



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

WEDNESDAY, THE 15TH DAY OF JULY 2026 / 24TH ASHADHA, 1948

WP(C) NO. 22702 OF 2022

PETITIONER:

NISHA JOSE
AGED 48 YEARS
NISHA JOSE, AGED 48, W/O. KURIAN FRANCIS, PADIKKALA
HOUSE, KORATH LANE, EAST FORT, THRISSUR DISTRICT,
KERALA - 680005.

BY ADVS.
SRI.M.R.VENUGOPAL
SMT.DHANYA P.ASHOKAN (SR.)
SRI.S. MUHAMMAD ALIKHAN

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
EDUCATION DEPARTMENT,
THIRUVANANTHAPURAM - 695001.
- 2 STATE PROJECT DIRECTOR - SSA
SAMAGRA SHIKSHA ABHIYAN (SSI), SSA BHAVAN,
NANDAVANAM.P.O, PALAYAM,
THIRUVANANTHAPURAM - 695014.
- 3 ADDL.R3. THE SECRETARY TO GOVERNMENT
FINANCE DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 4 ADDL.R4. THE DIRECTOR GENERAL OF EDUCATION,
DIRECTORATE OF GENERAL EDUCATION, JAGATHI,
THIRUVANANTHAPURAM



5 ADDL.R5. THE DIRECTOR OF HEALTH SERVICES
DIRECTORATE OF HEALTH SERVICE,
GENERAL HOSPITAL JUNCTION,
THIRUVANANTHAPURAM,

(ADDL.R3 TO R5 SUO MOTU IMPEADED AS PER ORDER DATED
7-10-2022 IN WP(C) 22702/2022).

SRI. BALAPRASANNAN -GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15.07.2026, ALONG WITH WP(C).5057/2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

WEDNESDAY, THE 15TH DAY OF JULY 2026 / 24TH ASHADHA, 1948

WP(C) NO. 5057 OF 2023

PETITIONER:

MOLY.P.C
AGED 51 YEARS
MANJILA HOUSE, P.O. MANNUTHY,
THRISSUR DISTRICT, KERALA, PIN - 680561

BY ADVS.
SRI.M.R.VENUGOPAL
SMT.DHANYA P.ASHOKAN (SR.)
SRI.S. MUHAMMAD ALIKHAN

RESPONDENTS:

- 1 THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT, FINANCE
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 2 THE DIRECTOR OF GENERAL EDUCATION
DIRECTORATE OF GENERAL EDUCATION, JAGATHI,
THIRUVANANTHAPURAM, PIN - 695014
- 3 THE STATE PROJECT DIRECTOR
SAMAGRA SHIKSHA ABHIYAN (SSI), SSA BHAVAN,
NANDAVANAM P.O, PALAYAM, THIRUVANANTHAPURAM,
PIN - 695014

SRI. BALAPRASANNAN, GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
15.07.2026, ALONG WITH WP(C).22702/2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**'C.R.'****JUDGMENT**

The petitioners in W.P.(C) Nos.22702 of 2022 and 5057 of 2023, are stated to be working as Special Educator (Secondary) with Samagra Shiksha Kerala on contract basis since 2011 and 2007, respectively. Petitioners had to undergo hysterectomy surgery, as evidenced by Ext.P2 discharge summaries. The petitioners, on the basis of Ext.P2 discharge summaries, as well as Ext.P3 medical certificates, which advised the petitioners to undergo rest for the periods 11.05.2022 to 10.06.2022 and 16.08.2022 to 29.09.2022, respectively, sought for medical leave in pursuance to Ext.P4 applications.

2. Pending decision on these applications, the petitioner in W.P.(C) No.22702 of 2022 was advised for another 15 days of rest, as evidenced by Ext.P5 medical certificate, on the basis of which, a second application



seeking leave for the afore period, as evidenced by Ext.P6, was submitted before the authorities.

3. The applications at Exts.P3 and P4 (in case of petitioner in W.P.(C) No.22702 of 2022 Exts.P5 and P6) were forwarded to the Government, for consideration. The petitioners have filed the captioned writ petitions at a point of time when the afore applications were not processed and disposed of by the Government, even on the face of Ext.P8 Government Order (Ext.P6 in W.P.(C) No.5057 of 2023) dated 04.02.2021, as per which, the benefit of "maternity leave" under Rule 100 as well as the leave under Rule 101 of Part I, Kerala Service Rules, 1959 (KSR) are extended to female officers, even when they are appointed on contract basis. During the pendency of the writ petitions, noticing the Government Order dated 04.02.2021, this Court issued an interim order dated 07.10.2022 in W.P.(C) No.22702 of 2022, also with reference to Note 4 under Rule 100, as well



as Note under Rule 2 to Appendix VIII of Part I KSR, directing the Government to come on record as to why the same benefit could not be extended as regards the claim under hysterectomy also. On that basis, an additional counter affidavit has also been filed dated 20.09.2022, essentially pointing out that the benefit under the Note in Rule 2 of Appendix VIII of Part I KSR as well as benefits under Rules 100 and 101, could not be extended to a claim under Rule 101A, since Rule 101A has not been made specifically applicable as regards the case of contractual appointment. On that basis, this Court has issued the second interim order in W.P.(C) No.22702 of 2022 dated 12.12.2022, noticing as under:-

"9. In view of the submission of the Government Pleader and taking note of the forceful submissions of Smt. P. Dhanya Ashokan, I am of the view that, as an interim measure, directions can be issued to the 1st respondent to advert to the contentions raised by the petitioner and take a



decision as to whether the benefit of Ext.P8 circular can be extended to claims under Rule 101A of Part I of the KSR. To enable the carrying out of such an exercise, the 2nd respondent shall forward the application submitted by the petitioner to the 1st respondent within ten days from the date of production of a copy of this order. The 1st respondent shall take a decision after adverting to all relevant aspects, including the observations and directions in an order dated 7.10.2022, and after affording an opportunity of being heard to the petitioner. Appropriate orders shall be passed expeditiously, in any event, within eight weeks from today.”

In the order dated 07.10.2022, this Court had categorically found that there is no rhyme or reason for not including a claim under Rule 101A while issuing Ext.P8 order. Thus, the Government was directed to consider the claim of the petitioners on the basis of the directions issued as above, with specific reference to the leave applications filed by the petitioners.

4. On the basis of the afore direction, the Government has issued Ext.P9 order dated 15.02.2023



(produced in W.P.(C) No.22702 of 2022), refusing to extend the benefit as sought by the petitioners, essentially for the reason that the benefits under the Note 4 of Rule 100 could not be claimed as regards the claim under Rule 101A. The Government also made reference to the Government Order at Ext.P8 and stated that the benefits are limited only with respect to the claim under Rules 100 and 101. The petitioners have therefore amended the writ petition seeking to challenge the order at Ext.P9.

5. I have heard Smt.Dhanya P. Ashokan, learned Senior Counsel instructed by Sri.Muhammad Alikhan, the learned counsel for the petitioners, as well as Sri.Balaprasannan, the learned Government Pleader for the respondents.

6. The short issue arising for consideration is as to whether the order at Ext.P9 could be sustained or not.

7. As already noticed the factual matters are not



in dispute. The claim made by the petitioners for leave on the basis of the medical certificates noticed as above have been rejected by Ext.P9, only for the reason that the benefits under the Note 4 to Rule 100 and the Note to Rule 2 of Appendix VIII of Part I KSR are not available in the case of hysterectomy. True, this Court also notices that the afore Note 4 under Rule 100 has been subsequently deleted with effect from 27.02.2018 onwards.

8. However, the larger issue arising for consideration is as to whether when the Government has extended the benefits under Rules 100 and 101, even with respect to a contractual employee, can such benefit be denied with respect to a claim under Rule 101A?.

9. This Court notices that a learned Single Judge of this Court in ***Rakhi P.V. and Others v. State of Kerala and Another [2018 (2) KLT 88]*** has



considered a claim made by the female employees admittedly working on contract basis under the State funded projects, who sought for the benefit of maternity leave under the provisions of the KSR. This Court, considering the afore, has categorically found as under:-

"8. I have considered the contentions advanced on either side. It is not in dispute that women employees directly employed by the Government would be entitled to 180 days of maternity leave, going by the provisions of the KSR. Employees in any establishment as provided in Maternity Benefit Act, 1961, i.e., employees of mines, factories or plantations and establishments where persons are employed for execution of acrobatic and other performances and employees of other establishments within the meaning of any law for the time being in force in relation to shops and establishments in the State would be entitled to maternity leave in terms of the Statutes and the orders in force.

9. The petitioners are also admittedly women employees working on a contract basis under state funded projects. The benefits of enhanced maternity leave to woman employees is undoubtedly a piece of



welfare legislation which is intended to give women equal opportunities in public employment. In the above view of the matter, the contention raised to the effect that the contract employees under the projects are entitled only to 90 days of maternity leave, according to me, cannot be countenanced, since it would amount to discrimination against woman employees only for the reason that they are engaged in projects in contractual capacities. The inalienable obligations of maternity should not and cannot be a reason to deny equal opportunities to woman employees. This precisely would be the result of limiting maternity leave to women employees, irrespective of the nature of their employment. The further contention to the effect that the contractual appointment of the petitioners have a duration of only one year and the grant of six months paid leave would obliterate the benefit to the project of the engagement is also not tenable because the petitioners are persons who are continuing in service on the basis of successive extension of contract. The contention therefore can have no application in the instant cases."

Thus, it has been found by this Court that the fruits of a beneficial legislation like the one at Rule 100 and Rule 101 requires to be given its full effect by extending



those benefits even to those contractual employees, who seek a maternity leave.

10. In the case at hand, this Court further notices that in tune with the principles laid down in the afore judgment, the Government has also come out with Ext.P8 Government Order seeking to extend the benefit of maternity leave to female officers appointed on contract basis, as laid down under Rules 100 and 101 of Part I KSR. In my opinion, when the afore benefits are being extended as regards the claim under Rules 100 and 101 to those female officers appointed on contract basis, there is no reason for not extending the very same benefits as regards the claim under Rule 101A.

11. The consideration made in the impugned order at Ext.P9, is also not in tune with the mandate under Ext.P8. Hence, in my opinion, Ext.P9 cannot be sustained. This is especially so, in view of the principles



laid down by this Court in ***Rakhi P.V.*** (*supra*).

11. The learned Government Pleader would however state that the case considered herein is not a case of hysterectomy, but a case of an operation requiring treatment for fibroids. But, ultimately, in the case of fibroid also, the hysterectomy has been carried out, as evidenced by the medical certificate at Ext.P5.

12. The provisions under Rule 101 provide for extending leave in cases of miscarriage including abortion. The provisions in Rule 101A at the same time, extend leave in case of hysterectomy. Therefore, when the benefit under Rule 101 is being extended to the contractual employees pursuant to Ext.P8 Government Order, there is no reason for denying the benefits under Rule 101A to contractual employees. This was specifically directed to be considered by the interim order of this Court dated 12.12.2022. However, the question has not been answered, taking into account



the extension of benefits under Rule 101 to contractual employees.

In such circumstances, I am of the opinion that the petitioners are entitled to succeed. Hence, Ext.P9 would stand set aside. There will be a direction to the Government to process the leave application submitted by the petitioners in tune with the declarations made as above. Orders as above to be issued as expeditiously as possible, at any rate, within a period of 16 weeks from today.

Sd/-

HARISANKAR V. MENON

JUDGE

AP



APPENDIX OF WP(C) NO. 22702 OF 2022

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE AGREEMENT DATED 02/04/2022 EXECUTED BY THE PETITIONER
Exhibit P2	TRUE COPY OF THE DISCHARGE SUMMARY DATED 13/05/2022 ISSUED FROM GEM HOSPITAL, PARAVATTANI
Exhibit P3	TRUE COPY OF THE MEDICAL CERTIFICATE DATED 20/05/2022 ISSUED BY DR. C.J. VARGHESE, GEM HOSPITAL
Exhibit P4	TRUE COPY OF THE LEAVE APPLICATION DATED 10/05/2022 SUBMITTED BY THE PETITIONER
Exhibit P5	TRUE COPY OF THE MEDICAL CERTIFICATE DATED 14/06/2022 ISSUED BY DR. C.J. VARGHESE, GEM HOSPITAL
Exhibit P6	TRUE COPY OF THE LEAVE APPLICATION DATED 13/06/2022 SUBMITTED BY THE PETITIONER
Exhibit P7	TRUE COPY OF THE FORWARDING NOTE DATED 07/06/2022 ISSUED FROM THE OFFICE OF THE BLOCK PROJECT CO-ORDINATOR
Exhibit P8	TRUE COPY OF THE GOP NO.2/2021/FIN DATED 4/01/2021 ISSUED BY THE GOVERNMENT OF KERALA IS PRODUCED HERewith AND MARKED AS EXHIBIT P8.
Exhibit P9	TRUE COPY OF THE ORDER G.O. (RT) NO. 1309/2023/GEDN DATED 15/02/2023 ISSUED BY THE 1ST RESPONDENT

RESPONDENT EXHIBITS

Exhibit R3(a)	TRUE COPY OF THE JUDGMENT DATED 1.6.2011 IN WP(C) 34614/2008.
Exhibit R3(b)	A TRUE COPY OF THE JUDGMENT DATED 2.2.2006 IN CIVIL APPEAL NO.933/2006.



APPENDIX OF WP(C) NO. 5057 OF 2023

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE AGREEMENT DATED 02/04/2022 EXECUTED BY THE PETITIONER
Exhibit P2	TRUE COPY OF THE DISCHARGE SUMMARY DATED 17/08/2022 ISSUED FROM CHANDRAMATHY AMMA MEMORIAL HOSPITAL, OLARIKKARA, THRISSUR
Exhibit P3	TRUE COPY OF THE MEDICAL CERTIFICATE DATED 16/08/2022 ISSUED BY DR.ANITA JAIDEV, CHANDRAMATHY AMMA MEMORIAL HOSPITAL, OLARIKKARA, THRISSUR
Exhibit P4	TRUE COPY OF THE LEAVE APPLICATION DATED 16/08/2022 SUBMITTED BY THE PETITIONER
Exhibit P5	TRUE COPY OF THE FORWARDING NOTE DATED 24/08/2022 ISSUED FROM THE OFFICE OF THE BLOCK PROJECT CO-ORDINATOR
Exhibit P6	TRUE COPY OF THE GOP NO.2/2021/FIN DATED 4/02/2021 ISSUED BY THE GOVERNMENT OF KERALA