**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 483 OF 2025**

Dhanashri Ramesh Karkhanis
Adult, Indian Inhabitant,
Occupation: Doctor (Anesthesiologist)
Assistant Professor at Seth G.S. Medical College
And K.E.M Hospital,
Residing at 1101, Laxmi Niwas, Ram
Maruti Road, Dadar (West), Mumbai 400028 ...Petitioner

**Versus**

1. Municipal Corporation of Greater Mumbai,
A Body Corporate and Planning Authority
established under the Mumbai Municipal
Corporation Act, 1888,
through its Legal Department
Having address at Mahapalika Building,
Mahapalika Marg, CST, Mumbai 400001.

2. Seth G.S. Medical College and K.E.M.
Hospital, through its Dean,
A Hospital and Medical College operated,
administered and managed by the Municipal
Corporation of Greater Mumbai situated
at Acharya Donde Marg, Parel, Mumbai 400012.

3. State of Maharashtra
Through the office of Government
Pleader, (original Side), High Court,
Bombay. ...Respondents

**WITH**
**INTERIM APPLICATION NO. 812 OF 2025**
**IN**
**WRIT PETITION NO. 483 OF 2025**

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Mr. Subit Chakrabarti, a/w Ms. Chaitrika Patki, Ms. Khushnumah Banerjee and Ms. Aashka Vora i/b. Vidhii Partners for the Petitioner.
Mr. Chaitanya Chavan, a/w Ms. Rupali Adhate, i/b Ms. Komal Punjabi for Respondent Nos.1 & 2-BMC.



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Mr. Himnashu Takke, AGP a/w Mr. Manish Upadhye, AGP for Respondent No. 3.
Dr. Harish Pathak, Dean, K.E.M. Hospital is present.

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**CORAM : R. I. CHAGLA AND ADVAIT M. SETHNA, JJ.**

**RESERVED ON : 12 FEBRUARY, 2026**
**PRONOUNCED ON : 27 FEBRUARY, 2026**

**JUDGMENT:- (PER ADVAIT M. SETHNA, J.)**

**1.** Rule. Rule made returnable forthwith with the consent of parties. The Petitioner has filed this Petition under Article 226 of the Constitution of India seeking the following substantive reliefs:-

> *"a) This Hon'ble Court be pleased to issue a writ of Certiorari or any other writ, order, direction in the nature of Certiorari, under Article 226 of the Constitution of India, calling for the records and proceedings in respect of the impugned communication dated 21st October 2024 (received on 22nd October 2024) [**Exhibit-H**] and after going through the legality, validity and propriety thereof, be pleased to quash and set aside the same;*
>
> *b) That this Hon'ble Court may be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction in the nature of Mandamus, under Article 226 of the Constitution of India, thereby directing the Respondent Nos. 1 and 2 to extend all benefits under the Maternity Benefit Act 1961 to the Petitioner forthwith."*

**2.** Apropos the above, we are in the present proceedings, called upon to examine and adjudicate a case of the Petitioner being a doctor and practicing anesthesiologist engaged as an Assistant Professor on contractual basis with Seth G. S. Medical College and K.E.M. Hospital (Respondent No.2), operating under the aegis of Municipal Corporation of Greater Mumbai (Respondent No.1). The Petitioner is fundamentally aggrieved by



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an impugned communication dated 21 October 2024 (**"Impugned Communication"** for short) by which the Respondent No. 2 refused the grant of maternity benefits in favour of the Petitioner. The reason as stated being that such benefits would not be available to contractual employees of the Respondent No. 1 – Corporation. Such rejection of the grant of maternity benefits to the Petitioner is to be tested under the canopy of the Maternity Benefit Act, 1961 ("**the said Act**" for short). We are dealing with a legislation which is enacted with an avowed object to guarantee maternity benefits to working women. The preamble to the said Act provides for regulation of employment of women in certain establishments with provisions for extending maternity benefits to them. The statutory provisions engrafted under the said Act ought to be read in light of such object and purpose sought to be achieved so as to ensure fair and judicious implementation of the said Act and its provisions. It is in such conspectus that we would be delving into the validity and legality of the Respondent's action in denying maternity benefits to the Petitioner.

**Factual Matrix:-**

**3.** The Petitioner was engaged as an Assistant Professor on contractual basis in the Department of Anaesthesia with Respondent No. 2 with effect from 4 January 2022 until 30 June 2022. By an office order dated 15 July 2022, the appointment of the Petitioner (supra) was continued until 30 June 2023. Such appointment of the Petitioner with the second Respondent



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was further continued by an office order dated 27 June 2023 until 30 June 2024. This was followed by an another office order dated 26 June 2024 which further continued the Petitioner's contractual employment until 30 June 2025.

**4.** An agreement was executed between Municipal Corporation of Greater Mumbai i.e. the first Respondent, represented by the Dean of Seth G. S. Medical College and K.E.M. Hospital i.e. the second Respondent and the Petitioner on 12 August 2024, duly recording the terms and conditions of her last extended appointment including the payment terms and her non-entitlement for holidays/vacation as available under the Service Rules applicable to permanent and regular employees of the Corporation.

**5.** The Petitioner by an application dated 20 August 2024 made a request in writing to the Dean of the second Respondent to make appropriate provisions for her maternity leave, in terms of the provisions of the said Act. By such application, she requested to sanction six months maternity leave in her favour.

**6.** To the above correspondence, the second Respondent responded by a letter dated 6 September 2024 to the Petitioner's initial application dated 20 August 2024, *inter alia*, stating that the exact leave period is not mentioned in such application of the Petitioner.

**7.** It is on 20 September 2024 that the Petitioner completed 80 (eighty) days of employment from the date of commencement of her last



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employment renewal i.e. from 2 July 2024 and before the date of her expected delivery as required under Section 5(2) of the said Act.

**8.** The Petitioner submitted another application addressed to the Dean of the second Respondent for maternity leave on 7 October 2024 for the grant and sanction of maternity leave in her favour in terms of the timelines and applicable provisions stipulated under the said Act.

**9.** The second Respondent issued the Impugned Communication dated 21 October 2024 refusing the grant of maternity benefits to the Petitioner. The main reason as stated being that such benefits would not be available to contractual employees of the first and second Respondent as the Brihanmumbai Municipal Corporation Service Rules are not applicable to them. It is this communication that is challenged in the present Petition.

**10.** Aggrieved by the rejection vide the Impugned Communication, the Petitioner submitted a notice dated 23 October 2024 issued by her under the said Act seeking the following:-

(a) 6 (six) weeks pre-delivery leave with pay out of permissible 8 weeks pre-delivery leave with pay as per Section 5(3) of the said Act.

(b) 20 (twenty) weeks delivery and post delivery leave with pay considering 15 November 2024 being the expected date of her delivery, in terms of Section 4(2) read with Section 5(3) of the said Act.

**11.** A coordinate Bench of this Court on 5 November 2024 passed an



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order during vacation period, *inter alia,* recording the statement on behalf of Respondent Nos. 1 and 2 that no further steps would be taken in respect of the Impugned Communication, until the next date of hearing.

**12.** It is on 7 November 2024 that the Petitioner delivered her child.

**13.** The Petitioner submitted another notice dated 18 December 2024 under Section 6(5) of the said Act giving intimation and requisite evidence regarding the birth of her child and the maternity benefits in the form of payments contemplated under Section 5 and Section 6(5) of the said Act, to be released in her favour.

**14.** The Petitioner on 7 April 2025 reported to the Head of Department of Anesthesiology at Respondent No. 2 and submitted a written request for resuming work considering her situation of being a nursing mother while assignment/allotting work to her.

**15.** The Petitioner addressed a letter dated 8 April 2025 to the Head/Dean of second Respondent informing them in writing of her intention to resign, for the reasons stated therein which was duly received and endorsed by the second Respondent on 15 April 2025. The Petitioner on 6 May 2025 submitted a formal resignation letter to be effective from 8 April 2025 requesting the second Respondent to release her from her duties for the remainder of her contractual period. This, *inter alia,* considering the fact that there was no creche or nursing/feeding room facilities at the hospital premises of the Respondent No.2 and no assurance or estimate was



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provided to her regarding the exact duty hours and/or fixed nursing breaks.

**16.** By a communication dated 20 June 2025 addressed by the Dean of the second Respondent to the Petitioner, it was intimated to the Petitioner that the first Respondent had no policy to deny maternity leave benefits to contractual female employees/doctors. Prior to the said communication, a coordinate Bench of this Court on 18 June 2025 had orally directed the Respondents to consider the Petitioner's case, *inter alia*, for the grant of maternity leave benefits.

**17.** A coordinate Bench of this Court vide order dated 23 June 2025, *inter alia*, recorded the statement on behalf of the first Respondent that they have agreed in principle to grant the benefits to the Petitioner to which she is entitled under the said Act. To process such payment, time was sought by the learned counsel appearing for the first Respondent. Accordingly, considering such approach of the first Respondent as reasonable/appropriate, the matter was stood over for two weeks. Thereafter, a coordinate Bench of this Court again heard this matter on 8 July 2025. By an order of the said date, this Court, on the request made on behalf of the first Respondent granted two weeks of further time to them for processing the payments to be made to the Petitioner. Expressing that a positive outcome would follow, the proceedings were directed to be listed for compliance on 11 August 2025. Pursuant thereto, this Petition was listed for hearing but could not be taken up due to paucity of time. The said



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Petition was then listed on 12 February 2026 before this Bench, when the matter was heard and reserved for orders.

**18.** This is how the Petitioner has approached this Court challenging the actions of the Respondents leading to the Impugned Communication.

**Rival Contentions**

**A) Submissions on behalf of the Petitioner:-**

**19.** Mr. Subit Chakrabarti, learned counsel for the Petitioner would urge that the Petitioner is illegally deprived and denied of her rightful benefits as provided under the said Act. The refusal/rejection by the Respondents of the benefits that she is rightly and statutorily entitled to, has compelled her to approach this Court under Article 226 of the Constitution of India.

**20.** Mr. Chakrabarti would place due reliance, firstly, on Sections 5(1), 5(2) and 5(3) of the said Act. This is to submit that the Petitioner has, undisputedly, fulfilled the qualifying criteria to be entitled to the maternity benefits under the said Act. This is so because the Petitioner has duly worked for the prescribed period of 80 days in the preceding 12 months with the second Respondent i.e. from her last contractual renewal on 2 July 2025 in the present case, to 7 October 2024 i.e. the date of her application for maternity leave, after which she proceeded on leave. Thus under the said provision, she is entitled to claim the maternity benefits under the said Act.

**21.** Mr. Chakrabarti would then refer to Section 27 of the said Act. He



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would place due emphasis on the opening non obstante clause contained in the said provision which contains the expression 'agreement or contract of service'. Relying on a plain reading and interpretation of the said statutory provision, he would submit that principal objection taken by the Respondents for rejecting/refusing the claim of the Petitioner for benefits under the said Act, on the ground that the same cannot be conferred to contractual employees, is completely misplaced and contrary to the said statutory provision. Therefore, considering such clear language and intent of the said Section, the basis of the Impugned Communication is completely contrary to the scheme, intent and purpose of the said Act.

**22.** Mr. Chakrabarti would strenuously urge that this is a Petitioner who by her initial application dated 20 August 2024 for the grant of maternity leave followed by an application dated 7 October 2024 had always kept the Respondents in loop of her medical condition including the expected date of her pregnancy, more particularly set out in her application dated 7 October 2024. In view thereof, the Petitioner can never be accused of any suppression in the given facts and circumstances as she had, at all times, disclosed her condition to the Respondents, including the expected date of her delivery. Therefore, Mr. Chakrabarti would vehemently contend that the objection taken by the Respondents alleging suppression and non disclosure of material and relevant facts is incorrect and contrary to the record.

**23.** Mr. Chakrabarti would next place reliance on Section 6(5) of the said



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Act which deals with payment for pre-delivery period to be made in advance upon furnishing a proof of pregnancy and the balance to be paid within 48 hours of furnishing proof of birth/delivery. In this regard, he would urge that the Petitioner has fully complied with the said provision by submitting appropriate notices of claim for maternity benefit and payment thereof in terms of Section 6 of the said Act, informing the Respondent No.2 at all times about her expected date of delivery as well as her application clearly setting out her entitlement for the grant of maternity benefits under the said Act. Mr. Chakrabarti would gainfully refer to notices dated 23 October 2024 followed by another notice dated 18 December 2024 issued under Section 6 of the said Act. He would urge that the said notice clearly sets out the intimation and requisite evidence recording the birth of her child and thereby requesting the second Respondent for maternity benefits as stipulated under Section 5 read with Section 6(5), to be released in her favour. Accordingly, she is rightfully entitled to the said benefits within the time frame stipulated under the said statutory provision. Furthermore, given such clear notice of intimation as required under the said section the allegations of the Respondents, *inter alia*, of suppression against the Petitioner falls foul and is completely baseless and misconceived.

**24.** According to him, there is no rationale much less reasoning offered by the Respondents to deny such legally admissible claims to her, except for stating that she is not so eligible/entitled to the same as she is merely a



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contractual employee and the policy of the Respondents does not permit such grant of benefits to the Petitioner. Such stand deprives the Petitioner of her legal entitlements which are statutorily conferred upon her under the said Act ensuring irreparable prejudice to her.

**25.** In addition to the above, Mr. Chakrabarti would place much reliance on the conduct of the Respondents. He would submit that despite making assurances to the Court duly recorded in orders dated 23 June 2025 and 8 July 2025, the Respondents have failed to comply with the clear directions recorded in such earlier orders passed by the Court. Such conduct is clearly indicative of defiance of the orders of this Court and the directions therein. This assumes much more seriousness as there is no reason, much less justification to not follow the categorical directions in the said orders, more particularly in that of 8 July 2025 when the proceedings were listed on 11 August 2025 for 'compliance'.

**26.** Mr. Chakrabarti in support of his submissions has placed reliance on a judgment of a coordinate Bench of this Court in ***Archana Vs. State of Maharashtra***[1] to submit that even a contractual employee would be entitled to maternity benefits under the said Act. He has also placed reliance on a decision in ***MCD Vs. Female Workers (Muster Roll) and Anr.***[2] and ***Kavita Yadav Vs. State (NCT of Delhi)***[3]. These decisions are cited by him to

1 2019 (2) Mh.L.J. 697
2 (2000) 2 SCR 171
3 (2024) 1 SCC 421



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strengthen his submission that in similar state of facts and circumstances, the Courts have granted the maternity benefit to the concerned employee under the aegis of the said Act which cannot be denied to such person, who are otherwise legally and statutorily entitled to the same.

**27.** For all of the above reasons, Mr. Chakrabarti would urge that the Petition be allowed and the Rule be made absolute.

**B) Submissions on behalf of the Respondents:-**

**28.** Per Contra, Mr. Chaitanya Chavan, learned counsel for the first Respondent-Corporation would defend their actions including the Impugned Communication. According to him, the actions of the Respondents in refusing the maternity benefits to the Petitioner being a contractual employee are in accordance with law and warrants no interference. Mr. Chavan would place reliance on the Affidavit-in-Reply to the Petition on behalf of the Respondent Nos.1 and 2 filed by Sangeeta Hasmukh Ravat, Dean with Respondent No.2-K.E.M. hospital dated 2 May 2025 in support of his contentions.

**29.** Mr. Chavan would at the outset submit that the Petitioner was engaged as an Assistant Professor in the Department of Anaesthesia initially under a contract dated 4 January 2022 which was to expire on 30 June 2022. Thereafter, under office orders dated 15 July 2022, 27 June 2023 and 26 June 2024, her appointment was continued as an Assistant Professor. At all relevant times it was made clear to the Petitioner vide the Agreement as



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well as the office orders that her appointment was merely a stop gap arrangement pending the regular selection process. In view thereof, the Petitioner could not claim any service benefit from Respondent No.1-Corporation in lieu of the services rendered by her during the substances of such contractual engagement.

**30.** Referring to the Agreement dated 12 August 2024 coupled with the office orders (supra) Mr. Chavan would contend that the Petitioner is not entitled and/or eligible to claim any benefits under the Municipal Service Regulations, Provident Fund Regulations and Pension Rules of the first Respondent. At the stage of executing the said Agreement dated 12 August 2024, the Petitioner was already pregnant. She was therefore, duty bound to disclose her pregnancy to Respondent No.1 prior to the execution of the contract. Mr. Chavan relying on the said affidavit would contend that she concealed such material fact from the Respondents and proceeded to execute the said Agreement. Further, immediately upon the execution of the Agreement dated 12 August 2024, by an application dated 20 August 2024 made to the second Respondent, the Petitioner sought benefits under the said Act.

**31.** Mr. Chavan would contend that the appointment of the Petitioner was purely on contractual basis, as a stop gap arrangement. The tenure for the same was of one year, with one day's break in service before the expiry of every 40 days. Had the Petitioner being a regular employee for a period



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of two years as per Rule 170 of the Brihanmumbai Municipal Corporation (Service) Regulation, 1989, she would have been entitled to the benefits of maternity leave, on full average pay. A contractual employee such as the Petitioner is thus not entitled to such benefits.

**32.** Mr. Chavan would then submit that on receipt of the Petitioner's application for the grant of maternity leave, she was first informed by a letter dated 6 September 2024 that she was not entitled to any kind of leave other than 15 days Casual Leave and 15 days Special Casual Leave. Mr. Chavan would then refer to another application dated 7 October 2024 made by the Petitioner for claiming maternity benefits. Mr. Chavan would contend that under the said Agreement, the Petitioner had agreed that she would not claim any payment or terminal benefits on account of engagement of her services, having acknowledged that she was a contractual employee of the Respondents.

**33.** For all of the above reasons, Mr. Chavan would urge that these being policy matters and the Impugned Communication being issued within the four corners of the said Act and in accordance with law, the Petition is devoid of merits and deserves to be dismissed.

**Analysis:-**

**34.** We have heard Mr. Chakrabarti, learned counsel appearing for the Petitioner, Mr. Chavan, learned counsel appearing for the Respondent No. 1 – Corporation and Mr. Takke, learned counsel appearing for Respondent No.



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3 – State of Maharashtra and with their assistance, perused the record.

**35.** We feel it appropriate at the very outset to refer to certain earlier orders passed in these proceedings. A coordinate Bench of this Court by an order 23 June 2025 recorded the statement of the learned counsel for the Respondents in terms of the communication dated 20 June 2025 addressed by Dean of Respondent No.2 to the effect that, in principle, the Corporation has agreed to grant the benefits to the Petitioner to which she is entitled to under the said Act. To process the payment, time was sought, for which the matter was adjourned to a later date. Again on 8 July 2025, upon considering the submissions made by the learned counsel for the Respondents, the matter was posted on 11 August 2025 under the caption "for compliance". This Court expressed a hope for a positive outcome by the next date, having regard to the nature of the litigation. However, despite such clear and categorical orders of this Court, the Respondents have chosen to now turn turtle and reject the claim of maternity benefits to the Petitioner. It is such refusal which is under judicial review in these proceedings.

**36.** In the backdrop above, we may advert to the preamble of the Maternity Benefit Act, 1961 which reads thus:-

> *"An Act to regulate the employment of women in certain establishments for certain period before and after child-birth and to provide for maternity benefit and certain other benefits."*

**37.** This evidently is an enactment aimed at emancipation of women.



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Therefore, the provisions set out in the said Act ought to be read in sync with its preamble (supra). We may at this juncture refer to Section 5 of the said Act.

> *"5. Right to payment of maternity benefits.—*
>
> *(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 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.*
>
> *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.*
>
> ***(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 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.***
>
> *(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:*
>
> *Provided further 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."*

Contextually, it is pertinent to note that the Petitioner has duly complied with the eligibility criteria for securing maternity benefits under Section 5(2) of the said Act. As borne out from the record, the Petitioner duly completed the prescribed period of 80 days of her work in the 12 months immediately preceding the date of her initial expected delivery which was on 15 November 2024. Alternatively, considering that the commencement of her last contractual employment renewal was from 2 July 2024, it is apparent that the Petitioner completed 80 days of work from such date, on 20 September 2024, before she proceeded on leave on 7 October 2024. This would indicate sufficient compliance by the Petitioner of the Section 5(2) of the said Act, making her entitled to the maternity benefits as contemplated thereunder.

**38.** The fundamental objection of the Respondents to the Petitioner's claim for maternity benefit under the said Act, has been that she being a



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contractual employee is not entitled to the same. Such submission is in the teeth of Section 27 of the said Act which reads thus:-

> ***"Section 27. Effect of laws and agreements inconsistent with this Act—***
>
> *(1)The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act.*
>
> *Provided that where under any such award, agreement, contract of service or otherwise, a woman is entitled to benefits in respect of any matter which are more favourable to her than those to which she would be entitled under this Act, the woman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that she is entitled to receive benefits in respect of other matters under this Act.*
>
> *(2)Nothing contained in this Act shall be construed to preclude a woman from entering into an agreement with her employer for granting her rights or privileges in respect of any matter which are more favourable to her than those to which she would be entitled under this Act."*

Evidently, the said Section begins with *a non obstante* clause suffixed by the expressions, "in terms of any award, agreement or contract of service". In other words, the submission of the Respondents as canvased by Mr. Chavan is *ex facie* contrary to the said provision. The said provision does not carve out an exception qua a contractual employee for the purpose of securing maternity benefits under the said Act. The yardstick for the women employee to claim the maternity benefits under the said Act shall be contingent upon her being eligible/entitled for the same in the manner stipulated under Section 5 of the said Act. Accordingly, the Respondents have in a manner contrary to law, deprived the Petitioner of the maternity benefits to which she is rightfully and lawfully entitled.



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**39.** Adverting to Section 27 of the Act (supra), it is pertinent to take note of the proviso under Sub-Section (1) and the language incorporated in Sub-Section (2) thereof. A conjoint reading of the same, makes it clear that a woman is entitled to benefits either contractually or otherwise whichever are more favourable to her, notwithstanding that she is entitled to receive benefits in respect of other matters under the said Act.

**40.** The said Section 27 of the said Act, came up for consideration before a coordinate Bench of this Court in ***Archana Vs. State*** (supra). Here this Court dealing with the said Act, held that it cannot be accepted that the Petitioner is not entitled to salary during the maternity leave period. In light of the salutary provisions, the respondent-authorities cannot be heard to contend that the condition in the agreement would override the beneficial and benevolent provisions of the said Act. The Court further held that the stand of the Respondent that the Petitioner is disentitled to the said benefits in view of the Agreement providing for the terms and conditions of service are unsustainable and contrary to Section 27 (supra). This Court concluded that the Petitioner cannot be deprived of the beneficial provisions of the said Act or any other Rules which may entitle her to benefits which are more favourable than those set out in her service contract/agreement.

**41.** The Respondents as set out in their Affidavit-in-Reply, through Mr. Chavan have contended that the Petitioner has suppressed/not disclosed certain relevant and material facts, in regard to her pregnancy. Let us test



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this contention on the basis of the facts on record. Firstly, the Petitioner had addressed a letter dated 20 August 2024 to the Dean of Respondent No.2 with a request in advance to make provisions for her maternity leave. This was followed by an application dated 7 October 2024 when the Petitioner applied for maternity leave citing timelines under the said Act. The Petitioner then issued a notice dated 23 October 2024 under Section 6 of the said Act (supra) enclosing proof of pregnancy along with the said notice. This was followed by another notice dated 18 December 2024, issued by the Petitioner under Section 6(5) of the said Act, all of which demonstrate that the Petitioner regularly kept the Respondents informed. Accordingly, the Respondents were intimated regarding the birth of her child, requesting that the maternity benefits be released in her favour as contemplated under Section 5 read with Section 6(5) of the said Act. The said facts make it abundantly clear that the Petitioner had all times, diligently made true and proper disclosure to the Respondents in this regard.

**42.** The Respondents would emphasize that the Petitioner's appointment was on a contractual basis. She was aware at the time of executing the Agreement on 12 August 2024 with the Respondents, that under the specific clause she would not be entitled to claim any benefits under any service rules, except those specified in the Agreement. Also that her appointment was purely a stop gap arrangement on contractual work which



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could be terminated at any time by Respondent No.2 by giving one month's written notice. As noted (supra), fundamentally the said Act clearly makes no distinction between a women employee who is appointed under a contract/agreement and/or otherwise. In view thereof, such submissions of the Respondents fall foul of the clear mandate under Section 27 of the said Act as discussed (supra).

**43.** Pertinent it is to note that Section 6(6) of the said Act in fact provides that the failure to give notice thereunder, shall not disentitle a woman to maternity benefit or any other amount if she is so otherwise entitled. Moreover, the said Act does not contemplate any such disclosures and/or that the Agreement/contract shall override such statutory provisions. The Respondents have demonstrated nothing to the contrary so as to appeal to our conscience for us to subscribe, much less agree to the contentions advanced.

**44.** The Respondents, based on their Affidavit-in-Reply, would submit that the first Respondent could grant benefits of maternity leave to the Petitioner, had she been a employee of Respondent No. 1 – Corporation on regular basis for a period of two years as per Rule 170 of the Brihanmumbai Municipal Corporation (Service) Regulation, 1989. In this context, it is pertinent to note that, Sub-Rule (2) thereof provides that a woman employee in the Municipal Corporation who is not in permanent service and has been in continuous service for at least one year shall also be eligible



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for maternity leave, as provided under Sub-Rule (1) of Rule 170. A plain reading of the said Rule does not support the stand of the Respondents. In any event, the statutory framework under the said Act as noted (supra) is absolutely unambiguous, entitling the Petitioner for the maternity benefits thereunder, in the given factual complexion.

**45.** We find merit in the submissions of Mr. Chakrabarti, that stand taken by the Respondents coupled with their conduct does interfere with the fundamental right of the Petitioner guaranteed under Article 21 of the Constitution of India. The decision of the Supreme Court in ***K. Umadevi Vs. Government of Tamilnadu & Ors***[4] throws much light on this aspect. The Supreme Court observed that by judicial interpretation 'life' under Article 21 means life in the fullest sense. This would include the right to health, to live with human dignity including the right of privacy which are now acknowledged facets of Article 21. In the said decision, the Supreme Court further referred to Article 42 of the Constitution of India. This being one of the Directive Principles of State Policy which mandates the State to secure just and humane conditions of work and for maternity relief. The Supreme Court in the context of Article 51(c) of the Constitution also referred to the leading international conventions *inter alia*, acknowledging State intervention and support for maternity related entitlements. In view thereof, deprivation of maternity benefits to the Petitioner, being integral

4. (2025) 8 SCC 263.



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and inextricably connected to her right to life as guaranteed under Article 21, in the given facts, cannot be countenanced.

**46.** The Supreme Court in ***Dr. Kavita Yadav (supra)*** observed that continuation of maternity benefits is inbuilt in the said Act itself, where the benefits would survive and continue despite cessation of employment. What the legislation envisages is entitlement to maternity benefits, which accrues on fulfillment of the conditions specified in Section 5(2), which can travel even beyond the terms of the employment. In our considered view, these observations in the given factual matrix are both apposite and applicable.

**47.** We do appreciate the fairness of Mr. Chavan, the learned counsel for Respondent No.1 throughout the proceedings before this Court. However, we are unable to fathom a complete "volte-face" approach by the Respondents after virtually agreeing to pay the maternity benefits to the Petitioner, as recorded in the Court orders (supra). Therefore, we see no rationale much less justification to sustain the Impugned Communication rejecting the grant of maternity benefits in favour of the Petitioner, primarily on the ground that she is a contractual employee and these are policy matters. Even if that being so, it is trite law that policy matters/decisions are to be free from discrimination, manifest arbitrariness so as to fall within the contours of Article 14 of the Constitution of India.

**48.** Before parting, we find it pertinent to observe that the object of maternity benefit is to protect the dignity of motherhood and to provide



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financial support/security to a woman and her child for the period she is not working. In today's day and age, more and more women are joining the workforce. In this scenario, it is important to ensure that a woman striving for self-sufficiency and economic independence does not have to compromise on her role as a care giver to her child. The State is therefore expected to be more sensitive to deserving persons such as the Petitioner. She ought not to be made to seek orders from this Court in cases like the present, where the Respondents had, in principle agreed and accepted to process payment of her maternity benefits. We expect the Respondents not to adopt such an unreasonable approach, going forward, as the one in the given case. We conclude with this earnest and solemn hope.

**49.** For all of the above reasons, we are persuaded to hold that the Petitioner has made out a case for the grant of reliefs as prayed for. We accordingly pass the following order:-

**ORDER**

**a)** The Petition is Allowed. The Rule is made absolute.

**b)** We accordingly quash and set aside the Impugned Communication dated 21 October 2024 addressed to the Petitioner by Respondent No.2.

**c)** We direct the Respondents to pay and extend the maternity benefits to the Petitioner as entitled under the Maternity Benefits Act, 1961, expeditiously, not later than within a period of six



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weeks from the date of this order being uploaded.

**d)** No order as to costs.

**e)** Interim Application No.812 of 2025 filed in the said Petition would accordingly not survive and the same is disposed of.

**[ADVAIT M. SETHNA, J.]** **[R.I. CHAGLA, J.]**



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