HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 9299 of 2026

Smt Shikha Yadav and another

…..Petitioner(s)

Versus

State of U.P. and 2 others

…..Respondent(s)

Counsel for Petitioner(s)	:	Jeeshan Ahmad Siddiqui, Mohammed Iftekhar
Counsel for Respondent(s)	:	C.S.C.

A.F.R.

Court No. - 6

HON'BLE SIDDHARTH NANDAN, J.

1. Heard Sri Mohammed Iftekhar Farooqui along with Sri Jeeshan Ahmed Siddiqui, learned counsel for the petitioner; learned Additional Chief Standing Counsel; and Sri Rajan Sharma, learned counsel for the respondents.

2. The present writ petition has been filed with the following prayer:-

> *"i) To issue a writ, order or direction in the nature of certiorari Quashing the impugned order dated 09.01.2026 (Letter No.159/E.C.-2/2026) contained as (Annexure No.2) and the impugned order dated 06/01/2026 issued by Respondent No.3, whereby Petitioner No.1' and petitioner No.2 maternity leave application was rejected*
>
> *ii) To issue a writ, order or direction in the nature of Mandamus commanding the respondents to immediately sanction and grant maternity leave to Petitioner No.1 for 180 days from 19.01.2026 to 17.07.2026 and Petitioner No.2 for 180 days from 21.01.2026*

the Government Order dated 08.12.2008, which is contrary to the provisions of The Code on Social Security, 2020 (hereinafter referred to as “the Code, 2020"). He further submits that the rejection of the claim on the basis of the said Government Order, which provides that a second spell of maternity leave cannot be granted within a period of two years from the date of the last maternity leave availed, is patently illegal.

4. Since the question regarding the applicability of the Code, 2020, and the ground raised by the petitioners are purely legal in nature, the learned Additional Chief Standing Counsel states that he does not propose to file a counter affidavit and is prepared to address the legal issue. Accordingly, with the consent of the parties, the present writ petition is being decided at the admission stage itself.

<u>Facts</u>

5. The present writ petition has been filed by the two petitioners, who claim an identical cause of action, namely, the rejection of their applications for the grant of benefits under the Code, 2020, on the basis of the Government Order dated 08.12.2008.

6. As far as petitioner No. 1 is concerned, she is working as a regularly appointed Staff Nurse/Nursing Officer under the Department of Medical Education, Government of Uttar Pradesh. She was earlier granted 180 days' maternity leave from 29.01.2024 to 27.07.2024 by Office Order dated 12.02.2024. Thereafter, she again conceived and became pregnant with her second male child, whose expected date of delivery was 12.01.2026. Accordingly, she submitted an application dated 05.01.2026 seeking the grant of maternity leave from 19.01.2026 to 17.07.2026 (180 days). The said application has been rejected by the impugned order dated 09.01.2026 issued by respondent No. 3, solely on

7. As far as petitioner No. 2 is concerned, she is also working as a regularly appointed Staff Nurse/Nursing Officer under the Department of Medical Education, Government of Uttar Pradesh. She was granted 180 days' maternity leave from 15.01.2024 to 12.07.2024 by Office Order dated 27.01.2024. Thereafter, she again became pregnant for the second time and submitted an application dated 24.12.2025, seeking the grant of maternity leave for 180 days with effect from 21.01.2026. However, the said application was also rejected by respondent No. 3 vide order dated 06.01.2026, relying upon the Government Order dated 08.12.2008.

<u>Issue</u>

8. The question that arises for consideration is whether Rule 153(1) of Chapter XIII of the U.P. Fundamental Rules contained in Financial Handbook, Volume II, Parts 2 to 4, is applicable to a regular Government servant, or whether, in the event of any inconsistency between the said Rule and the provisions of the Code, 2020, being a Central enactment, would prevail and govern the field under the constitutional scheme.

<u>Petitioners' Argument</u>

9. The contention of the learned counsel for the petitioners is that, in furtherance of the mandate contained in Article 42 of the Constitution of India, the Parliament enacted the Code, 2020. On the other hand, the provisions contained in the Financial Handbook, Volume II, Parts 2 to 4 were framed by the Governor in exercise of the powers conferred under Section 241(2)(b) of the Government of India Act, 1935, and continue to be applicable by virtue of Article 313 of the Constitution of India. He submits that the provisions of the Financial Handbook, at best, have the status of executive instructions and, therefore, must yield to the provisions of the Code, 2020. For ready reference Article 42 of the

10. He further submits that Section 161 of the Code, 2020, categorically provides that the provisions of the said Code shall have effect notwithstanding anything inconsistent therewith contained in any other law, whether made before or after the coming into force of the Code, 2020. For ready reference Section 161 of the Code, 2020 is reproduced below:-

> ***"161. Effect of laws and agreements inconsistent with this Code.*** *—(1) The provisions of this Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Code:*
>
> *Provided that where under any such award, agreement, contract of service or otherwise, a person is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Code, the person shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he is entitled to receive benefits in respect of other matters under this Code.*
>
> *(2) Nothing contained in this Code shall be construed to preclude a person from entering into an agreement with his employer for granting him rights or privileges in respect of any matter which are more favourable to him than those to which he would be entitled under this Code."*

11. It is further submitted that the Government of Uttar Pradesh, vide Government Orders dated 08.12.2008 and 24.03.2009, earlier adopted the decision of the Central Government along with the modifications made by it. Thereafter, the State Government, vide Government Order dated 11.04.2011, also adopted further modifications. However, the said Government Orders were in reference to 'The Maternity Benefit Act, 1961; and subsequently in order to simplify and rationalise the relevant

thereto. For ready reference, the Government Order dated 11.04.2011 is reproduced below:

"प्रेषक,
वृन्दा सरूप, प्रमुख सचिव, उ०प्र० शासन।
सेवा में,
समस्त विभागाध्यक्ष एवं प्रमुख कार्यालयाध्यक्ष, उत्तर प्रदेश।
वित्त (सामान्य) अनुभाग-2 लखनऊ :
दिनांक 11 अप्रैल, 2011
विषयः- महिला सरकारी सेवकों को बाल्य देखभाल अवकाश की अनुमन्यता।
महोदय,
उपर्युक्त विषयक कार्यालय ज्ञाप संख्या-जी-2-2017/दस-2008-216-79, दिनांक 08-12-2008 तथा कार्यालय ज्ञाप संख्या जी-2-573/दस-2008-216-79, दिनांक 24-3-2009 द्वारा प्रदेश की महिला सरकारी सेवकों को केन्द्र सरकार की महिला कर्मचारियों की भांति बाल्य देखभाल अवकाश की सुविधा कतिपय शर्तों के अधीन प्रदान की गयी थी। चूंकि भारत सरकार द्वारा उक्त शर्तों में कतिपय संशोधन किए गए हैं अतः सम्यक् विचारोपरान्त श्री राज्यपाल महोदय संदर्भगत शासनादेशों में उल्लिखित शर्तों को निम्नवत् संशोधित करने की सहर्ष स्वीकृति प्रदान करते हैं:-
(1) संबंधित महिला कर्मचारी के अवकाश लेखे में उपार्जित अवकाश देय होते हुए भी बाल्य देखभाल अवकाश अनुमन्य होगा।
(2) बाल्य देखभाल अवकाश को एक कलेण्डर वर्ष के दौरान तीन बार से अधिक नहीं दिया जायेगा।
(3) बाल्य देखभाल को 15 दिनों से कम के लिए नहीं दिया जायेगा।
(4) बाल्य देखभाल अवकाश को साधारणतया परिवीक्षा अवधि के दौरान नहीं दिया जायेगा, ऐसे मामलों को छोड़कर जहाँ अवकाश देने वाला प्राधिकारी परिवीक्षार्थी की बाल्य देखभाल अवकाश की आवश्यकता के बारे में पूर्ण रूप से संतुष्ट न हो। इसे भी सुनिश्चित किया जायेगा कि परिवीक्षा अवधि के दौरान अवकाश दिया जा रहा है तो इस अवकाश की अवधि कम-से-कम हो।
(5) बाल्य देखभाल अवकाश को अर्जित अवकाश के समान माना जायेगा और उसी प्रकार से स्वीकृत किया जायेगा।
2- यदि किसी महिला कर्मचारी द्वारा दिनांक 08.12.2008 के कार्यालय ज्ञाप के जारी होने के पश्चात बाल्य देखभाल के प्रयोजन हेतु अर्जित अवकाश लिया गया है तो उसके अनुरोध पर उक्त अर्जित अवकाश को बाल्य देखभाल अवकाश में समायोजित किया जा सकेगा।
3- शासनादेश संख्या जी-2-2017/दस-2008-216-79, दिनांक 08-12-2008 तथा शासनादेश संख्या जी-2-573/दस-2009-216-79 दिनांक 24-03-2009 इस सीमा तक संशोधित समझे जायेंगे।
4- संगत अवकाश नियमों में आवश्यक संशोधन यथासमय किये जायेंगे।

भवदीया,
(वृन्दा सरूप)
प्रमुख सचिव, वित्त।"

12. On the strength of the aforesaid submissions, learned counsel for

Leave' and 'Child Care Leave' to its employees has been adopted by the State Government. Consequently, Rule 153(1) of the Financial Handbook, Volume-II, Part 2 to 4, as well as the Government Order dated 08.12.2008, to the extent they are inconsistent with the provisions of the Code, 2020, must yield to the said Code.

Respondents Arguments

13. Per contra, the learned Additional Chief Standing Counsel submits that the claim of the petitioners cannot be allowed in view of Rule 153(1) of Chapter XIII of the U.P. Fundamental Rules contained in the Financial Handbook, Volume-II, Part 2 to 4. In support of his submission, he places reliance upon the judgment of a Coordinate Bench of this Court in **Renu Chaudhary v. State of U.P. and Others**[1]**,** wherein, in relation to an employee of an institution established and maintained by the U.P. Basic Education Board, it was held that there is no conflict between the second proviso to Rule 153 of the Fundamental Rules and the provisions of the erstwhile Act, 1961, as the said Act does not apply to the establishments of the U.P. Basic Education Board or the schools maintained by it.

14. In view of the aforesaid submissions, learned counsel for the respondents prays for dismissal of the aforesaid writ petition.

Consideration

15. Having considered the rival submissions made by the parties, before proceeding to examine the moot question as to whether the provisions of the Code, 2020, would be applicable to the employees of the State Government or whether the Fundamental Rules would govern the field, this Court deems it appropriate to consider the relevant constitutional provisions in the light of the parliamentary enactment and

and humane conditions of work and for maternity relief. It is, therefore, to be examined whether the provisions contained in the U.P. Fundamental Rules in the Financial Handbook, on the subject of maternity relief, are in consonance with the constitutional mandate embodied in the Directive Principles of State Policy, applicable to the State.

17. The provisions of the Financial Handbook, Volume II, Parts 2 to 4, were framed by the Governor in exercise of the powers conferred under Section 241(2)(b) of the Government of India Act, 1935, and continue to remain in force by virtue of the provisions contained in Article 313 of the Constitution of India. It is no longer *res integra* that the nature of the said Rules contained in the Financial Handbook is, at best, is that of executive instructions; and by no stretch of imagination, can they be brought within the category of an "enactment" made by the legislature.

18. Further, Article 38 of Part IV of the Constitution of India, as amended by the 44th Amendment in 1978, directs the State to secure a welfare State. It mandates the State to promote the welfare of the people, by ensuring that the social order is informed by social, economic, and political justice; and requires the State to minimize inequalities in income, status, facilities, and opportunities.

19. Thereafter, Article 39 of the Constitution of India provides that the citizens, men and women equally, have the right to an adequate means of livelihood; and that the health and strength of workers, both men and women, are not abused or forced by economic necessity to enter into avocations unsuited to their strength.

20. Articles 42 and 43 of the Constitution of India, make provisions for just and humane conditions of work and maternity relief, and

discriminate on the ground of sex and shall not be prevented from making special provisions for women and children.[2]

21. A scrutiny of the aforesaid constitutional provisions reveals that the grant of maternity benefits, protection of the health and strength of workers, and maintenance of a decent standard of life through "just and humane conditions of work, constitute a constitutional mandate and an obligation upon the State.

22. In the backdrop of the aforesaid constitutional provisions, the question that arises for consideration is whether the benefit of "maternity relief" can be curtailed by executive instructions and policies framed by the State, or whether the legislation enacted by Parliament on the subject, namely, “The Code on Social Security, 2020”, which finds place in Entry 24 of List III of the Seventh Schedule to the Constitution of India, would prevail.

23. It is also trite in law that where Parliament has legislated on a subject contained in List III and the State Legislature enacts a law overriding the said provisions; For eg. The Code, 2020, such law would require the assent of the President as contemplated under Article 254(2) of the Constitution of India. The same, however, is not the case in the present matter.

24. In view of the aforesaid discussion, I have no hesitation in concluding that The Code, 2020, does not contain any stipulation prescribing a time gap between the grant of maternity benefits for the first and second child, as provided under Rule 153(1) of the Financial Handbook. On the contrary, Section 161 of the Code, 2020, categorically provides that, notwithstanding anything inconsistent therewith contained in any other law, whether made before or after the coming into force of

Rule 153(1) of the Financial Handbook cannot be permitted to override or curtail the benefits conferred under the Code, 2020.

25. The aforesaid fact further gains significance from the fact that the State Government, vide its Government Order dated 11.04.2011, adopted the same policy as is being followed by the Central Government for the grant of 'Maternity Leave' as well as 'Child Care Leave' to its employees; though at the relevant time "The Maternity Benefit Act, 1961" was applicable, however the relevant provisions are also pari materia in the Code, 2020.

"The Code on Social Security, 2020"

(i) **Section 2 (43) of the Code, 2020,** defines "maternity benefit", in respect of Chapter VI, which means the payment referred to in Section 60(1) thereof. For ready reference, Section 2 (43) of the Code, 2020 is reproduced below:

> *"2(43) "maternity benefit", in respect of Chapter VI, means the payment referred to in sub-section (1) of section 60;"*

(ii) **Section 60 of the Code, 2020** further stipulates that every woman shall be entitled to payment of maternity benefit, at the rate of the average daily wage that is 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, subject to the minimum rate of wage fixed or revised under the Code on Wages, 2019 (29 of 2019), for a maximum period of 26 weeks. For ready reference, Section 60 of the Code, 2020 is reproduced below:

> *"**60. Right to payment of maternity benefit.**—(1) Subject to the other provisions of this Code, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity*

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, subject to the minimum rate of wage fixed or revised under the Code on Wages, 2019 (29 of 2019).

(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.

Explanation.— For the purposes of calculating the period under this 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 expected date of her delivery shall be taken into account.

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

Provided that the maximum period entitled to maternity benefit by a woman having two or more 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:

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.

handed over to the adopting mother or the commissioning mother, as the case may be.

(5) In case the 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."

(iii) **Section 62 of the Code, 2020**, provides for a notice in writing by a woman to her employer, specifically indicating the date from which she intends to remain absent from work. However, such date shall not be earlier than eight weeks, from the date of her expected delivery. Thereafter, the amount of maternity benefit for the period preceding the date of expected delivery shall be paid in advance, and the amount due for the subsequent period shall be paid by the employer to the woman within 48 hours. The provision further stipulates that failure to give such notice shall not disentitle a woman to maternity benefit or any other amount payable under the Code, if she is otherwise entitled to such benefit. For ready reference, Section 62 of the Code, 2020 is reproduced below:

*"**62. Notice of claim for maternity benefit and payment thereof.—** (1) Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Chapter may give notice in writing in such form as may be prescribed by the Central Government, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Chapter may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.*

(2) In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than eight weeks from the date of her expected delivery.

(3) Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after her delivery.

(4) On receipt of the notice, the employer shall permit such

employer to the woman within forty-eight hours of production of such proof as may be prescribed by the Central Government that the woman has been delivered of a child.

(6) The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Chapter if she is otherwise entitled to such benefit or amount and in any such case an Inspector-cum-Facilitator may either of his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order."

26. The entire scheme of the Code, 2020, does not contain any stipulation prescribing a time gap between the birth of the first and second child, as has been provided under Rule 153(1) of the Financial Handbook.

27. The aforesaid view is fortified by the judgment dated 21.10.2022 passed in **Smt. Anupam Yadav v. State of U.P. and 2 Others**[3], wherein the Court also considered the ratio laid down by a Division Bench of this Court in the case of **Dr. Rachna Chaurasiya v. State of U.P. and Others**[4].

28. The court is conscious of the fact that the aforementioned judgments were given considering the provisions of "Maternity Benefits Act, 1961"; but however as far as the consideration of the provisions of The Code 2020, is concerned; the same are *pari materia* to the sections indicated hereinabove and as such the nine Central labour enactments, relating to social security also included "The Maternity Benefits Act, 1961". The reasoning of the said judgement are therefore relevant. It lays down the ratio that the Act (erstwhile 'The Maternity Benefits Act,1961' and Act no. 36 of 2020 i.e., 'The Code of Social Security, 2020') shall prevail over the executive instructions, including Rule 153 (1) of the Financial Handbook, Volume II, Part 2-4.

Schedule to the Constitution of India, seek to secure the goals enshrined in Part IV of the Constitution of India, namely, the Directive Principles of State Policy, and also give effect to the provisions contained in Article 15(3) of the Constitution of India.

30. Accordingly, it is held that the provisions of The Code, 2020 shall prevail over any executive instructions, including Rule 153(1) of the Financial Handbook, Volume II, Part 2 to 4, which has also been read down by a Coordinate Bench of this Court in Smt. Anupam Yadav (supra) in relation to the grant of maternity benefits for the second pregnancy. The said benefits, therefore, shall be governed by the provisions of the Code, 2020; which does not put any embargo, by way of a timeline, between two pregnancies.

31. In view of the aforesaid, the impugned orders dated 09.01.2026 (Annexure-2) and 06.01.2026 issued by respondent No. 3, whereby the claims of the petitioners have been rejected, are hereby set aside. A further direction is issued to respondent No. 2 that, in the event the petitioners submit fresh applications for the benefits available to them under the Code, 2020, and if the same are permissible for the period for which the benefit is claimed, respondent No. 3 shall take an appropriate decision on such applications, keeping in view the observations made and the law laid down by this Court herein above.

32. The said exercise shall be completed expeditiously, preferably within a period of two weeks from the date of filing of the applications along with a certified copy of this order.

33. With the aforesaid directions/observation, the writ petition stands allowed.

(Siddharth Nandan,J.)