

**Reserved****Court No. - 66****Case :- WRIT - C No. - 20885 of 2021****Petitioner :- Saumya Tiwari****Respondent :- State Of U.P. And 3 Others****Counsel for Petitioner :- Uday Narain Singh, Lal Dev****Counsel for Respondent :- C.S.C., Rohit Pandey****Hon'ble Ajay Bhanot, J.**

1. The narrative is being structured in the following framework to facilitate the discussion:

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**A. Introduction**

2. The petitioner asserts that she could not successfully complete B.Tech. (Electronics and

Communication) course in the period prescribed in the University Regulations, as she was not granted maternity leave nor provided maternity support benefits as an expectant mother and as a new mother. She claims entitlement to an additional chance in an enlarged time period to appear in the two papers of B. Tech. (Electronics & Communication) which she could not clear in the regular academic calendar.

## **B. Submissions**

**3.** Sri Lal Dev Chaurasiya, learned counsel and Sri Uday Narain Singh, learned counsel for the petitioner submit that the petitioner could not appear in the last chance for qualifying the papers (which she could not clear in the regular academic semesters) due to her pregnancy and post natal recovery issues. The University authorities did not grant any relaxation and support to the petitioner during her pregnancy and immediately after she delivered a baby child. The pre natal and post natal conditions imposed limitations upon the petitioner which precluded her from competing equally with other students.

4. The petitioner has a fundamental right to various maternity benefits and reliefs. The action of the University in denying the petitioner maternity relief, benefits and support has violated her fundamental rights guaranteed under Articles 14, 15 and 21 of the Constitution of India and has permanently blighted her academic future.

5. Learned counsels submitted various authorities of the Constitutional Courts, Hon'ble Supreme Court & Hon'ble High Courts, international instruments and analogous statutes, which define and regulate maternity rights.

6. Sri Rohit Pandey, learned counsel assisted by Ms. Shambhavi Tiwari, learned counsel for the respondents-University contends that there is no provision for grant of any maternity benefits or reliefs to students under the Regulations or Ordinances of the University. The University cannot act contrary to its statutes and regulations framed thereunder. The University cannot be faulted for not granting any maternity benefits or support to the petitioner.

7. Shri Ajal Krishna, learned counsel for the AICTE has filed an affidavit on behalf of the

regulatory body. Learned counsel for the AICTE contends that AICTE does not oppose the creation of scheme for grant of maternity benefits to undergraduate students by the University-respondent nos. 2 and 3. Further it is for the University to create the desired Regulations for which it is adequately empowered.

**8.** Learned Standing Counsel for the State of U.P. contends that the creation of Regulations for grant of maternity benefits lies within the domain of the University.

**9.** Shri Paras Nath Rai, learned Central Government Standing Counsel submits that the Government of India had sent a communication to the University Grants Commission, New Delhi, to intimate the action taken in the matter. In response to the aforesaid communication, the University Grants Commission, New Delhi, has passed an order on 14.12.2021, requesting the Vice Chancellors of all Universities in the country to frame appropriate rules/norms with regard to the grant of maternity leave and any other facilities/relaxations deemed necessary for women students pursuing undergraduate and postgraduate

programme. and also provide necessary relaxation to the women students.

**10.** Shri Paras Nath Rai, learned Central Government Standing Counsel further contends that the University Grants Commission, New Delhi, as well as Union of India do not contest the claim of the petitioner.

**11.** Facts of the case are undisputed and lie in a narrow compass. Pure questions of law arise for consideration in this writ petition. With consent of parties, the matter is being decided finally.

### **C. Facts**

**12.** The petitioner was admitted to the B.Tech. (Electronics and Communication) course in the academic year 2013-14, in Krishna Institute of Technology, Kanpur, which is affiliated to Dr. A. P. J. Abdul Kalam Technical University, Uttar Pradesh, Lucknow (hereinafter referred to as the 'University').

**13.** The time period for completion of B.Tech. course in Electronics and Communication, as provided in the Ordinances of the University is 7

years. The relevant Ordinance is extracted hereunder:

“4.3 The maximum time allowed for a candidate admitted in 1<sup>st</sup>/IIIrd semester (for diploma holders) for completing the B.Tech course shall be 7 (seven)/5(five) years respectively, failing which he/she shall not be allowed to continue for his/her B.Tech degree.”

**14.** The petitioner cleared all the semester examinations successfully, but did not qualify the subjects of Signals and Systems in the 3<sup>rd</sup> semester and Engineering Mathematics-II in the 2<sup>nd</sup> Semester examination in the regular academic calendar.

**15.** The petitioner could not complete the B.Tech (Electronics & Communication) course by the academic session 2019-2020, as stipulated in the Ordinances.

**16.** The exam schedules of the last two opportunities given to the petitioner for appearing in the said papers are as follows is as follows:

I. “Signals and System—3<sup>rd</sup> semester — B.Tech. (Electronics and Communication) — December 2019

Engineering Mathematics-II — 2<sup>nd</sup> Semester — B.Tech. (Electronics and Communication) — September 2020”

II. Signal and System (3<sup>rd</sup> Semester), February, 2021, Engineering Mathematics (2<sup>nd</sup> Semester) July, 2021.

**17.** The petitioner could not appear and avail the chances as she was an expectant mother. The

petitioner gave birth to a child on 22<sup>nd</sup> December, 2020. Thereafter she experienced post natal issues which delayed her recovery.

**18.** The University refused to give her an additional chance which catered to her maternity period and post natal recovery time. There are no provisions for grant of maternity leave or any relaxation for expectant and new mothers in the Uttar Pradesh Technical Universities Act, 2000, Ordinances, Regulations or Statutes which govern and regulate functioning of the University.

#### **D. Issues for consideration**

**19.** The issues which arise for consideration are as under:

I. Whether the right of reproductive choice of a woman is a fundamental right if so the implications of the same on the current controversy?

II. Whether the petitioner can be denied maternity benefits solely on the footing that no provision exists in the statutes or Ordinances or Regulations of the University to provide such relaxation?

III. What is the nature of maternity benefits and relief which can be granted to the petitioner at this stage?

## E. Statutory Perspectives

### (a) University Statutes

**20.** Section 29 of the Uttar Pradesh Technical Universities Act, 2000 empowers the Executive Council to frame new Regulations or amend or repeal Regulations made by the State in the first instance. The provision is reproduced below:

“**Section 29.**(1) The First Regulations of the University shall be made by the State Government by notification.

(2) The Executive Council may, from time to time, make new or additional Regulations or may amend or repeal the Regulations referred to in sub-section (1):

Provided that the Executive Council shall not make, amend or repeal any Regulation affecting the status, power or constitution of any authority of the University until such authority has been given a reasonable opportunity to express its opinion in writing on the proposed changes and any opinion so expressed has been considered by the Executive Council.

(3) Notwithstanding anything contained in the foregoing sub-sections, the State Government may in order to implement any decision taken by it in the interest of learning, teaching or research on the basis of any suggestion or recommendation of the University Grants Commission or All India Council for Technical Education or the State or National Education Policy require the Executive Council to make new or additional Regulations or amend or repeal the Regulations referred to in sub-section (1) or sub-section (2) within a specified time and if the Executive Council fails to comply with such requirement the State Government may make new or additional Regulations or amend or repeal the Regulations referred to in sub-section (1) of sub-section (2).”

**21.** The relevant Regulations which advise special arrangements for women are extracted below:

“**4.12** Subject to the provisions of the Act and Regulations, the Academic Council shall have the following powers:

(e) to advise special arrangements, if any for the teaching of female students and students of weaker section of society;

(emphasis supplied)

(g) to recommend to the Executive Council for the Ordinances regarding examinations of the University;

(h) to prepare Academic calendar.

(p) to perform, in relation to academic matters, all such duties and do all such acts as may be necessary for the proper execution by carrying out of the provisions of the Act and the Regulations.”

**22.** The Academic Council of the University is further vested with the plenary following powers:

“4.10 The Council shall exercise all the powers of the University not otherwise provided by the Act, Regulations, and Ordinances for the fulfillment of the objects of University.”

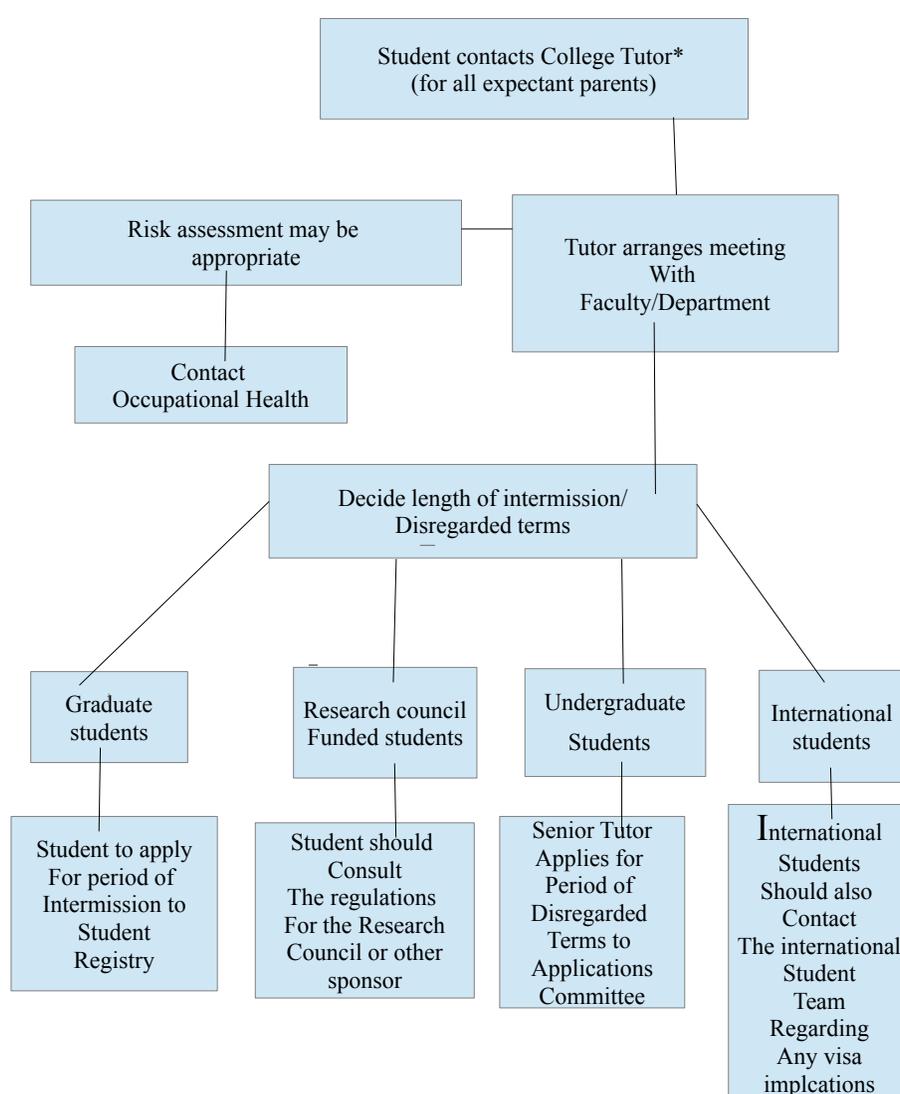
“23. The Academic Council shall have the power to relax any provision provided in the ordinance in any specific matter/situation subject to the approval of Executive Council of the University and such decision(s) shall be reported to the Chancellor of the University.”

### **(b) Analogous Provisions**

**23.** The Statutes, Ordinances, Regulations, directions or orders of the Academic Council and Executive Council of the University are silent on grant of maternity leave/support to expectant and new mothers. In view of the aforesaid statutory and executive void, analogous provisions created by various universities and academic regulatory bodies in India, as well as foreign universities which are sensitive to the rights of expectant mothers’ students’ and new parents will support the discussion.

**24.** Cambridge University has taken out a detailed brochure for students who are expectant parents. The flow chart which is part of brochure sums up the roles of various stake holders as well as responsibilities of University authorities and the procedure to be followed is drawn hereinunder:

**“K. Pregnancy/Maternity/Paternity/Adoption Leave flow diagram”**



**25.** Similarly, the University of Oxford has a comprehensive frame work for entitlement of parental leave, arrangements for return to study,

and supportive measures for pregnant students and new mothers.

**26.** The provisions of the maternity leave under the Oxford University are reproduced below:

**“3. MATERNITY LEAVE**

The University’s policy has been harmonised with the Research Councils’ framework and clearly differentiates maternity leave from suspension of status for medical or disciplinary reasons. It aims to ensure consistent and fair treatment of pregnant students and new mothers and provides new mothers with the right to a protected period of leave after the birth.

3.1. Students should notify their college, department, supervisor or Director of Graduate Studies of their pregnancy as soon as possible, and preferably no later than the 15th week before the expected week of childbirth. Earlier notification may be necessary in some cases, for example where a student works in a potentially hazardous environment. If this is the case, the department in question must ensure that it has published this information and drawn students’ attention to it.

3.2. Risk assessments must be made where the work environment (e.g. laboratory, clinic) might pose a threat to a pregnant student. The University Occupational Health Service (UOHS) recommends that departments seek advice from their Departmental Safety Officer, the Area Safety Officer or the Safety Office. The OUHS can also assist with health queries relating to pregnancy and breastfeeding at work. This may require a consultation with a doctor or nurse and a visit to the workplace (email enquiries@uohs.ox.ac.uk).

3.3. In conjunction with the student, the college and department should draw up a student support plan to be reviewed at key stages during pregnancy and maternity. This will help coordinate support and ensure students’ needs are met during pregnancy, following the birth and on the student’s return to studies.

**27.** Oxford university contemplates grant of one full year leave to students who give birth. The said provision is extracted as under:

**“Undergraduate and postgraduate taught students**

3.5. Students who give birth may choose to suspend their status before recommencing their studies. This will normally

last one full year so that the student may return to study at the same point at which they suspended.”

**28.** The student is not left to fend for herself even after maternity leave. During the maternity leave the students of the Oxford University do not snap their academic links and are required to maintain them in order to plan all their return to study. The relevant provisions are as follows:

**“Planning for return to study**

**3.12.** Undergraduate and postgraduate students on maternity leave should be encouraged by their college and/or department to maintain occasional contact with their tutor and/or supervisor so that arrangements may be made for their return to study. This is likely to involve a limited amount of academic guidance and preparation, as necessary in each case.

**3.13.** Timely arrangements should be made to facilitate students’ return to study after maternity leave, including a full assessment of their requirements in relation to e.g. training, updating, monitoring and additional learning support. Typically this assessment would be carried out by a college tutor, supervisor or other relevant academic staff.

**3.14.** Risk assessments must also be made where the work environment might pose a threat to a breastfeeding mother (see section 3.2 above).

**3.15.** If ill-health prevents a postgraduate student from returning to work after completing their maximum period of maternity leave, this should be treated as sickness absence and further suspension of status should be sought and notifications made accordingly (i.e. to the funding body). If a student is unable to return to work due to the illness of their child, they should seek a further suspension of status, if necessary by application to the Education Committee.

**Undergraduate students**

**4.1.** Some undergraduate students returning to study after the birth of a child may find it difficult to pursue their course at the normal pace. Under such circumstances it may be possible to extend the duration of their studies, typically by studying the Final Honour School over one additional year. Such a

proposal requires endorsement from both the college and the faculty or department. The student's college can then apply to Education Committee to request dispensation from the examination regulations concerning overstanding for honours, the timing of multi-University of Oxford Policy on Student Maternity, Extended Paternity, Adoption and Shared Parental Leave part examinations, or if it is proposed to split Finals over two years. Approval for the extension of study will also have to be obtained from Student Finance England or the relevant regional body. Applications for remission of the additional year's university fees will be considered by the Fees Panel on a case-by-case basis."

**29.** Similarly the University Grants Commission, New Delhi, have set up minimum standards for supportive facilities to expectant parents under UGC (Minimum Standards and Procedures for Award of M.Phil./Ph.D. Degrees) Regulations-2016. The said Regulations contemplate grant of maternity leave and other relaxations to M.Phil/Ph.D. students. The relevant provisions state thus:

**"Duration of the Programme:**

4.4.....In addition, the women candidates may be provided Maternity Leave/Child Care Leave once in the entire duration of M.Phil/Ph.D. for up to 240 days."

**30.** Guidelines for maternity and paternity leave for fellowship students have been framed by the All India Council for Technical Education for Ph.D. Programme, which are as follows:

**"9.0. Terms and Conditions:-**

**m) Leave:-**

(ii) Candidates are eligible for maternity/ Paternity leave as per GoI norms issued from time to time at full rates of

fellowship etc. once during the tenure of their award. However, maximum duration of fellowship will not be extended under any circumstances.”

**31.** All India Council for Technical Education has also framed maternity leave guidelines for Post Graduate Scholarship Schemes in the year 2021:

**“1.4 Other Entitlements:**

**Maternity leave :**

Candidates are eligible for maternity/ Paternity leave as per Govt. of India norms issued from time to time at full rates of fellowship etc. once during the tenure of their award. However maximum duration of fellowship will not be extended in any circumstances.”

**32.** The Ordinances of the University of Allahabad also contemplate grant of maternity leave/child care leave for the Doctor of Philosophy students. Proviso to Ordinance 4(a) which provides for the same is stated below:

**“4 (a)** Subject to the provisions of this Ordinance and the Regulations, each candidate shall, upon admission and enrolment to the Ph.D. programme, pursue a course of research of a duration of not less than twenty-four months in residence within the area referred to in sub-clause (b) of clause 1, and shall regularly pay the prescribed annual and other fees up to the time he withdraws from his enrolment, or such enrolment is terminated, or he duly submits his thesis to the University. The minimum duration of submitting the thesis is 36 months from the date of enrolment and maximum period of submitting the thesis is 72 months from the date of enrolment.

Provided that the Women Candidates and Persons with Disability may be allowed a relaxation of two years for Ph.D. in the maximum duration. In addition, the Women candidate may be provided maternity leave/childcare leave once in the entire duration of Ph.D. for upto 240 days.”

(emphasis supplied)

**33.** Ordinances of the Allahabad University which provide for grant of maternity leave for various other courses are extracted hereinbelow:

**“9 (d).** In the case of a married woman student who is granted maternity leave, in calculating the total number of lectures

delivered in the College or in the University, as the case may be, for her course of study in each academic year, the number of lectures in each subject delivered during the period of her maternity leave shall not be taken into account:

Provided that Post-graduate Degree students under the Faculty of Medical Sciences who apply for maternity leave either in I year or in II year, may be allowed the maternity leave for a period not exceeding 3 months in an academic year but such students will be required to complete the duration of the course as regular students as required in the Ordinance and the students will be permitted to submit the thesis or to take the written examination, as the case may be, in January instead of August that year.”

### **(c) International Instruments**

**34.** International covenants, treaties and instruments reflect the growth of international law. Various international instruments proclaim the dignity of motherhood. These international instruments evidence a consensus of shared human values and universalisation of human rights in the comity of nations. India has cemented her international standing by being a signatory to such forward looking international instruments. Indian courts have faithfully implemented the international obligations through judicial pronouncements. The strong commitment of the constitutional courts in India to the cause of women and motherhood is consistent with the constitutional scheme and various international instruments.

**35.** A scholarly discussion on the importance of discharging national obligations under various international instruments is found in *Pratap Singh vs. State of Jharkhand*<sup>1</sup>.

**36.** Some relevant international instruments and provisions of the Constitution of India are extracted below:

**I. United Nation Universal Declaration on Human Rights Article 25(2):**

“2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”

**II. International Convention on Economic and Cultural Rights.**

Need for supportive measures to expectant mothers both before and after child birth as provided in Article 10 (2):

“2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.”

**III. Convention on elimination of all forms of discrimination against women:**

*“Article I*

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human

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1. 2005 (3) SCC 551

rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

*“Article 10*

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d ) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same Opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.”

**(d) Constitutional Provisions:**

**37.** Articles 42 of the Constitution of India provides for humane conditions of work and maternity relief.

**“42. Provision for just and humane conditions of work and maternity relief.-**

The State shall make provision for securing just and humane conditions of work and for maternity relief.”

**38.** Other relevant provisions are Article 41 and Article 43 of the Constitution of India. Article 15(3) prohibits discrimination on the basis of sex.

#### **F. Case Laws:**

**39.** The Supreme Court in **Suchita Srivastava and others Vs. Chandigarh Administration**<sup>2</sup>, gave widest amplitude to a woman's right to make reproductive choices. Reproductive choices were construed as inherent to a woman's right to privacy, dignity and bodily integrity which are relatable to Article 21 of the Constitution of India. The Supreme Court then declined to put any restriction on such choices by holding forth:

“22. There is no doubt that a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth-control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children....”

**40.** **R. Rajagopal Vs. State of Tamil Nadu and others**<sup>3</sup> was the precursor to **Suchita Srivastava**

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<sup>2</sup> AIR 2010 SC 235

<sup>3</sup> (1994) 6 SCC 632

(supra), wherein the right to motherhood, procreation and child bearing was found to be relatable to the fundamental right vested by Article 21 of the Constitution of India. **R. Rajagopal (supra)** was cited with approval while expounding the following proposition in **Govind Vs. State of Madhya Pradesh and others**<sup>4</sup>:

“9.....Any right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child-rearing. This catalogue approach to the question is obviously not as instructive as it does not give analytical picture of the distinctive characteristics of the right of privacy. Perhaps, the only suggestion that can be offered as unifying principle underlying the concept has been the assertion that a claimed right must be a fundamental right implicit in the concept of ordered liberty....”

**41. Justice K. S. Puttaswamy (Retd.) Vs. Union of India**<sup>5</sup> following Suchita Srivastava (supra) firmly and irrevocably reiterated that human dignity is a fundamental right under Article 21 of the Indian Constitution. With customary eloquence, in **K.S. Puttaswamy (supra)** Dr. D. Y. Chandrachud, J., speaking for the learned Constitution Bench upon consideration of the judicial precedents in point distilled the concept of human dignity and its place in part III of the Constitution:

**“Jurisprudence on dignity**

"108. Over the last four decades, our constitutional jurisprudence has recognised the inseparable relationship between protection of

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4 AIR 1975 SCC 1378

5 2017 (10) SCC 1

life and liberty with dignity. Dignity as a constitutional value finds expression in the Preamble. The constitutional vision seeks the realisation of justice (social, economic and political); liberty (of thought, expression, belief, faith and worship); equality (as a guarantee against arbitrary treatment of individuals) and fraternity (which assures a life of dignity to every individual). These constitutional precepts exist in unity to facilitate a humane and compassionate society. The individual is the focal point of the Constitution because it is in the realisation of individual rights that the collective well-being of the community is determined. Human dignity is an integral part of the Constitution. Reflections of dignity are found in the guarantee against arbitrariness (Article 14), the lamps of freedom (Article 19) and in the right to life and personal liberty (Article 21).

118. Life is precious intself. But life is worth living because of the freedoms which enable each individual to live life as it should be lived. The best decisions on how life should be lived are entrusted to the individual. They are continuously shaped by the social milieu in which individuals exist. The duty of the State is to safeguard the ability to take decisions. "Life" within the meaning of Article 21 is not confined to the integrity of the physical body. The right comprehends one's being in its fullest sense. That which facilitates the fulfillment of life is as much within the protection of the guarantee of life.

119. To live is to live with dignity. The draftsmen of the Constitution defined their vision of the society in which constitutional values would be attained by emphasising, among other freedoms, liberty and dignity. So fundamental is dignity that it permeates the core of the rights guaranteed to the individual by Part III. Dignity is the core which unites the fundamental rights because the fundamental rights seek to achieve for each individual the dignity of existence. Privacy with its attendant values assures dignity to the individual and it is only when life can be enjoyed with dignity can liberty be of true substance. Privacy ensures the fulfilment of dignity and is a core value which the protection of life and liberty is intended to achieve."

**42. Maternity relief was embedded in the minimum requirement for dignified life in *Bandhua Mukti Morcha Vs Union of India (UOI) and others*<sup>6</sup>:**

“10. Moreover, when a complaint is made on behalf of workmen that they are held in bondage and are working and living in miserable conditions without any proper or adequate shelter over their heads, without any protection against sun and rain, without two square meals per day and with only dirty water from a nullah to drink, it is difficult to appreciate how such a complaint can be thrown out on the ground that it is not violative of the

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6 (1984) 3 SCC 161

fundamental right of the workmen. It is the fundamental right of every one in this Country, assured under the interpretation given to Article 21 by this Court in Francis Mullen's case, to live with human dignity, free from exploitation. This right to live with human dignity, enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief."

(emphasis supplied)

**43.** The importance of dignified environment for motherhood in pre or post natal period was propounded in the context of the Maternity Benefit Act 1961 and in the backdrop of Articles 39, 42 and 43 of the Constitution of India in **Municipal Corporation of Delhi Vs Female Workers (Muster Roll) and Another<sup>7</sup>**: The Supreme Court in **Municipal Corporation of Delhi (supra)** set its face against victimization of pregnant women:

“33. A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably,

undeterred by the fear of being victimised for forced absence during the pre or post-natal period.”

(emphasis supplied)

**44.** The High Court of Kerala in **Mini K.T. Vs Senior Divisional Manager L.I.C.**<sup>8</sup> emphasized the need for an institutional support system for expectant mothers in light of our civilisational values, cultural ethos and constitutional law and held thus:

“23. Coming back to the question of dignity, those dignity has to be understood in the societal background. Indian cultural and traditional practices would go to show that motherhood is an essential part of family responsibility. International Human Rights Law thus protect dignity of woman and also family. The Constitution thus demand interpretation of its WPC 22007/2012 provisions in that background. Person-hood of a woman as mother is her acclaim of individuality essentially valued as liberty of her life. This was so designed by culture, tradition and civilisation. Mother's role in taking care of the child has been considered as an honour; she enjoyed such status because of her position in respect of the child. If on any reason she could not attend her workplace due to her duties towards child (compelling circumstances), the employer has to protect her person-hood as "mother". If not that, it will be an affront to her status and dignity. No action is possible against a woman employee for her absence from duty on account of compelling circumstances for taking care of her child. No service Regulations can stand in the way of a woman for claiming protection of her fundamental right of dignity as a mother. Any action by an employer can be only regarded as a challenge against the dignity of a woman. Motherhood is not an excuse in employment but motherhood is a right which demands protection in given circumstances. What employer has to consider is whether her duty attached WPC 22007/2012 to mother prevented her from attending employment or not. As already adverted above, motherhood is an inherent dignity of woman, which cannot be compromised.

24. A mother cannot be compelled to choose between her motherhood and employment. A woman employee is not expected to surrender her self respect fearing action against her for not being able to attend duty for compelling family responsibility. John Rawls in the book, "A Theory of Justice", identifies that in a just Society, self respect is not subject to

political bargaining while parties in original position thrust for justice as fairness. He describes self respect thus:

"67. SELF-RESPECT, EXCELLENCE, AND SHAME ...We may define self-respect (or self-esteem) as having two aspects. First of all, as we noted earlier, it includes a person's sense of his own value, his secure conviction that his conception of his good, his plan of life, is worth carrying out. And second, self-respect implies a confidence in one's ability, so far as within one's power, to fulfill one's intentions. When we feel that our plans are of little value, we cannot pursue them with pleasure or take delight in their execution. Nor plagued by failure and self-doubt can we continue in our endeavors. It is clear then why self-respect is a primary good. Without it nothing may seem worth doing, or if some things have value for us, we lack the will to WPC 22007/2012 strive for them. All desire and activity becomes empty and vain, and we sink into apathy and cynicism. Therefore the parties in the original position would wish to avoid at almost any cost the social conditions that undermine self-respect. The fact that justice as fairness gives more support to self-esteem than other principles is a strong reason for them to adopt it."

26. In patriarchy, woman belonged to kitchen. It needs to be realised that girls do have a dream and woman do have a vision, and motherhood cannot be seen as a burden on them to pursue such dreams and visions. The court while considering amplitude and meaning of life under Article 21 of the Constitution has to embrace its full meaning in the societal background on which the court is called upon to WPC 22007/2012 decide such disputes. Thus, a woman employee cannot be thrown out from service for remaining absent on account of taking care of child, if such taking care is indispensable for her. It is made clear that it is only in compelling circumstances, such right can be claimed and protected. In the enforcement of fundamental right, the employer cannot raise a plea to defend themselves by referring to financial implication or organisational interest. Whatever be the inconvenience that the employer may suffer, that is no excuse against claim of protection of fundamental rights.

Our culture, tradition and practice venerate motherhood; our Constitution proclaim and protect status, dignity and self-respect of motherhood; let our deeds, action and decision not be allowed to become profane on motherhood of a woman."

(emphasis supplied)

**45.** The issue of maternity benefits for students of Delhi University arose before the Delhi High Court in **Vandana Kandari Vs University of Delhi**<sup>9</sup>. The

ordinances of the Delhi University came in the way of grant of relief to the petitioner who was an expectant mother. After examining the rights of pregnant female students and the said ordinances the anvil of Articles 41, 42, 43, Article 15(3) of the Constitution of India and the judgments rendered in **Madhu Kishwar and others Vs State of Bihar and others**<sup>10</sup>, the Delhi High Court held as under:

“62. In the light of the above discussion, if any female candidate is deprived or detained in any of the semester just on the ground that she could not attend classes being in the advanced stage of pregnancy or due to the delivery of the child, then such an act on the part of any of the university or college would not only be completely in negation of the conscience of the Constitution of India but also of the women rights and gender equality this nation has long been striving for. It is a saying that "Motherhood is priced of God, at price no man may dare to lessen or misunderstand". By not granting these students relaxation, we will be making motherhood a crime which no civilized democracy in the history of mankind has ever done or will ever do. We cannot make them pay the price for the glory that is motherhood.”

**46.** The judgment of the learned Single Judge in **Vandana Kandari (supra)** was carried in appeal (Ref: LPA 662/2010, University of Delhi and another Vs. Vandana Kandari and another). The learned Division Bench of Delhi High Court while not agreeing with the findings of the learned Single Judge held that the petitioners were entitled to relaxation in view of the concession given by

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<sup>10</sup> 1996 (5) SCC 125

the University. The concession was commended by the learned Division Bench:

“3. We are of the considered opinion that the maternity leave could not have been put in a different compartment for the purpose of relaxation of attendance. In view of the aforesaid, the decision rendered by the learned single Judge to this extent suffers from an infirmity and is accordingly set aside. Be it noted, a peculiar circumstance has emerged in this case. Though we have allowed, appeal, we have asked Mr. M.J.S. Rupal whether the University has any objection to the benefit of relaxation to the two respondents. Regard being had to the special features of the case, Mr. M.J.S. Rupal has fairly stated that the University has no objection to give the benefit of relaxation to the respondent students. We record our appreciation for the statement made by Mr. M.J.S. Rupal after obtaining instructions from the University. We may also aptly note that the said concession has been given by the University as the result of the respondents have already been declared. Needless to say that when a case is decided and benefit of concession is given, the same cannot be cited as a precedent in future cases. There shall be no order as to costs.”

**47. Similarly in A. Arulin Ajitha Rani Vs. The Principal, Film and Television Institute of Tamil Nadu and others<sup>11</sup>**, the Madras High Court directed the institution to frame a policy for pregnant women after finding that the maternity support granted to the petitioner to be inadequate:

“27. Therefore, the writ petition is allowed and the impugned order is set aside. The first respondent is directed to formulate a policy in general, for all educational institutions and universities in the State, so as to ensure that girl students, whose attendance falls short of the prescription, on account of marriage and pregnancy, are granted the benefit of condonation of shortage of attendance, so that the natural biological process does not act as a hindrance to the education and empower of women. There will be no order as to costs.”

**48. The Madras High Court in Nithya Vs. University of Madras and others<sup>12</sup>** mandated the

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<sup>11</sup> AIR 2009 Mad 7

<sup>12</sup> 1994 SCC OnLine Mad 339

grant of maternity support in view of Article 42 of the Constitution of India by holding thus:

“5. Learned counsel for the first respondent, University of Madras submitted that as per the attendance regulation applicable to the petitioner even if 50% of attendance is condoned as the rule stands, she has to appear for the next September or subsequent University examination by paying the prescribed condonation fee without putting in further attendance. There is force in the contention of Miss K. Geetha, learned counsel appearing for the respondent that as the rule stands the University is bound by the said regulations. However, in the instant case, it is clear that the petitioner during the last course of her academic year for B.A. Corporate Secretaryship was married on 18-10-1993 and she was conceived shortly thereafter and as a result she was suffering from morning sickness and other indispositions and, therefore, she was not in a position to attend the classes regularly. The reasons given by the petitioner for not attending the classes have to be accepted as they are genuine and natural consequences of married life. However, there is an impediment as far as University is concerned as long as Regulation 2(ii) is there. Taking into the peculiar facts and circumstances of the case, I feel that it is a fit case to give an exemption from the operation of the said rule as the petitioner has completed 55.75% of attendance and as such she is entitled to condonations of attendance by paying necessary condonation fee to the University. In this connection it is observed that as large number of women students are joining University courses and the type of situation in which the petitioner was involved viz., she was married, may also occur in case of any woman students. The directive principles of State policy contain in part IV of our Constitution by Art. 41 says that the State shall, within the limits of its economic capacity, make of active provision for securing education. If equal opportunity is given to women for education, they can stand on equal terms with men. Article 42 the Directive Principles of State Policy says that the State shall make provision for securing just and humane conditions of work and for maternity relief. Maternity relief in case of girl student will include leave. The University of Madras, a creature of statute can make provisions for granting leave to girl students, if they get married during the period of study and lose their minimum attendance. It is high time that the regulations that have been framed by the University are modified taking into consideration such situations where women student are married during the last course of their academic career and due to pregnancy they may not be in position to attend and complete the course.”

(emphasis supplied)

49. The Delhi High Court examined service conditions in CRPF, which put pregnant employees at a disadvantage in **Inspector (Mahila) Ravina Vs. Union of India and others**<sup>13</sup>. The Delhi High Court looked askance against such discriminatory treatment against women and after viewing the controversy on the foot of Articles 14, 15 (1), 16 (2) and 21 of the Constitution of India laid down the following proposition of law:

“12. It would be a travesty of justice if a female public employee were forced to choose between having a child and her career. This is exactly what the CRPF’s position entails. Pregnancy is a departure from an employee’s “normal” condition and to equate both sets of public employees- i.e. those who do not have to make such choice and those who do (like the petitioner) and apply the same standards mechanically is discriminatory. Unlike plain unwillingness- on the part of an officer to undertake the course, which can possibly entail loss of seniority- the choice exercised by a female employee to become a parent stands on an entirely different footing. If the latter is W.P.(C) 4525/2014 Page 6 treated as expressing unwillingness, CRPF would clearly violate Article 21. As between a male official and female official, there is no distinction, in regard to promotional avenues; none was asserted. In fact, there is a common pre-promotional programme which both have to undergo; both belong to a common cadre. In these circumstances, the denial of seniority benefit to the petitioner amounts to an infraction of Article 16 (1) and (2) of the Constitution, which guarantee equality to all in matters of public employment, regardless of religion, caste, sex, descent, place of birth, residence etc. A seemingly “neutral” reason such as inability of the employee, or unwillingness, if not probed closely, would act in a discriminatory manner, directly impacting her service rights. That is exactly what has happened here: though CRPF asserts that seniority benefit at par with the petitioner’s colleagues and batchmates (who were able to clear course No. 85) cannot be given to her because she did not attend that course, in truth, her “unwillingness” stemmed from her inability due to her pregnancy. In this present situation the course was in Coimbatore. Travelling and living in an alien area without support was not a feasible proposition for an expecting mother;

besides, the CRPF had determined that her medical category was SHAPE III. Mercifully, the CRPF does not contend that its regulations imposed any restrictions on a female employee's pregnancy at the stage of the Petitioner's career. That the petitioner exercised her right therefore to become a parent should not operate to penalise her, and her „choice“ to do so was irrelevant, in the circumstances of the case; the CRPF should have taken the reasons for the unwillingness into account given the admitted fact that she was pregnant.

13. Standing Order dated 19.03.1999, by clause (J), clothes the Director General, CRPF with discretion - through non-obstante and overriding power. This case was eminently suitable for the Director General to exercise his powers on a compassionate basis, enabling the petitioner to catch up on lost opportunity due to her involuntary condition (on account of her exercise of reproductive rights) and regain her seniority with her batchmates who cleared the 85th course. The omission to exercise this power has led to the present dispute. The lack of an express plea of pregnancy based discrimination does not in any way stop this court from doing complete justice, to further the rights of the petitioner under Articles 14, 15 (1), 16 (2) and 21 of the Constitution of India. (emphasis supplied)

14. For the foregoing reasons, this Court hereby directs the Respondents to restore seniority of the Petitioner from 10.07.2010, the completion date of SICC SL. No. 83- as in the case of her other batchmates who completed that course, and consequently promote as well as assign her consequential seniority. Consequential seniority and all pay benefits including fixation of pay and arrears of pay shall also be disbursed to the petitioner within twelve weeks. The writ petition is allowed in the above terms. No costs.”

**50.** Per contra on behalf of the University, Sri Rohit Pandey, learned counsel assisted by Ms. Shambhavi Tiwari, learned counsel for the University relied on the judgment of the Madras High Court rendered in **A. Arulin Ajitha Rani (supra)**. The learned Division Bench in **A. Arulin Ajitha Rani (supra)** declined to apply the provisions of Articles 42 and 51 of the Constitution of India and also the international conventions to which

India is a signatory, to grant any maternity benefits to the petitioner:

“10. Even assuming that an Educational Institution may also come within the aforesaid provisions, there is no dispute that the State Government has not issued any notification declaring that the provisions of the Act would be applicable to the educational institutions. There can not be any dispute regarding the requirement of grant of maternity benefit to the working women. However, the question is, in the absence of any specific provision applicable to educational institution, whether such provision can be extended.

11. We do not think that in the content in which such provisions have been made for the working women, such provisions can be ipso facto made applicable. Whether such benefit can be extended or not is essentially a policy decision to be taken by either the State Government or the Central Government.

14. For the aforesaid reasons, we are unable to persuade ourselves to interfere with the order of the learned single Judge. The question as to whether similar beneficial provisions should be made applicable to the educational institutions is essentially a policy matter left to the wisdom of the legislature and we do not express any opinion in one way or the other.”

**51. Similarly, in *Ahalya K.A. Vs. Kannur University and others*<sup>14</sup>, the Kerala High Court did not deviate from the regulations of the University which provided for minimum attendance requirement even when the absence was on account of pregnancy. The Kerala High Court created a distinction between women who are pursuing academic courses and working women to deny relief by holding:**

“5. The learned Counsel for the petitioner would argue that leave on grounds of maternity is an accepted practice, even in service and the employer is also obliged to pay salary for the period spend on maternity leave. The same welfare measure extended to women in service, should also be extended to them in studies; is

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14 2016 SCC OnLine Ker 19424

the argument. This court is not prepared to accept the said contention. The incidence of service and the requirement in a regular course of study cannot be equated . While in employment, the grant of maternity leave is a statutory mandate which the employer definitely has to comply with; even to his or her disadvantage, of not having the services of such woman employee when payment of salary is made. That is a definite advantage conferred on the employee who has to remain out of employment only for reason of her pregnancy. However in studies, if a student keeps away from classes, on the ground of pregnancy, then disadvantage is to that student. The University definitely does not suffer any disadvantage but it has to go by its regulations which have a binding nature on the University and the student. Such regulations are also made to ensure the quality of education and the degree offered; on completion of studies; upon which the Society acts. A student cannot be allowed to keep away from the regular courses in a structured system of education and then be permitted to appear for the examinations as a equitable measure. ”

**52.** The Kerala High Court declined to depart from the University regulations to ameliorate the disadvantage imposed by pregnancy in **Jasmine V.G. Vs. Kannur University<sup>15</sup>** by holding :

“6. This Court, with due respect, is unable to accept the finding of the learned Single Judge that in providing just and humane conditions of work and for maternity relief and in making effective provisions for securing the right work and to education, a female student could be given relaxation from attending the requisite classes as stipulated by the educational agency or the University for participating in the examination. The requirement, insofar as providing minimum attendance in lecture classed, is to equip the students to better perform in the profession they wish to pursue. Mere bookish knowledge is not the criteria of judging a professional, and pass in examination is not the only standard. The professional courses insist that the structured as semesters over a period of years. That involves attendance in lecture classes, participation in seminars, performance in practicals; herein giving lectures and so on and so forth, which; together with the pass in the final examinations, not only awards a degree but sends forth a well molded professional into society. This ensures that the students, after the award of the degree when set out to the professional world, is equipped to discharge the professional duties with high standards, commitment and orientation in the chosen vocation.

7. The petitioner herein is a student of B.Ed., a teacher training course, and is being trained to work as a teacher, whose role in nation building cannot , but be emphasized. It cannot be said that merely for the reason of her pregnancy a student could be allowed to sit for the examinations even without satisfying the requisite attendance, as prescribed by the educational agency. It cannot also be said that the case of the petitioner is an exceptional one, since, pregnancy cannot be considered to be a medical condition visited on the petitioner unexpectedly. This Court is of the firm view that the petitioner ought to have definitely adjusted her priorities when continuing a higher education, especially in a course which trains her to be a professional teacher. Pregnancy was an optional choice and that cannot be a reason to permit a student to deviate from the requirements of a regular course of study, and the insistence to adhere to the course regulations cannot be termed to be, a negation of the preferential values of motherhood. The petitioner has chosen to expand her family and can only be deemed to have taken a sabbatical from regular studies; which is definitely permissible and laudable too. But that cannot be turned to her advantage for wriggling out of the terms and conditions of a regular academic course. The award of a degree is not a private affair concerning the awardee along; when it also brings with it the stamp of approval of a reputed educational agency, on which the society acts. Personal preferences and individual predilection should bow down to the larger public interest and societal obligations. The petitioner definitely will be entitled to continue the second semester in the next year and appear for the examination after securing the requisite attendance.”

**53.** The Delhi High Court in **Ankita Meena Vs. University of Delhi**<sup>16</sup>, refused to condone the shortfall in attendance even after acknowledging the inability of the petitioner to attend the regular classes on account of her pregnancy.

**54.** The judgement of **Ankita Meena (supra)** rendered by Delhi High Court was taken in appeal before the Supreme Court. Various interim orders were passed from time to time in favour of the petitioner Ankita Meena. In **Ankita Meena Vs.**

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16 2018 SCC OnLine Del 9049

**University of Delhi**<sup>17</sup> the Supreme Court ruling in favour of the petitioner held as follows:

“12. Therefore, the I.A. and the SLP are disposed of directing the University to declare the 5<sup>th</sup> Semester supplementary Examination results of the petitioner and issue the provisional degree along with necessary certificates, if she had passed the examinations, subject to the petitioner clearing the other formalities. This order is passed in the peculiar facts and circumstances of the case.”

**55.** University regulations for minimum attendance and medical council rules were strictly interpreted and rigidly enforced by Punjab and Haryana High Court in **Dr. Shelly Jetly Vs. State of Punjab and others**<sup>18</sup>. In **Dr. Sheely Jetly (supra)** while denying relief to the petitioner, who could not fulfill the attendance criteria because of her pregnancy, it was held:

“8. The above recommendations leave no manner of doubt that no exemption is provided to the candidate during the period of three years either for doing housemanship or for any other experience or diploma. Necessarily it has to be taken that the candidate should not have any continuous break from the period of training. It has not been disputed by the petitioner that the recommendations and directions of the Medical Council of India are binding on respondent Nos. 2 and 3 and these cannot be by-passed by the petitioner. It cannot be overlooked that the entire study course is training based. It has to be kept in mind that candidate during the course of training has not only to share greater responsibility in the management, but has also to acquire expertise knowledge during his clinical performance and, therefore, necessarily the training period would also include Sundays and public holidays. The retention behind such a course of specialization appears to be that utmost benefit can be derived by the student by following the scheduled course of training. It is for that reason that it is a residency system course. It cannot be ignored that continuous break of six months of the training whether on account of maternity leave or for any other reason like aliment etc. does have a direct impact on the schedule of

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17 2021 SCC OnLine SC 36

18 2000 SCC OnLine P & H 1061

training based and the medical Council of India has chosen to limit the absence from the training up to 20%, it does not fall within the domain of any other authority to bye-pass that requirement. Once this limit is allowed to be tinkered with for one reason for the other, it would lead to defeat the very purpose for which training course has been envisaged. The direct consequence would be that it would ultimately affect the prescribed standards of the Post- Graduate Degree Course. The recommendations of the Medical Council of India note above does not give any option to the university to deviate from them.”

**56.** With utmost respect to the erudite holdings of **A. Arulin Ajitha Rani (supra)**, Kerala High Court in **Ahalya K.A. (supra)** and **Jasmine V.G. (supra)**, Delhi High Court in **Ankita Meena (supra)**, Punjab & Haryana High Court in **Dr. Shelly Jetley (supra)** it has to be observed that the judgements of the Supreme Court and the High Courts in point, applicable constitutional provisions as well as the international instruments to which India is signatory were not referred to the Hon’ble Courts.

**57.** In such wake, the aforesaid judgements relied upon by the respondent University do not constitute binding precedents applicable to the facts of this case.

### **G. Evolution of Fundamental Rights by courts, Legislative & Executive Inertia:**

**58.** The fundamental rights of citizens are stated in Part III of the Constitution of India. In many cases,

text of the right does not contain an exhaustive description of the scope of the right. Rights have to be interpreted from the text of the Constitution. The process of interpretation of the text, results in the evolution of rights. The Constitution is the textual origin of fundamental rights. Constitutional law defines the substance of fundamental rights.

**59.** The fast pace of life in modern times often outstrips the capacity of the legislature to cope with the consequences of social change. There is a limit to human foresight, but the possibilities of life are limitless. The limits of legislation are the constraints of human foresight. The legislative process is complex and even time taking. Human affairs do not wait on the legislative process. These facts frequently create a legislative lag. It is almost inevitable in the nature of things.

**60.** The first intersection of life with law, at times happens in courts, even before the legislatures grapple with the problems. The courts are often seized of various emerging issues in social and individual lives, before the legislatures are cognizant of them.

**61.** A legislative hiatus or executive lethargy cannot cause a constitutional stasis. The enforcement of fundamental rights cannot be forestalled by a legislative lag or executive inertia or a regulatory void. Constitutional guarantees and Fundamental Rights have to be enforced on demand. Constitutional overhang is perpetual. Law is always in motion and never at a standstill. The Constitution of India is a forever living organism. Constitutional law can never be stone deaf to calls of violations of fundamental rights.

**62.** The text of the Constitution contains a conceptual philosophy of fundamental rights, and is not an exhaustive compendium of all fundamental rights. The text of the Constitution is constant, fundamental rights are always evolving. This is the essence of constitutional law jurisprudence.

**63.** There is a method in the evolution of constitutional law jurisprudence. Evolution of constitutional law rights are guided and controlled by the text of the constitution, long settled judicial principles of interpretation of the constitution, and judicial precedents in point. The march of law is also assisted by consensus of values in the comity

of civilized nations. These universal values are often manifested in international instruments. Another source of such values is comparative international jurisprudence. The felt needs of the times are also factored in by the courts. Development of constitutional law and evolution of fundamental rights happens on these sure foundations. Fundamental rights are thus distilled by the constitutional courts in discharge of their constitutional obligations. This is not judicial activism by courts. It is judging.

**64.** The Supreme Court in **Vishaka Vs. State of Rajasthan**<sup>19</sup>, issued various guidelines for the safety of women at working places. The guidelines held the field, till the Parliament enacted a legislation. Judicial directions in that case preceded the legislative enactment. Infact the legislature was alerted, to the need of a legislation to cover the field, by the judgment of the constitutional court.

**65.** This narrative will profit from the observations made in **Rattan Chand Hira Chand v. Askar Nawaz Jung**<sup>20</sup>:

"The legislature often fails to keep pace with the changing needs and values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only

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19 1997 (6) SCC 241

20 (1991) 3 SCC 67

necessary but obligatory on the courts to step in to fill the lacuna. When courts perform this function undoubtedly they legislate judicially. But that is a kind of legislation which stands implicitly delegated to them to further the object of the legislation and to promote the goals of the society. Or to put it negatively, to prevent the frustration of the legislation or perversion of the goals and values of the society. So long as the courts keep themselves tethered to the ethos of the society and do not travel off its course, so long as they attempt to furnish the felt necessities of the time and do not refurbish them, their role in this respect has to be welcomed.

(emphasis supplied)

All courts have at one time or the other felt the need to bridge the gap between what is and what is intended to be. The courts cannot in such circumstances shirk from their duty and refuse to fill the gap. In performing this duty they do not foist upon the society their value judgments. They respect and accept the prevailing values, and do what is expected of them. The courts will, on the other hand, fail in their duty if they do not rise to the occasion but approve helplessly of an interpretation of a statute or a document or of an action of an individual which is certain to subvert the societal goals and endanger the public good."

**66. K. S. Puttaswamy (supra)** unequivocally set forth that determining different facets of dignified existence which fall within Article 21 of the Constitution of India, is a function of judicial review:

“127. The submission that recognising the right to privacy is an exercise which would require a constitutional amendment and cannot be a matter of judicial interpretation is not an acceptable doctrinal position. The argument assumes that the right to privacy is independent of the liberties guaranteed by Part III of the Constitution. There lies the error. The right to privacy is an element of human dignity. The sanctity of privacy lies in its functional relationship with dignity. Privacy ensures that a human being can lead a life of dignity by securing the inner recesses of the human personality from unwanted intrusion. Privacy recognises the autonomy of the individual and the right of every person to make essential choices which affect the course of life. In doing so privacy recognises that living a life of dignity is essential for a human being to fulfill the liberties and freedoms which are the cornerstone of the Constitution. To recognise the value of privacy as a constitutional entitlement and interest is not to fashion a new fundamental right by a process of amendment through judicial fiat. Neither are the Judges nor is the process of

judicial review entrusted with the constitutional responsibility to amend the Constitution. But judicial review certainly has the task before it of determining the nature and extent of the freedoms available to each person under the fabric of those constitutional guarantees which are protected. Courts have traditionally discharged that function and in the context of Article 21, as we have already noted, a panoply of protections governing different facets of a dignified existence has been held to fall within the protection of Article 21.” (emphasis supplied)

**67.** Motherhood is the most sublime expression of Nature’s longing for life. Dignity of motherhood is the highest manifestation of refinement in the human race. To recognize maternal dignity as a constitutional entitlement is not to create a new fundamental right through judicial fiat.

## **H. Education & Universities**

### **Role and obligation of universities**

“Universities are made by love, love of beauty and learning.”

~Annie Besant

**68.** Universities are the custodians of old values, even as they ceaselessly push the boundaries of modern knowledge.

**69.** In universities students of diverse backgrounds and different beliefs, congregate in a common pursuit of knowledge. Through knowledge they will learn, that humanity unites more than diversity differentiates. With learning they will understand that diversity enriches human life, and

does not divide humankind. University experience will help them cultivate constitutional values and transcend parochial attitudes.

**70.** Universities are not teaching shops, nor are they mere examining bodies. Universities nurture intellect and develop character of young citizens in a wholesome manner. Students gain knowledge and imbibe values in universities. These dual pursuits constitute the founding purpose of a university, in fact its *raison detre*.

**71.** A unifocal approach promoting scholastic achievements, to the exclusion of character building will degrade the founding principles of a university.

**72.** Ideals professed by the University today will be the values practised by the nation tomorrow. Lack of empathy of the University towards pregnant women will create apathy towards maternity rights among the students. The University has to show fidelity to the rule of law by creating an enabling environment to realize fundamental rights, foster fundamental duties and promote constitutional values.

## **I. Conclusions & Directions**

**73.** The rights of the petitioner to reproductive choices, marriage, procreation and motherhood are entrenched as fundamental rights by the law laid down by constitutional courts.

**74.** The need to ameliorate the constraints imposed by pregnancy and its aftermath and to dignify motherhood by providing institutional support systems for expectant mothers and new mothers is an imperative command of law. The respondent University has to implement the fundamental rights of the petitioner vested by the aforesaid pronouncements of law made by constitutional courts.

**75.** The petitioner in this case could not clear her exams in the stipulated attempts and time period due to pre natal and post natal conditions. The petitioner could not compete equally with other students due to constraints of pregnancy and new motherhood. Her disadvantage was not compensated by the respondent University.

**76.** Wide amplitude of powers vested by virtue of Section 29 of the Uttar Pradesh Technical

University Act, 2000 enjoin upon the University to create necessary Regulations which will exalt constitutional values and bring fundamental rights of the students to fruition. Regulation 4.12 contemplates making special arrangements for female students.

**77.** The respondent University has neglected to frame Regulations or create appropriate legal instruments to provide for maternity benefits to expectant mothers and new mothers. The failure of the University to perform its statutory functions has left the students bereft of maternity benefits. This inertia of the University betrays its insensitivity to the plight of pregnant students, undermines the rule of law and subverts the ideal of holistic education. The University cannot justify violation of fundamental rights of the petitioner on the foot of its own omissions.

**78.** Gurudev Tagore had alerted the nation to the consequences of absence of empathy in societal values: “Stupendous load of callousness that accumulates till the moral foundations of our

society begins to show dangerous cracks and civilizations are undermined<sup>21</sup>.”

**79.** Various regulatory bodies including All India Council for Technical Education (AICTE) restrict the grant of maternity benefits to post graduate fellowship students while overlooking undergraduate students. Such discriminatory treatment is violative of Articles 14 and 15(3) of the Constitution of India.

**80.** However, it is noteworthy that in the counter affidavit filed on behalf of the All Indian Council for Technical Education (AICTE) does not resist grant of maternity benefits to the petitioner. Sequitur of the stand of the AICTE before this Court is that the University is not constrained by any regulatory standards in creating provisions for grant of maternity benefits for undergraduate students. No other co-respondents, namely Union of India, State of U.P. or the UGC have contested the entitlement claimed by the petitioner.

**81.** The circular/order issued by the University Grants Commission, New Delhi on 14.12.2021, produced by Shri Paras Nath Rai, learned Central

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21 As quoted in *Home in the World : A Memoir*, by Amartya Sen

Government Standing Counsel is extracted in its entirety hereinunder:

“D.O.No. 21-116/2021 (CPP-II) 14<sup>th</sup> December, 2021

**Subject: Maternity leave to women students.**

Respected Madam/Sir,

The UGC has made a provision in the UGC (Minimum Standards and Procedure for Award of M.Phil./Ph.D. Degrees) Regulations, 2016 that:

***“that women candidate may be provided Maternity Leave/Child Care Leave once in the entire duration of M.Phil./Ph.D. for up to 240 days.”***

In addition to above, all Higher Education Institutions(HEIs) are requested to frame appropriate rules/norms with regard to granting Maternity Leave to the women students enrolled in their respective institution/affiliated Colleges and also provide all relaxations/exemptions relating to attendance, extension in date for submitting examination forms or any other facility deemed necessary for women students pursuing Under Graduate and Post Graduate programmes.

With kind regards.

Yours sincerely  
(Rajesh Jain)

**The Vice Chancellors of all Universities”**

**82.** In wake of the aforesaid circular issued by the University Grants Commission, New Delhi, and the stand of the Union of India, there is no legal impediment before the respondent University to frame the necessary Regulations for grant of maternity benefits.

**83.** The University by framing the aforesaid Regulation will be true to the legacy of Dr. A. P. J. Abdul Kalam, former President of India, in whose name the University is founded. The University will do itself credit by realizing the vision of the scholar statesman. The University

cannot rest content in the reflected glory of his undying name.

**84.** This Court wishes to record its appreciation on the sensitivity in the stand and promptness of response of the Union of India and the University Grants Commissions, New Delhi in the matter.

**85.** The Court also commends Shri Paras Nath Rai, learned Central Government Standing Counsel for the diligence with which he has discharged his duties as counsel for the Union of India and an officer of this Court.

**86.** By failing to frame Regulations or appropriate legal instruments for grant of maternity benefits and by declining to grant such benefits to the petitioner, the University has violated the fundamental rights of the petitioner as guaranteed under Articles 14, 15(3) and 21 of the Constitution of India and as expounded in the law laid down by Constitutional Courts.

**87.** The questions framed for consideration are answered as under:

I. The petitioner is entitled to an additional chance to appear in the examinations which she could not clear in the admissible time frame

due to her pregnancy and post natal recovery period.

**II.** The petitioner cannot be denied maternity benefits on the foot that the University Ordinances or University Regulations do not provide such relaxation. The University is under an obligation of law to frame the requisite Regulations/appropriate legal instruments for grant of maternity benefits to students which embrace the pregnancy period and post natal recovery time. The University is also liable to consider the grant of maternity benefits to the petitioner in light of the said Regulations.

**III.** The relief to which the petitioner is entitled to set out below.

**88.** A writ in the nature of mandamus is issued to the respondent-University to execute the following directions:

**I.** The University shall create Regulations/Ordinances/appropriate legal instruments for grant of pre-natal and post-natal support and other maternity benefits to expectant mothers and new mothers who are pursuing various courses in the University. The maternity benefits shall also include

additional chances to clear the exams in an enlarged time frame.

**II.** The petitioner shall make an representation with supporting documents (including medical reports/certificates) to appear in the aforesaid examinations in the subjects of (a) Signals and System—3<sup>rd</sup> semester—B.Tech. (Electronics and Communication) (b) Engineering Mathematics-II, 2<sup>nd</sup> Semester—B.Tech. (Electronics and Communication), which will be conducted by the University. The examinations schedule shall be decided by the University.

**III.** The petitioner shall be permitted by the University to appear in the aforesaid examinations.

**IV.** The above directions shall be complied with within a period of four months from the date of receipt of a certified copy of this order.

**89.** The writ petition is allowed to the extent indicated above.

**Order Date:** 16-12-2021

Kumar Dhananjai