speaks of "just and humane conditions of work" and "maternity relief", the validity of an executive or administrative action in denying maternity benefit has to be examined on the anvil of Article 42 which, though not enforceable at law, is nevertheless available for determining the legal efficacy of the action complained of. The learned counsel would then refer to the judgment of this Court in **Rakhi P.V.** (supra) and it was submitted that it has been unequivocally held by this Court

that the benefits of enhanced maternity leave to women employees are undoubtedly a piece of welfare legislation which is intended to give women equal opportunities in public employment. According to the learned counsel, the State has a responsibility to ensure that a restricted meaning is not given to welfare legislation so that the rights of women employees to avail leave are not restricted one way or the other. The learned counsel would then contend that the records reveal that the petitioners had been actually working in the 2nd respondent University for years together. In order to deny them the benefits such as maternity reliefs to which they are legitimately entitled, the 2nd respondent has relied on an artificial break-in of two days between the successive extension of contracts. Relying on the judgment dated 8.10.2018 in W.P.(C) No. 19296/2018 and connected cases, it is contended that this Court has held that when employees are allowed renewal based on their satisfactory service, the artificial break of two days is only to be ignored. Finally, the learned counsel would rely on the judgment of this Court in **Najeema M.M. and Ors. v. Kerala State Beverages (M&M) Corporation, Sasthamangalam and Another** [2013 (1) KHC 123] and it is argued that continuous engagement of a person with an artificial break-in is a device designed by some unscrupulous employers to keep on engaging persons without regularizing them thereby denying them the benefits of

regular employees. According to the learned counsel, the 1st and 3rd petitioners have been actually working under the 2nd respondent for the past 9 years and the 2nd petitioner for the past 5 years and there is absolutely no justification in denying maternity benefits to them for the reasons mentioned in Ext.P6 to P8.

10. Sri.P. Sreekumar, the learned Standing Counsel appearing for the KUHS and Smt. Anima, the learned Government Pleader, argued that neither under the provisions of the KSR nor under Ext.P4 order, would the petitioners be entitled for maternity benefits.

11. I have carefully considered the submissions advanced.

12. In **Municipal Corporation of Delhi v Female Workers (Muster Roll) and Another** [AIR 2000 SC 1274], the female workers (Muster roll) engaged by the Municipal Corporation of Delhi raised a demand for grant of maternity leave which was made available only to regular female workers but was denied to them on the ground that their services have not been regularised. While granting benefits to the petitioners therein, it was observed as follows in paragraphs Nos. 27 and 33 of the judgment.

> 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,

> especially 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.
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> 33. 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 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 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 realise the physical difficulties which a working woman would face in performing her duties at the workplace 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 victimised for forced absence during the pre-or post-natal period.

13. In the case on hand, originally the request for maternity benefit to the petitioners was rejected on the ground that maternity leave under Rule 100 and 101 of the KSR would be admissible to female officers appointed on a contract basis continuing on service beyond one year. In other words, female officers appointed on contract for a period of one year or less were not

eligible for maternity leave. However, in view of the law laid down by this Court in **Rakhi P.V.** (supra), the Government had a change of mind and they have come out with Ext.P4 order on 4.1.2021 by which the benefit of maternity leave on full pay as per Rule 100, Part I KSR has been granted up to a period of 180 days or till the expiry of the existing contract, irrespective of its tenure. However, in Ext.P4, the Government has inserted a caveat that no officer shall be entitled to the above benefits unless she has "actually" worked under the employer for a period of not less than 80 days immediately preceding her expected date of delivery or date of miscarriage.

14. I am of the view that the word "actually" has been consciously used in Exhibit P4 order. From Ext.P1 and P2 appointment orders itself, it is evident that the KUHS is working with minimum number of staff and it was when the same had adversely affected the workflow of the University that recommendations were obtained from the system manager and after reckoning the qualifications and the prior experience of the petitioners in the University that the Vice-Chancellor chose to accord sanction to appoint the petitioners as programmers. It is undisputed that the 1st and 3rd petitioners have been working under the 2nd respondent for the past 9 years and the 2nd petitioner for the past 5 years. What is stated by the Government in Ext.P4 is that in order to be eligible for the benefits, the employee should

have "actually" worked for a period of not less than 80 days immediately preceding her expected date of delivery or date of miscarriage. By employing the word "actually", the Government wanted to include persons such as the petitioners who have been working for years together. Furthermore, I have no doubt in my mind that the artificial break-in of two days inserted between successive contracts cannot be used as a device to deny the benefits to which the petitioners, as female officers, were entitled by way of maternity benefits. This was the view taken by this Court in the judgment dated 8.10.2018 in W.P.(C) No. 19296/2018 wherein this Court had held that the petitioners therein were allowed renewal based on their satisfactory service, the artificial break of one day is only to be ignored.

15. As held by the Apex Court, women 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 with all the facilities to which they are entitled. To become a mother is the most natural phenomenon in the life of a woman. The employer has to be considerate and sympathetic to the cause of the female officer and no action shall be taken to lower the dignity of the women employee in the workplace. The employer is to take all steps possible to ensure that they are

sympathetic to the cause of the female officer so that she can achieve her potential in the workplace and the time spent by her to deliver and raise her child shall not be detrimental to her career or her prospects. 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.

In view of the discussion above, the petitioners are entitled to succeed. The impugned orders insofar as it denies maternity benefits to the petitioners will stand quashed. There will be a direction to the respondent to forthwith calculate the maternity benefits to which the petitioners are entitled and to disburse the same expeditiously, in any event, within a period of two months from the date of receipt of a copy of this judgment.

Sd/-

RAJA VIJAYARAGHAVAN V,

JUDGE

ps/5/5/2022

APPENDIX OF WP(C) 26904/2021

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE APPOINTMENT ORDER OF THE FIRST PETITIONER DATED 30.06.2021.
Exhibit P2	TRUE COPY OF THE APPOINTMENT ORDER OF THE THIRD PETITIONER DATED 17.08.2021.
Exhibit P3	TRUE COPY OF THE COMMUNICATION ISSUED BY THE SECOND RESPONDENT DATED 29.03.2019.
Exhibit P4	TRUE COPY OF THE GO(P) 2/2021/FIN DATED 04.01.2021.
Exhibit P5	TRUE COPY OF THE REQUEST DATED 07.01.2021 SUBMITTED BY THE FIRST PETITIONER WITH TRANSLATION.
Exhibit P6	TRUE COPY OF THE MEMO DATED 30.10.2021 ISSUED TO THE FIRST PETITIONER.
Exhibit P7	TRUE COPY OF THE MEMO DATED 30.10.2021 ISSUED TO THE SECOND PETITIONER.
Exhibit P8	TRUE COPY OF THE MEMO DATED 30.10.2021 ISSUED TO THE THIRD PETITIONER.

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PS to Judge