DEEPIKA SINGH

v.

CENTRAL ADMINISTRATIVE TRIBUNAL AND OTHERS

(Civil Appeal No. 5308 of 2022)

AUGUST 16, 2022

[DR DHANANJAYA Y CHANDRACHUD AND A S BOPANNA, JJ.]

Service Law: Central Civil Services (Leave) Rules 1972: r. 43 – Maternity leave – Entitlement to – Female government servant-nursing officer applied for maternity leave on the birth of her first biological child when she had already taken the benefit of child care leave in respect of the two children born to her spouse from his first marriage – Rejected by the tribunal as also the High Court – On appeal, held: Independent of the grant of maternity leave, a woman is also entitled to the grant of child care leave for taking care of her two eldest surviving children whether for rearing or for looking after any of their needs, such as education, sickness and the like – Both maternity leave and child care leave constitute distinct entitlements – The fact that the nursing officer's spouse had two biological children from his first marriage would not impinge upon her entitlement to avail maternity leave for her sole biological child – Grant of child care leave to her cannot be used to disentitle her to maternity leave u/r. 43 – Unless a purposive interpretation were to be adopted, the object and intent of the grant of maternity leave would simply be defeated – Grant of maternity leave under the Rules of 1972 is intended to facilitate the continuance of women in the workplace – Child birth has to be construed in the context of employment as a natural incident of life and hence, the provisions for maternity leave must be construed in that perspective – Furthermore, the guardians and caretakers-mother and father, of children may change with remarriage, adoption, or fostering – Such atypical manifestations of the family unit are equally deserving not only of protection under law but also of the benefits available under social welfare legislation – On facts, the structure of the employee's family changed when she took on a parental role with respect to her spouse's biological children from his previous marriage – When courts are confronted with such situations, they would do well to

A *attempt to give effect to the purpose of the law in question rather than to prevent its application – Thus, the nursing officer was entitled to the grant of maternity leave – Judgment of the High Court and the tribunal is set aside.*

Allowing the appeal, the Court

B **HELD: 1.1 Under Article 15(3) of the Constitution, the State is empowered to enact beneficial provisions for advancing the interests of women. The right to reproduction and child rearing has been recognized as an important facet of a person's right to privacy, dignity and bodily integrity under Article 21. Article 42** C **enjoins the State to make provisions for securing just and humane conditions of work and for maternity relief. [Para 21][572-B-C]**

1.2 India has ratified to several international conventions of the United Nations. Article 25(2) of the UDHR provides that motherhood and childhood are entitled to special care and D **assistance. Article 11(2)(b) of CEDAW requires states "to introduce maternity leave with pay or comparable social benefits." In alignment with the Constitution as well as the treaties mentioned, Rule 43(1) of the Rules of 1972 contemplates the grant of maternity leave for a period of 180 days. Independent of the grant of maternity leave, a woman is also entitled to the grant** E **of child care leave for taking care of her two eldest surviving children whether for rearing or for looking after any of their needs, such as education, sickness and the like. Child care leave under Rule 43-C can be availed of not only at the point when the child is born but at any subsequent period as is evident from the** F **illustrative causes which are adverted to in the provisions. Both constitute distinct entitlements. [Paras 22, 23][572-D; 573-G-H; 574-A-B]**

1.3 The facts of the present case indicate that the spouse of the appellant had a prior marriage which had ended as a result G **of the death of his wife after which the appellant married him. The fact that the appellants spouse had two biological children from his first marriage would not impinge upon the entitlement of the appellant to avail maternity leave for her sole biological child. The fact that she was granted child care leave in respect of the two biological children born to her spouse from an earlier**

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marriage may be a matter on which a compassionate view was taken by the authorities at the relevant time. Gendered roles assigned to women and societal expectations mean that women are always pressed upon to take a disproportionate burden of childcare work. According to a "time-use survey conducted by the Organisation for Economic Co-operation and Development (OECD), women in India currently spend upto 352 minutes per day on unpaid work, 577% more than the time spent by men.12 Time spent in unpaid work includes childcare. In this context, the support of care work through benefits such as maternity leave, paternity leave, or child care leave (availed by both parents) by the state and other employers is essential. Although certain provisions of the Rules of 1972 have enabled women to enter the paid workforce, women continue to bear the primary responsibility for childcare. The grant of child care leave to the appellant cannot be used to disentitle her to maternity leave under Rule 43 of the Rules of 1972. [Para 24][574-C-F]

1.4 Unless a purposive interpretation were to be adopted in the present case, the object and intent of the grant of maternity leave would simply be defeated. The grant of maternity leave under Rules of 1972 is intended to facilitate the continuance of women in the workplace. It is a harsh reality that but for such provisions, many women would be compelled by social circumstances to give up work on the birth of a child, if they are not granted leave and other facilitative measures. No employer can perceive child birth as detracting from the purpose of employment. Child birth has to be construed in the context of employment as a natural incident of life and hence, the provisions for maternity leave must be construed in that perspective. [Para 25][574-G; 575-A]

1.5 The predominant understanding of the concept of a "family" both in the law and in society is that it consists of a single, unchanging unit with a mother and a father (who remain constant over time) and their children. This assumption ignores both, the many circumstances which may lead to a change in one s familial structure, and the fact that many families do not conform to this expectation to begin with. Familial relationships may take

the form of domestic, unmarried partnerships or queer relationships. A household may be a single parent household for any number of reasons, including the death of a spouse, separation, or divorce. Similarly, the guardians and caretakers (who traditionally occupy the roles of the "mother" and the "father") of children may change with remarriage, adoption, or fostering. These manifestations of love and of families may not be typical but they are as real as their traditional counterparts. Such atypical manifestations of the family unit are equally deserving not only of protection under law but also of the benefits available under social welfare legislation. The black letter of the law must not be relied upon to disadvantage families which are different from traditional ones. The same holds true for women who take on the role of motherhood in ways that may not find a place in the popular imagination. [Para 26][575-B-E]

1.6 The structure of the appellants family changed when she took on a parental role with respect to her spouse s biological children from his previous marriage. When the appellant applied to PGIMER for maternity leave, PGIMER was faced with facts that the law may not have envisaged or adequately accounted for. When courts are confronted with such situations, they would do well to attempt to give effect to the purpose of the law in question rather than to prevent its application. [Para 27][575-F]

1.7 The appellant was entitled to the grant of maternity leave. The communication of the third respondent denying her the entitlement was contrary to the provisions of Rule 43. The impugned judgment of the High Court and the judgment of the CAT is set aside. The appellant shall be granted maternity leave under Rule 43. [Para 28][575-G-H; 576-A]

KH Nazar v. Mathew K Jacob **(2020) 14 SCC 126 : [2019] 14 SCR 928;** *Badshah v. Urmila Badshah Godse* **(2014) 1 SCC 188 : [2013] 10 SCR 259;** *Municipal Corporation of Delhi v. Female Workers (Muster Roll)* **(2000) 3 SCC 224 : [2000] 2 SCR 171;** *Justice K.S. Puttaswamy (Retd.) v. Union of India* **(2017) 10 SCC 1 : [2017] 10 SCR 569;** *Suchita Srivastava v. Chandigarh*

Administration **(2009) 9 SCC 1 : [2009] 13 SCR 989 – referred to.**

Organisation for Economic Co-operation and Development, 'Time-Use' (OECD Stat) <https://stats.oecd.org/Index.aspx? datasetcode = TIME_USE#> accessed 22 August 2022 – referred to.

Case Law Reference

[2019] 14 SCR 928	**referred to**	**Para 15**
[2013] 10 SCR 259	**referred to**	**Para 16**
[2000] 2 SCR 171	**referred to**	**Para 20**
[2017] 10 SCR 569	**referred to**	**Para 21**
[2009] 13 SCR 989	**referred to**	**Para 21**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5308 of 2022.

From the Judgment and Order dated 16.03.2021 of the High Court of Punjab and Haryana at Chandigarh in CWP No. 3460 of 2021.

Akshay Verma, Ms. Sushma Verma, Ms. Savita Dhanda, Advs. for the Appellant.

Vikramjit Banerjee, ASG, Gurmeet Singh Makker, Ms. Alka Agarwal, Anmol Chandan, Anukalp Jain, Amit Sharma, Anirudh Sharma, Sudarshan Rajan, Mahesh Kumar, Ramesh Rawat, Hitain Bajaj, Rohit Bhardwaj, Ashutosh Gupta, Advs. for the Respondents.

The Judgment of the Court was delivered by

DR DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

2. This appeal arises from a judgment dated 16 March 2021 of a Division Bench of the High Court of Punjab and Haryana.

3. The appellant was, at the material time, working on the post of Nursing Officer in the Post Graduate Institute of Medical Education and Research[1] at Chandigarh since her appointment on 25 November 2005. On 18 February 2014, the appellant married Amir Singh. The spouse

[1] "PGIMER"

A of the appellant was married before his marriage to the appellant, but his former wife passed away on 16 February 2013. From his first marriage, he has two children, a male child born on 1 February 2001 and a female child born on 3 March 2005. The appellant filed an application on 4 May 2015, requesting the authorities at PGIMER to enter the names of the two children born from the first marriage of her spouse in the official service record.

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4. The appellant had her first biological child on 4 June 2019 from her marriage. On 6 June 2019, she applied for maternity leave for the period from 27 June 2019 to 23 December 2019 in terms of Rule 43 of the Central Civil Services (Leave) Rules 1972.[2] The authorities at PGIMER sought a clarification on 3 July 2019 regarding the fact that the spouse of the appellant had two surviving children from his first marriage. The appellant submitted a detailed reply on 24 July 2019. The request of the appellant for the grant of maternity leave was rejected on 3 September 2019 on the ground that she had two surviving children and had availed of child care leave earlier for the two children born from the first marriage of her spouse. Consequently, maternity leave for the child borne by her, considered as her third child, was found to be inadmissible in terms of the Rules of 1972. By an office order dated 21 January 2020, her leave for the period from 30 May 2019 to 3 June 2019; 4 June 2019 to 27 October 2019; 27 October 2019 to 6 November 2019; and 7 November 2019 to 31 November 2019 was treated as earned leave, medical leave, half pay leave, and extraordinary leave respectively. The period of extraordinary leave was not counted towards increments in the scale of Rs. 9300-34800 under FR-26(ii) of the Fundamental Rules, Volume-I.

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5. Aggrieved by the decisions dated 3 September 2019 and 21 January 2020 of the administrative authorities at PGIMER, the appellant moved the Central Administrative Tribunal[3] at its Chandigarh Bench in OA No 155 of 2020. By a judgment dated 29 January 2021, the Central Administrative Tribunal dismissed the OA, holding:

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> "10. [ ] It is, thus, clear that the maternity leave can be granted to a female government servant only if she has less than two surviving children. As per her own request, the applicant has already shown her two children from the first marriage of her husband as her

[2] "Rules of 1972"

H [3] "CAT"

children and she has been availing benefit in their respect on many occasions earlier and subsequent to her marriage. Therefore, for all practical purposes and as far as respondent department is concerned, she has already two surviving children and she is taking benefit for them from the respondent department by way of Child Care Leave and other benefits.

11. In view of the above, any child born to her now will be considered only as a third child and cannot be taken as the first child. It may be true that Viren Partap Singh is first child born to her after her first pregnancy with her husband. But, of her own choice, the applicant has already got the names of other two children from her husband's first marriage entered in the record of the office as her children and is availing benefits on their behalf including Child Care Leave. The Rule position is clear and for all practical purposes, the applicant has two surviving children. As such, any child born to her now can only be considered as third child.

12. In view of the above, the decision of the respondents to reject her maternity leave is correct even though it may be first maternity for the applicant herself"

6. The appellant moved the High Court in a writ petition[4] under Article 226 of the Constitution, calling into question the judgment of the Tribunal, resulting in the impugned judgment. By the impugned judgment and order dated 16 March 2021, the High Court dismissed the petition on the ground that there is no perversity or illegality in the judgment of the CAT. The High Court held:

"12. A bare perusal of the aforesaid rule would reveal that maternity leave can be granted to a female Government servant only if she has less than two surviving children. Though, the petitioner is not the biological mother of the two children born from the first wedlock of her husband, she cannot deny the fact that now she is the mother of them also after having married to Amar Singh. In this way, the petitioner has already two surviving children. Not only this, she has also availed CCL for them from the respondent Department. In this view of the matter, any child born to her is to be considered as a third child. We are of the considered view that the CAT has rightly observed in the impugned order that "....for

[4] CWP No 3460 of 2021

all practical purposes, the applicant has two surviving children. As such, any child born to her now can only be considered as a third child."

7. Child care leave is provided under Rule 43-C. Rule 43-C is extracted below:

"43-(C). **Child Care Leave**

(1) A woman Government servant having minor children below the age of eighteen years and who has no earned leave at her credit, may be granted child care leave by an authority competent to grant leave, for a maximum period of two years, i.e., 730 days during the entire service for taking care of upto two children whether for rearing or to look after any of their needs like examination, sickness, etc.

(2) During the period of child care leave, she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

(3) Child care leave may be combined with Leave of any other kind.

(4) Notwithstanding the requirement of production of medical certificate contained in sub-rule (1) of rule 30 or sub-rule (1) of rule 31, leave of the kind due and admissible (including commuted leave not exceeding 60 days and leave not due) upto a maximum of one year, if applied for, be granted in continuation with child care leave granted under sub-rule (1).

(5) Child care leave may be availed of in more than one spell.

(6) Child care leave shall not be debited against the leave account."

8. The High Court opined that since the appellant had availed of child care leave in respect of the biological children of her spouse born from his first marriage, she would be disentitled to the grant of maternity leave. After her marriage to Amar Singh, she was considered to have two surviving children. The High Court found that she therefore did not meet the requirement of sub-rule (1) of Rule 43 of having less than two surviving children for the purpose of being granted maternity leave.

9. Notice was issued in these proceedings on 1 July 2021. In pursuance of the order issuing notice, the respondents have entered appearance and have filed a counter affidavit.

10. We have heard Mr Akshay Verma, learned counsel appearing on behalf of the appellant and Mr Sudarshan Rajan, learned counsel appearing for the second, third and fourth respondents.

11. The case of the appellant is that the maternity leave was sought by her on the birth of her first biological child and the fact that there are two children of her spouse born from an earlier marriage would not disentitle her under Rule 43 of the Rules of 1972. Counsel for the appellant submitted that though the appellant had availed of child care leave in respect of her step children, this leave is distinct from maternity leave.

12. The contention of the respondents is that having taken the benefit of child care leave in respect of the two children born to the spouse of the appellant from his first marriage, the appellant was not entitled to maternity leave in respect of the birth of her own biological child. The appellant was, in the submission of the respondents, disentitled to maternity leave on the ground that she had two surviving children, in terms of Rule 43 of the Rules of 1972.

13. The significant issue which falls for determination in the appeal turns on the interpretation of Rule 43 of the Rules of 1972. The Central Civil Services (Leave) Rules 1972 have been framed under the proviso to Article 309 of the Constitution. Rule 43 is extracted below:

> "43. **Maternity Leave**
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> (1) A female Government servant (including an apprentice) with less than two surviving children may be granted maternity leave by an authority competent to grant leave for a period of (180 days) from the date of its commencement.
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> (2) During such period, she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.
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> NOTE:- In the case of a person to whom Employees State Insurance Act, 1948 (34 of 1948), applies, the amount of leave salary payable under this rule shall be reduced by the amount of benefit payable under the said Act for the corresponding period.
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> (3) Maternity leave not exceeding 45 days may also be granted to a female Government servant (irrespective of the number of surviving children) during the entire service of that female Government servant in case of miscarriage including abortion on production of medical certificate as laid down in Rule 19:

A Provided that the maternity leave granted and availed of before the commencement of the CCS (Leave) Amendment Rules, 1995, shall not be taken into account for the purpose of this sub- rule.

(4)(a) Maternity leave may be combined with leave of any other kind.

B (b) Notwithstanding the requirement of production of medical certificate contained in sub-rule (1) of Rule 30 or sub-rule (1) of Rule 31, leave of the kind due and admissible (including commuted leave for a period not exceeding 60 days and leave not due) up to a maximum of two years may, if applied for, be granted in C continuation of maternity leave granted under sub-rule (1).

(5) Maternity leave shall not be debited against the leave account."

14. The marginal note to Rule 43 is titled „maternity leave. Sub-rule (1) stipulates that a female government servant with less than two surviving children would be granted maternity leave for a period of 180 D days from the date of its commencement. Sub-rule (2) stipulates that during the period of maternity leave, the employee is entitled to leave salary equal to the pay drawn immediately before proceeding on leave. Sub- rule (3) stipulates that maternity leave not exceeding 45 days may also be granted to a female government servant, irrespective of the E number of surviving children, during the entire service in case of a miscarriage including an abortion on production of a medical certificate. Sub-rule (4) stipulates that maternity leave is capable of being combined with leave of any other kind.

15. The provisions of Rule 43(1) must be imbued with a purposive F construction. In **KH Nazar** v. **Mathew K Jacob**,[5] this Court noted that beneficial legislation must be given a liberal approach:

"11. Provisions of a beneficial legislation have to be construed with a purpose-oriented approach. The Act should receive a liberal construction to promote its objects. Also, literal construction of G the provisions of a beneficial legislation has to be avoided. It is the court's duty to discern the intention of the legislature in making the law. Once such an intention is ascertained, the statute should receive a purposeful or functional interpretation

H [5] (2020) 14 SCC 126

12. In the words of O. Chinnappa Reddy, J., the principles of statutory construction of beneficial legislation are as follows: (*Workmen case*, SCC p. 76, para 4)

> "*4*. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as 'social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the "colour", the "content" and the "context" of such statutes (we have borrowed the words from Lord Wilberforce's opinion
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> in *Prenn* v. *Simmonds* [*Prenn* v. *Simmonds*, (1971) 1 WLR 1381 : (1971) 3 All ER 237 (HL)]).
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> In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surendra Kumar Verma* v. *Central Govt. Industrial Tribunal- cum-Labour Court* , we had occasion to say : (*Surendra Kumar Verma case*, SCC p. 447, para 6)
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> '*6*. … Semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions.'"
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> 13. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified and then a construction that suppresses the problem and advances the remedy should be adopted."

16. In **Badshah** v. **Urmila Badshah Godse**,[6] a two-judge Bench of this Court comprising AK Sikri and Ranjana Desai, JJ. ruled that

[6] (2014) 1 SCC 188

courts must bridge the gap between law and society through the use of purposive interpretation, where applicable:

> "13.3. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125 CrPC. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. **Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society**.
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> 14. Of late, in this very direction, it is emphasised that the courts have to adopt different approaches in "social justice adjudication", which is also known as "social context adjudication" as mere "adversarial approach" may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:
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> "It is, therefore, respectfully submitted that **'social context judging' is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice.** Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the Judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication." [Keynote address on "Legal Education in Social Context" delivered at National Law University, Jodhpur

on October 12, 2005, available on http://web.archive.org/web/20061210031743/http:/www.nlujodhp ur.ac.in/ceireports.htm [last visited on 25-12-2013]] A

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16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. **The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too.** Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. **In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.**" B C D

(emphasis supplied) E

17. For the purpose of adopting an approach which furthers legislative policy, it would be appropriate to derive some guidance from the provisions of the Maternity Benefit Act 1961[7] though, it must be stated at the outset that the Act *per se* has no application to the PGIMER as an establishment. Nonetheless, the provisions of the Act of 1961 are indicative of the object and intent of Parliament in enacting a cognate legislation on the subject. F

18. Section 3(c) of the Maternity Benefit Act of 1961 defines the expression „delivery to mean the birth of a child. Section 5 provides for the right to payment of maternity benefit. Section 5 is extracted in its entirety below: G

"5. **Right to payment of maternity benefit.–** (1) Subject to the provisions of this Act, every woman shall be entitled to, and her

[7] "Act of 1961" H

A employer shall be liable for, the payment of maternity benefit at the rate of the 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.

B *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 (11 of 1948), or ten rupees, whichever is the highest.

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(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:

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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.

E *Explanation.*– For the purpose of calculating under the sub- section the days 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.

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(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the date of her expected delivery:

G Provided that the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery:

Provided further 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:

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Provided also 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 that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.

(4) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

(5) In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree."

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 Act of 1961 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 **Municipal Corporation of Delhi** v. **Female Workers (Muster Roll)**,[8] 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[9] and Article 11 of the Convention on

[8] 2000 (3) SCC 224
[9] "UDHR"

A the Elimination of All Forms of Discrimination Against Women[10] to extend benefits under the Act of 1961 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.

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21. Under Article 15(3) of the Constitution, the State is empowered to enact beneficial provisions for advancing the interests of women. The right to reproduction and child rearing has been recognized as an important facet of a person s right to privacy, dignity and bodily integrity under Article 21.[11] Article 42 enjoins the State to make provisions for

C securing just and humane conditions of work and for maternity relief.

22. In this context, regard may also be had to several international conventions of the United Nations that India has ratified. Article 25(2) of the UDHR provides that motherhood and childhood are entitled to special care and assistance. Article 11(2)(b) of CEDAW requires states

D "to introduce maternity leave with pay or comparable social benefits." The relevant provision of Article 11 of CEDAW states that:

"**Article 11**:

1. States Parties shall take all appropriate measures to eliminate

E discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the

F application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining,

G including apprenticeships, advanced vocational training and recurrent training;

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[10] "CEDAW"

[11] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1; Suchita Srivastava

H v. Chandigarh Administration (2009) 9 SCC 1

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary."

(emphasis supplied)

23. In alignment with the Constitution as well as the treaties mentioned above, Rule 43(1) of the Rules of 1972 contemplates the grant of maternity leave for a period of 180 days. Independent of the grant of maternity leave, a woman is also entitled to the grant of child

A care leave for taking care of her two eldest surviving children whether for rearing or for looking after any of their needs, such as education, sickness and the like. Child care leave under Rule 43-C can be availed of not only at the point when the child is born but at any subsequent period as is evident from the illustrative causes which are adverted to in the provisions, which have been extracted in the earlier part of the B judgment. Both constitute distinct entitlements.

24. The facts of the present case indicate that the spouse of the appellant had a prior marriage which had ended as a result of the death of his wife after which the appellant married him. The fact that the appellant s spouse had two biological children from his first marriage C would not impinge upon the entitlement of the appellant to avail maternity leave for her sole biological child. The fact that she was granted child care leave in respect of the two biological children born to her spouse from an earlier marriage may be a matter on which a compassionate view was taken by the authorities at the relevant time. Gendered roles D assigned to women and societal expectations mean that women are always pressed upon to take a disproportionate burden of childcare work. According to a 'time-use' survey conducted by the Organisation for Economic Co-operation and Development (OECD), women in India currently spend upto 352 minutes per day on unpaid work, 577% more than the time spent by men.[12] Time spent in unpaid work includes E childcare. In this context, the support of care work through benefits such as maternity leave, paternity leave, or child care leave (availed by both parents) by the state and other employers is essential. Although certain provisions of the Rules of 1972 have enabled women to enter the paid workforce, women continue to bear the primary responsibility for F childcare. The grant of child care leave to the appellant cannot be used to disentitle her to maternity leave under Rule 43 of the Rules of 1972.

25. Unless a purposive interpretation were to be adopted in the present case, the object and intent of the grant of maternity leave would simply be defeated. The grant of maternity leave under Rules of 1972 is G intended to facilitate the continuance of women in the workplace. It is a harsh reality that but for such provisions, many women would be compelled by social circumstances to give up work on the birth of a

[12] Organisation for Economic Co-operation and Development, 'Time-Use' (*OECD Stat*) <https://stats.oecd.org/Index.aspx?datasetcode=TIME_USE#> accessed 22 August H 2022

child, if they are not granted leave and other facilitative measures. No employer can perceive child birth as detracting from the purpose of employment. Child birth has to be construed in the context of employment as a natural incident of life and hence, the provisions for maternity leave must be construed in that perspective.

26. The predominant understanding of the concept of a "family" both in the law and in society is that it consists of a single, unchanging unit with a mother and a father (who remain constant over time) and their children. This assumption ignores both, the many circumstances which may lead to a change in one s familial structure, and the fact that many families do not conform to this expectation to begin with. Familial relationships may take the form of domestic, unmarried partnerships or queer relationships. A household may be a single parent household for any number of reasons, including the death of a spouse, separation, or divorce. Similarly, the guardians and caretakers (who traditionally occupy the roles of the "mother" and the "father") of children may change with remarriage, adoption, or fostering. These manifestations of love and of families may not be typical but they are as real as their traditional counterparts. Such atypical manifestations of the family unit are equally deserving not only of protection under law but also of the benefits available under social welfare legislation. The black letter of the law must not be relied upon to disadvantage families which are different from traditional ones. The same undoubtedly holds true for women who take on the role of motherhood in ways that may not find a place in the popular imagination.

27. The facts of the present case, too, indicate that the structure of the appellant's family changed when she took on a parental role with respect to her spouses biological children from his previous marriage. When the appellant applied to PGIMER for maternity leave, PGIMER was faced with facts that the law may not have envisaged or adequately accounted for. When courts are confronted with such situations, they would do well to attempt to give effect to the purpose of the law in question rather than to prevent its application.

28. For the above reasons, we hold that the appellant was entitled to the grant of maternity leave. The communication of the third respondent denying her the entitlement was contrary to the provisions of Rule 43. We accordingly set aside the impugned judgment of the High Court dated 16 March 2021 and the judgment of the CAT dated 29 January 2021. The OA filed by the appellant shall in consequence

A stand allowed and the appellant shall be granted maternity leave under Rule 43 in terms of the present judgment. The benefits which are admissible to the appellant shall be released to her within a period of two months from the date of this order.

29. The appeal is accordingly allowed.

B 30. Pending applications, if any, stand disposed of.

Nidhi Jain Appeal allowed.