



## Central Administrative Tribunal Jammu Bench, Jammu

T.A. No. 2285/2021  
(SWP No.2211/2018)

Tuesday, this the 2<sup>nd</sup> day of March, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Mr. Pradeep Kumar, Member (A)**

Dr. Nazia Majeed Zargar  
D/o Abdul Majeed Zargar  
r/o Shah-i-Hamdan Lane, Umerabad,  
Sector 2 Zainokote, Srinagar  
Jammu & Kashmir

..Applicant

(Mr. Sameer Hasan Dar, Advocate for Mr. M Anis Ul Islam,  
Advocate)

### Versus

1. State of Jammu and Kashmir, through Commissioner/Secretary to Government, General Administration Department, Civil Secretariat, Srinagar/Jammu.
2. State of Jammu & Kashmir through Commissioner/Secretary to Govt. Health and Medical Education Department Civil Secretariat, Jammu/Srinagar
3. Director Health Services, Kashmir
4. Principal  
Govt. Dental College & Hospital,  
Srinagar, Kashmir

..Respondents

(Mr. Amit Gupta, Additional Advocate General)

**ORDER (ORAL)****Mr. Justice L. Narasimha Reddy:**

The applicant was engaged as a Lecturer on academic arrangement basis in terms of SRO No.384 of 2009 dated 14.12.2009, in the year 2014, and she is being continued thereafter by granting extension year after year. She applied for maternity leave from 26.04.2017 to 22.10.2017. When the request was not acceded to, she approached the Hon'ble High Court of Jammu & Kashmir by filing SWP No.303/2018. That was disposed of through order dated 21.02.2018, directing the respondents to pass orders for extending the benefit to the extent it is permissible under the relevant provisions of law. Accordingly, an order was passed on 09.07.2018, taking the view that a contractual employee is entitled for leave of 180 days but it is without honorarium and the same is accordingly granted. The grievance of the applicant is that granting of maternity leave without honorarium is as good as rejecting the benefit. Accordingly, she filed SWP No.2211/2018 before the Hon'ble High Court of Jammu & Kashmir, challenging the order dated 09.07.2018.

2. The applicant contends that it was not proper on the part of the respondents to deny her, the honorarium at a time when every step is being taken for the welfare of women and children. Reference is made to various Schemes, that are in *vogue* in this behalf.



3. The respondents filed a counter affidavit, stating that the benefit of maternity leave with wages is available only to the regular employees, whereas for contractual employees, the benefit is confined only to that of leave without honorarium. It is stated that initially it was for a period of 90 days and it has been extended to 180 days.

4. The SWP has since been transferred to this Tribunal in view of re-organization of the State of Jammu & Kashmir and renumbered as T.A. No.2285/2021.

5. Today, we heard Mr. Sameer Hasan Dar for Mr. M Anis Ul Islam, learned counsel for applicant and Mr. Amit Gupta, learned Additional Advocate General, through video conferencing.

6. It is not in dispute that the applicant was appointed as a Lecturer on academic arrangement basis in the Department of



Prosthodontics in Government Dental College & Hospital, Srinagar, in the year 2014. Obviously because of her performance and the need of the Institution, her services were being extended from time to time. She availed the maternity leave between 26.04.2017 and 22.10.2017, which is about 180 days. The respondents also did not treat the period as unauthorized absence. The only controversy is as to whether she is entitled to be paid the honorarium for that period.

7. Cutting across all the departments, the welfare of women and children is treated as of utmost priority and importance. In the recent past, the Central Government has extended the maternity leave for a larger period and even the male spouses are extended leaves with wages to assist the female spouses. When such is the facility being extended to the women, with reference to the pregnancy and delivery, there is no basis to deny the wages to the applicant during the period of leave.

8. In **Municipal Corporation of Delhi v. Female Workers (Muster Roll) & another**, (2000) 3 SCC 224, the Hon'ble Supreme Court held that such entitlement of female workers is referable to the mandate under Articles 42 & 43 of the Constitution of India. This was followed by the Hon'ble High

Court of Jammu & Kashmir in recent past in **Dr. Rabia Khatoon v. State of Jammu & Kashmir & Others** (SWP No.2618/2012) decided on 17.12.2012. Therefore, the impugned order, insofar as it denied the honorarium to the applicant during the period of maternity leave, cannot be sustained in law.



9. We accordingly allow the T.A. and set aside the impugned order, insofar as it denied the honorarium to the applicant. We direct the respondents to pay honorarium to the applicant for the period during which she availed maternity leave, within a period of two months from the date of receipt of a copy of this order.

There shall be no order as to costs.

**( Pradeep Kumar )**  
Member (A)

**( Justice L. Narasimha Reddy )**  
Chairman

**March 2, 2021**  
/dkm/sd/sunil/jyoti/