

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5063 OF 2018

Ku. Shubhangini D/o. Krushnarao Hedao,
Aged about 34 years,
R/o. C/o. Rupesh Wasantrao Nimje,
R/o. Shiv Nagar,
Madhuratan Colony, Warud,
Tah. Warud, Distt. Amravati.

.... **PETITIONER**

// VERSUS //

- 1) Education Officer (Secondary),
Zilla Parishad, Amravati.
- 2) Headmaster,
Abhimanji Kalmegh High School,
Mangrulipeth,
Tahsil Warud, Distt. Amravati.

.... **RESPONDENTS**

Shri N. R. Saboo, Advocate for petitioner.
Shri A. A. Madiwale, A.G.P. for respondent No.1.
Shri Kuldeep Mahalle, Advocate for respondent No.2.

**CORAM : SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.**

DATED : 31.08.2021

ORAL JUDGMENT : (Per Sunil B. Shukre, J.)

1. Heard Shri Saboo, learned counsel for the petitioner, Shri A. A. Madiwale, learned A.G.P. for respondent No.1 and Shri Kuldeep Mahalle, learned counsel for respondent No.2.

2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. The grievance of the petitioner is that after having attained motherhood through surrogacy, she was entitled for grant of maternity leave but, it was denied to her. The claim of the petitioner for grant of maternity leave was for the period from 11.08.2015 to 10.02.2016. The Education Officer i.e. respondent No.1 refused to clear the salary bills of the petitioner for the aforesated period on the ground that the maternity leave sought by the petitioner was during the period which was not covered by the Government Resolution dated 20.01.2016. The Government Resolution dated 20.01.2016 permits maternity leave even to surrogate mothers, but with prospective effect.

4. The issue involved in this petition, as rightly submitted by learned counsel for the petitioner is squarely covered by the view taken by this Court in the case of *Dr. Mrs. Hema Vijay Menon Vs. State of Maharashtra and Ors., in Writ Petition No. 3288 of 2015*, decided on 22.07.2015. In this case, the Division Bench of this Court, relying upon Rule 74 of the Maharashtra Civil Services (Leave) Rules, 1981 (For short the “Rules, 1981”) has held that there is nothing in this Rule which would dis-entitle a woman, who has attained motherhood through the surrogacy procedure, to maternity leave. This Court further

found that even the Government Resolution dated 28.07.1995 permits maternity leave not only to a natural mother but also to an adoptive mother, who adopts a child on its birth. Therefore, this Court held that no distinction could be made between natural motherhood and surrogate motherhood.

5. We have no reason to disagree with the view taken by the Co-ordinate Bench of this Court. After-all, motherhood is motherhood whether it is natural or upon surrogacy. The anxiety, the burden and the labour pains are just the same for a surrogate mother who carries foetus of another couple, just as her own foetus. Rule 74 of the Rules, 1981 does not make any distinction between a surrogate mother, natural mother and adoptive mother. It treats all the mothers and their motherhood equally and with dignity. Therefore, it is a matter of surprise for us that respondent No.1, a responsible Officer in the field of Education, is labouring under confusion about the manner in which the mothers and their motherhood be treated under rule 74 of the Rules, 1981, which entitles all mothers, irrespective of their category, for maternity leave as long as they do not have three or more living children on the date of the application. In the present case, there is no dispute that the petitioner is otherwise eligible for availing of the maternity leave in terms of rule 74 of the Rules, 1981.

6. In view of above, we find that the refusal of respondent No.1 in clearing the pay bills of the petitioner for the period from 11.08.2015 to 10.02.2016 on the aforestated untenable ground is illegal and deserves to be quashed and set aside.

7. The Writ Petition is **allowed**.

8. It is directed that maternity leave from 11.08.2015 to 10.02.2016 be granted to the petitioner and consequently her pay bills for the said period be also cleared.

Rule accordingly. No costs.

(ANIL S. KILOR, J.)

(SUNIL B. SHUKRE J.)