

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**W.P. (S) No. 1124 of 2021**

Sarita Kumari

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**Petitioner**

**V E R S U S –**

1. The State of Jharkhand
2. The Secretary-cum-Chairman, Jharkhand State Child Protection Unit, Women, Child Development and Social Security Department, Government of Jharkhand, Project Bhawan, Dhurwa, Ranchi
3. The Director-cum-Member Secretary, Jharkhand State Child Protection Unit, Women, Child Development and Social Security Department, Government of Jharkhand, Project Bhawan, Dhurwa, Ranchi
4. The District Social Welfare Officer, Bokaro
5. The District Child Protection Officer, Bokaro

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**Respondents**

**CORAM: HON'BLE MR. JUSTICE DR S. N. PATHAK**

**(Through : Video Conferencing)**

For the Petitioner

: Mr. Shadab Bin Haque, Advocate

For the Respondents

: Mr. Achyut Keshav, GP-I

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**04/21.09.2021**

The petitioner has approached this Court with a prayer for a direction upon the respondents to pay the arrears of honorarium for the period from 03.10.2019 to 30.03.2020 in which the petitioner was on maternity leave. Further, prayer has been made to pay the litigation cost and interest upon delayed payment.

The case of the petitioner lies in a narrow compass. The petitioner was appointed on 16.11.2013 on contractual basis to the post of Protection Officer Institutional Care (POIC), Bokaro and till date she is working. The petitioner applied for maternity leave before the District Social Welfare Officer and copy of the same has been given to Deputy Commissioner, Bokaro praying therein that to approve maternity leave from 03.10.2019 to 30.03.2020 and the same was duly received in the office of the Deputy Commissioner, Bokaro as well as District Social Welfare Officer, Bokaro. After availing the maternity leave, the petitioner resumed her duties on 30.03.2020. It is specific case of the petitioner that she is continuously working and getting honorarium for the current month, but she has not been paid the honorarium for the aforesaid period of her

maternity leave, therefore, she represented before the respondents, but no heed was paid. Aggrieved by the same, she has approached this Court for redressal of her grievances.

Mr. Shadab Bin Haque, learned counsel for the petitioner submits that the petitioner is entitled for honorarium of the aforesaid period on which she was on maternity leave. He further submits that there cannot be any distinction between a regular employee, contractual employee and casual employee so far as grant of maternity benefit is concerned. The maternity leave was duly sanctioned to the petitioner and prior information was given to the authorities before leaving the station and as such, it cannot be said that it was an unauthorized leave. He further submits that when the contract of the employment of the petitioner is subsisting then the female employee, whatever be the mode and nature of the employment, is entitled to get the monetary benefits arising out of maternity leave. To buttress his argument, learned counsel places a heavy reliance on the judgment of this Court in case of **Priyanka Kumari Vs. The State of Jharkhand in W.P.(S) No.2766 of 2018** and submits that the issue is now no more res integra the case of the petitioner is squarely covered by the aforesaid case.

On the other hand, no counter-affidavit has been filed. However, learned counsel for the respondents does not dispute the legal issues and very fairly submits that in view of the amendment in the Maternity Act, 2017, maternity leave of 12 weeks have been extended to 26 weeks and same is applicable for every working women. He further submits that if the petitioner files a fresh representation, same shall be considered, in accordance with law and the arrears of honorarium for the period in question, for which she is entitled, shall be paid to her as per direction of this Hon'ble Court.

Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that admittedly the petitioner was appointed on the contractual basis and is still in employment. There is no quarrel that petitioner being a female, is entitled for maternity benefits. Law is very clear on that point, Section 2 of the Maternity Benefit Act, 1961 deals with the applicability of such case(s) and it applies to all establishments belonging to the Government and to every establishment wherein person(s) are employed. Further, Section 3(O) of the Act defines a "woman"; which means a woman

employed whether directly or through any agency, for wages in any establishment. Section 5 of the Act provides for right to payment of maternity benefits, which includes any women.

Thus, from the aforesaid facts, it is quite clear that a woman employee cannot be discriminated on the basis of mode of appointment and each and every woman, who is an employee of any establishment, is entitled to get the maternity benefit, whatever be the mode of her appointment, subject to the condition that the contract of employment should subsist.

Further, the issue is now no more res integra, as a Co-ordinate Bench of this Court has already decided the issue in case of **Priyanka Kumari (supra)**.

As a cumulative effect of the aforesaid rules, guidelines and judicial pronouncement, I hereby direct the petitioner to file a fresh representation before the respondents, claiming maternity leave benefit for the period in question, within a period of two weeks from the date of receipt of a copy of this order. After receipt of the same, the respondent authorities are directed to take an appropriate decision, in accordance with law, within a further period of two weeks and issue orders for payment of the arrears of honorarium for the period in question on which she was on maternity leave and pay the same within a further period of two weeks.

With the aforesaid observation and directions, writ petition stands allowed.

**(Dr. S.N. Pathak, J.)**

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