**Judgment Reserved on : 14.07.2020**
**Judgment Delivered on : 24.07.2020**

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Writ Petition (S/B) No. 263 of 2019**

Smt. Tanuja Tolia .....Petitioner

Versus

State of Uttarakhand and others

.....Respondents

Present : Mr. B.D. Pandey, Advocate with Mr. Harshit Sanwal and Mr. Rakshit Joshi, Advocates for the petitioner.
Mr. Paresh Tripathi, Chief Standing Counsel with Mr. Suyash Pant, Brief Holder for the State.

**Coram: Hon'ble Ramesh Ranganathan, C.J.**
**Hon'ble Sudhanshu Dhulia, J.**
**Hon'ble Alok Kumar Verma, J.**

**Hon'ble Sudhanshu Dhulia, J.**

This writ petition was filed by the petitioner, who is a lady Ayurvedic doctor in State Medical and Health Services, Uttarakhand. Her appointment though is not regular, but is on contractual basis, which is continuing since 2009. The contract which was for one year initially, has been periodically renewed or extended. The last extension was upto 28.02.2019 vide order dated 23.03.2018. As the petitioner was in the family way, she applied for her maternity leave, which was sanctioned to her from 08.04.2017 to 04.10.2017. After availing her maternity leave, the petitioner, however, did not join her service, but applied for Child Care Leave (from hereinafter referred to as the CCL). Her argument before the authorities was that in view of a decision of a

Division Bench of this Court, in **Writ Petition (S/B) No. 99 of 2015 (Dr. Shanti Mehra Vs. State of Uttarakhand*)**, even a contractual employee is entitled for CCL for a period of 730 days. Her application, all the same, was rejected by an order dated 24.05.2019 passed by the Director, Ayurvedic and Unani Services, where the reasons given while denying CCL to the petitioner are that the petitioner had applied for a child care leave, but in view of Government Order dated 30.05.2011 a child care leave can only be given to a "regular Government employee" and not to employees who are working on contractual basis, as their service conditions are given in their contract, where there is no mention of child care leave. Aggrieved by this order, the petitioner filed a writ petition before this Court.

2. The petitioner relied upon the order dated 15.12.2016 passed by a Division Bench of this Court in Writ Petition (S/B) No. 99 of 2015, wherein the Division Bench, inter alia, had held that even a female employee who is working on a contractual basis is entitled for child care leave of 730 days. These directions were as under:

> "The State Government is also directed to grant Child Care Leave (CCL) of 730 days' to all the female employees, whether appointed on regular basis, contractual basis, *ad hoc*/tenure or temporary basis having minor children with a rider that the child should not be more than 18 years of age or older. The female employees shall be entitled to paid leave equal to the pay drawn immediately before proceeding on leave. CCL can be combined with leave of the kind due and admissible."

*** 2017 (1) U.D., 191**

3. When the matter came up before the Division Bench of this Court, argument by the State was that the total period of employment of the petitioner is for a period of twelve months i.e. 365 days, and therefore it is not possible to grant child care leave for 730 days. The Division Bench was also not in agreement with the order of the earlier Division Bench of this Court, which supported the case of the petitioner, and it observed:

> "3. We find it difficult to agree with the view that a person, employed on a contractual basis for a period of one year should also be granted Child Care Leave for a period of 730 days i.e. for a period of two years, which would, in effect, obligate the Government to automatically renew the contract of employment, with the employee concerned, beyond the original contractual period of one year. In our view, the aforesaid judgment of the Division Bench, in Writ Petition (S/B) No. 99 of 2015 dated 15.12.2016, needs reconsideration."

4. It then referred the matter to a Full Bench for examining the correctness of the matter by formulating the two questions:-

> "(i) Whether Child Care Leave of 730 days i.e. for a period of 2 years can be granted to a person employed on a contractual basis only for a period of one year?

(ii) Whether the High Court, in the absence of any legislation or a Rule in this regard having been framed by the State Government, can issue mandatory guidelines, in the exercise of its jurisdiction under Article 226 of the Constitution of India, directing that such benefits be extended by the State Government to persons engaged on a contractual basis for a specified period?"

5. Consequent to the above orders, and the order of the Hon'ble Chief Justice on administrative side, this Bench was constituted. The matter came up before this Court on 08.07.2020 and thereafter on 14.07.2020, when it was heard at length.

6. Learned counsel for the petitioner would argue that grant of CCL is a beneficial provision made in law primarily for female work force in the country. Such a provision must be given a liberal construction and all female employees, irrespective of the nature of their job, employment and service, must be granted CCL. Any classification being made between a regular female employee and contractual female employee would be violative of Article 14 of the Constitution of India, the learned counsel would argue. The foundation of petitioner's argument though rests on the decision of the Division Bench of this Court in the case of **"Dr. Shanti Mehra Vs. State of Uttarakhand, 2017 (1) U.D., 191** and "**Dr. Deepa Sharma Vs. State of Uttarakhand, Writ Petition (S/B) No. 54 of 2015"** decided on 15.12.2016, which have already been referred above.

7. Learned counsel for the petitioner would also rely upon two other decisions, one of the Division Bench of Allahabad High Court in "**Dr. Rachna Chaurasiya Vs. State of UP (2017) 6 ALJ 454**, and another Single Bench decision in Gauhati High Court in **Doli Gogoi Vs. State of Assam (2017) 3 Gauhati Law Reports 247.** Broadly the Allahabad High Court has held in its judgment that the law does not make any distinction between a regular and contractual employee, for grant of child care leave and CCL ought to be granted in favour of contractual employees as well. As far as Gauhati High Court is concerned, the Gauhati High Court though has relied upon substantially the decision of the Division Bench of this High Court, but with a caution, as it has expressed doubts whether a child care leave of 730 days can be granted to a contractual worker whose entire employment is for a lesser number of days. The Gauhati High Court has held that contractual employees should be granted CCL but on a pro rata basis. All the same, what would here be the pro rata basis has not been explained in the decision of the Gauhati High Court.

8. The learned Chief Standing Counsel for the State Mr. Paresh Tripathi, on the other hand, would argue that the petitioner is admittedly not a regular employee but a contractual employee. It is a clear condition of her contract, contained in para 1, para 3, para 7 and para 11, which state that the petitioner is entitled for a "fixed monthly honorarium" alone, and in case of her absence, the honorarium of said period would liable to be deducted. As far as leave is concerned, all the petitioner is entitled is fourteen days

casual leave in a year, with six working days in a week. Moreover, under the Rules applicable in this case, a contractual employee is not technically a Government servant for whom such child care leave is applicable. As far as the Government Order of the State dated 30.05.2011 is concerned, the same is admissible only to female Government servants of the State. CCL also cannot be given as a matter of right, nor can it be given during period of probation, unless there is a special circumstances. This order is not applicable to contractual employees. Moreover, the petitioner has not challenged the order dated 30.05.2011 (which excludes her category of employment for CCL), before this Court.

9. Learned Chief Standing Counsel would also submit that the petitioner is only relying upon provisions given in Part IV of the Constitution of India which are Directive Principles of State Policies, and which are not enforceable under the law. The learned counsel would also rely upon the decision of Division Bench of this Hon'ble Court in the case of **State of Uttarakhand Vs. Smt. Urmila Masih and others*** passed in **Special Appeal No. 736 of 2019**, where it has been held that – "In the absence of any law made by the State, Article 42 of the Constitution of India is not enforceable in proceedings before this Hon'ble Court".

10. Lastly, he would submit that contrary to what is being argued by the petitioner's counsel, there is no violation of Article 14 or Article 16 of the Constitution of India, as it cannot be said that the action of the State is discriminatory. Moreover, Government servant

* **(2019) 163 FLR 762**

appointed on regular basis form a different class than a contractual employee and Article 14 permits reasonable classification. He would also argue that there is no violation of Article 21 of the Constitution of India and all arguments on this effect are totally misconceived. He further relied upon the decision of Division Bench of this Court in **Writ Petition (PIL) No. 21 of 2019, "Vipul Jain Vs. State and others",** decided on 17.10.2019, and states that in absence of any Rules, the Court cannot direct the State to frame a Rule on a subject. He has also relied upon a decision of the Hon'ble Apex Court in **State of U.P. Vs. Subhash Chand Jaiswal** reported in **(2017) 5 SCC,** where the Hon'ble Apex Court has held that the High Court should not interfere in the domain of the Legislature and formulate a law. He then argues that grant of CCL to the employees other than regular employees would also result in huge financial burden on the Government.

11. Before we examine the precise question which is before us, it may be worthwhile to quickly look back in history to find the emergence of the concepts of maternity and child care leave. When we do that we find that women as well as children till recently, were rather neglected subjects for the lawmakers, world over. Gradually as modern societies grew it was recognised that women as well as children both have special needs. This social approach was first reflected in the rights for the maternity leave and later for the child care leave. Behind the concept of maternity leave as well as the child care leave lie the philosophy of social responsibility which conveys that an individual who is in need of care

is an equal responsibility of his family as well as of the State[1].

12. We are also of the opinion that many of the needs as well as rights, of both children and women are inter depended. Even the case, which we have at hand, though is being contested by a woman, who is apparently asserting her right for child care leave is essentially asserting rights of her child. It is the child which needs the care here. The Government Order which has been referred before us dated 30.05.2011 entitles a woman Government employee a child care leave of 730 days, with certain conditions. But essentially the leave is not a recognition of the rights of a woman but it is more a recognition of the rights of a child. As we have said earlier, children like women did not get the attention of law makers, till very recently[2]. It is only in the 19th century the children started getting attention of the law makers, which saw a growing attention for the special needs of children[3]. There was a growth of orphanages, development of schooling and construction of separate institutions such as juvenile courts for children who were in conflict with the law[4].

13. The United Nations has recognised the rights of both the women and children. The foundation of the rights of both the women and children is contained in

1. There is a scholarly article on a much larger feminist perspective on the subject titled "Feminist Reflections on Labour: The 'Ethics of care' within maternity laws in India" – 13 Socio-Legal Review (2017). The article is by Ira and Geetika, two final year law students of West Bengal National University of Juridical Sciences, Kolkata. (My source is SC Online Case Finder).

2. https://www.culturalsurvival.org

3. Booklet published by United Nations Population Fund and the United Nations Children's Fund: Women's & Children' Rights: Making the Connection; https://www.unfpa.org/sites/default/files/pub-pdf/Women-Children_final.pdf

4. ------do------

Article 1 of the Universal Declaration of Human Rights, 1948, which states "All human beings are born free and are equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".

14. Children do find a separate mention in paragraph (2) of Article 25 of the Universal Declaration of Human Rights, which is as under:

> "Article 25
>
> (1).....
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> (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."

15. Later in the year 1979 (on 18.12.1979), the most important convention for women recognised these rights; rights which are specific to women. This was the "Convention on the Elimination of Discrimination Against Women" (from hereinafter referred to as CEDAW). Article 11 of the Convention states as under:

> "Article 11
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> 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
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> (a) the right to work as an inalienable right of all human beings;
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> (b) The right to the same employment opportunities, including the application of the

same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training.;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave.

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures.

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

> (d) to provide special protection to women during pregnancy in types of work proved to be harmful to them."
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> (emphasis provided)

16. Ten years later, another convention of United Nations, this time for children, declared rights for the children. This was the "Convention on the Rights of the Children" (CNCRC), which was adopted in the year 1989, a decade after the CEDAW and which came into force in the year 1990. The convention recognised that all those who are less than 18 years of age have specific needs and are children. It spells out basic human rights of children worldwide, which are rights to survive, to develop into the fullest, protection from harmful practices, protection from abuse and exploitation and to create facilities for them so that they can participate fully in family, cultural and social life.

17. India is a signatory, though with minor reservations, to both the above mentioned treaties i.e. CEDAW as well as CNCRC.

18. Article 4 of the convention binds "State parties" to bring in appropriate legislative, administrative and other measures for implementation of the rights recognised in the convention. Article 4 reads as under:-

> "Article 4
>
> States Parties shall undertake all appropriate legislative, administrative, and other measures for the

> implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."

19. The provision of child care leave first came for the Central Government employees, on the recommendations of the Sixth Pay Commission. The provision was initially for women employees alone, who had two children of less than 18 years of age. The maximum period of leave, during the entire service period was upto 730 days. Later, however, on recommendations of Seventh Pay Commission, the CCL has also been extended to single male parent as well, with certain restrictions. The petitioner has referred to a Government Order of Central Government which is from "Ministry of Personnel, Public Grievances & Pensions dated 11.09.2008, which introduced the concept of child care leave for the first time. The relevant clause of the said Government Order dated 11.09.2008 reads as under:-

> "(c) Women employees having minor children may be granted Child Care Leave by an authority competent to grant leave, for a maximum period of two years (i.e. 730 days) during their entire service for taking care of upto two children whether for rearing or to look after any of their needs like examination, sickness etc. Child Care Leave shall not be

admissible if the child is eighteen years of age or older. During the period of such leave, the women employees shall be paid leave salary equal to the pay drawn immediately before proceeding on leave. It may be availed of in more than one spell. Child Care Leave shall not be debited against the leave account. Child Care Leave may also be allowed for the third year as leave not due (without production of medical certificate). It may be combined with leave of the kind due and admissible."

20. Subsequently suitable amendments were also made in Central Civil Services (Leave) Rules, 1972.

21. Consequent to the order of the Government of India, the Government of Uttar Pradesh brought its Government Order on 11.04.2011 which gave the benefit of child care leave to Government female employees of the State Government, inter alia, with the following conditions:

(A) In one calendar year, it can be taken for a maximum of three times.

(B) It shall be for not less than 15 days at a time.

(C) Normally CCL will not be given during the period of probation, unless the authority concerned is satisfied that it is necessary.

(D) The other conditions such as that it can be maximum for a period of 730 days, spread over the entire service period and that it shall be given for care of two children who

are less than 18 years of age were also applicable.

22. The Government of Uttarakhand then came out with its own Government Order on 30.05.2011. Its subject is: Child Care Leave for Women Government Servants in State Government Service. It more or less reproduces the same language as G.O. of Uttar Pradesh, except that Uttarakhand G.O. specifically states that CCL will not be treated as a matter of right and under no condition will an employee go on CCL without prior sanction of the leave.

23. We now refer to our Constitution, and the provisions contained therein. In his First book "the Indian Constitution : Cornerstone of a Nation", Granville Austin says that "the Indian Constitution is first and foremost a social document" [1] .

24. The very preamble to our Constitution secures to all its citizens justice, social, economic and political and equality of status and opportunity and it promotes fraternity assuring the dignity of the individual.

1. The Indian Constitution : Cornerstone of a Nation, by Granville Austin: Chapter 3, Pg. 50 : Oxford, University Press. Second Impression 2000.

25. Clause (3) of Article 15 of the Constitution of India enables the State to make special provisions for women and children. Article 39 (f), which is a Directive Principle of State Policies mandates that the State shall direct its policies towards securing, inter alia, that "children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment".

26. Article 42* of the Constitution of India mandates a State that it shall have provisions for just and humane conditions of work and maternity leave.

27. Article 45** again is a special provision for early childhood care and education to children below the age of six years.

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***Article 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.

****Article 45. Provision of early childhood care and education to children below the age of six years. –** The State shall endeavour to provide early childhood care and education for al children until they complete the age of six years.

28. One of the fundamental duties as contained in Part IV A of the Constitution of India (Article 51A) is the duty of every citizen of India who is a parent or guardian to "provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years."

29. The right to elementary education for children which was initially a part of the Directive Principle was incorporated as a Fundamental Right in Part III of the Constitution of India, by way of 86th (Amendment) Act of 2002 (w.e.f. 01.04.2010). This is Article 21A*** of the Constitution of India.

30. After incorporation of elementary education of children as a fundamental right, the Parliament came out with a seminal legislation known as "Right of Children to Free and Compulsory Education Act, 2009". Right of Children to Free and Compulsory Education Act mandates that every child between six to fourteen years of age shall be given free and compulsory elementary education i.e. elementary education from Class I to VIII. The education visualised here is not merely a formality but it means a meaningful education.

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***__21A. Right to education.__ – The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

31. All these provisions were brought into force with the needs and rights of children in mind. Similarly Child care is again essentially a recognition of the need and the rights of children, more than a recognition of woman's right, as already stated above.

32. An argument has been raised at the Bar by the learned Chief Standing Counsel for the State that the provisions which have been pressed by the petitioner in her argument are the provisions which are contained in Part IV of the Constitution of India, which are Directive Principles of State Policies and the learned Counsel would therefore argue that the provisions which are contained in Part IV of the Constitution of India are not enforceable by any Court in view of Article 37* of the Constitution of India.

33. We, however, do not agree with this proposition of the learned counsel for the State. The law stands settled on this by the Hon'ble Apex Court in **Olga Tellis and others v. Bombay Municipal Corporation and others, (1985) 3 SCC 545** and later in **Mohini Jain (Miss) v. State of Karnataka and others, (1992) 3 SCC 666,** that the Directive Principles are

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*Article 37. **Application of the principles contained in this Part. –** The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

fundamentals in governance of the country. In Mohini Jain, it was held by the Hon'ble Apex Court as under:-

> "The directive principles which are fundamentals in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all."

34. Again in **Society for Unaided Private Schools of Rajasthan v. Union of India and another, (2012) 6 SCC**, right to education, which was a guaranteed fundamental right under Article 21A of the Constitution of India, and its limits were examined in the light of the directive principles, and it has been stated in para 24 and 25 of the majority judgment as under:-

> "24. To begin with, we need to understand the scope of Article 21-A. It provides that:
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> "**21-A. Right to education**.- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."
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> Thus, under the said article, the obligation is on the State to provide free and compulsory education to all children of specified age. However, under the said article, the manner in which the said obligation will be discharged by the State has been left to the State to determine by law. Thus, the State may decide to provide free and compulsory education to all children of the specified age through its own schools or through government-aided schools or through unaided

> private schools. The question is whether such a law transgresses any constitutional limitation?
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> 25. In this connection, the first and foremost principle we have to keep in mind is that what is enjoined by the directive principles (in this case Articles 41, 45 and 46) must be upheld as a "reasonable restriction" under Articles 19(2) to 19(6). As far back as 1952, in State of Bihar V. Kameshwar Singh[3] this Court has illustrated how a directive principle may guide the Court in determining crucial questions on which the validity of an important enactment may be hinged. Thus, when the courts are required to decide whether the impugned law infringes a fundamental right, the courts need to ask the question whether the impugned law infringes a fundamental right within the limits justified by the directive principles or whether it goes beyond them. For example, the scope of the right to equality of opportunity in matters relating to employment (Article 16) to any office in the State appears more fully defined when read with the obligation of the State to promote with special care the economic and other interests of the weaker sections (Article 46). Similarly, our understanding of the right "to practise any profession or occupation" [Article 19(1)(g)] is clarified when we read along with that right the obligation of the State to see that the health of the workers and the tender age of the children are not abused [Article 39(e)]. Thus, we need to interpret the fundamental rights in the light of the directive principles."

35. The question before this Court is whether a woman who is appointed on a contractual basis is entitled for child care leave. We must remember that maternity leave, which is in a way a precursor to the child care leave, went through a similar trajectory, as the child care leave. Like the child care leave today, even maternity leave was denied to a contractual worker, or that is how the Maternity Benefit Act, 1961 was

interpreted by the employer. All the same, the Hon'ble Supreme Court in **Municipal Corporation of Delhi v. Female Workers (Muster Roll) and another** reported in **(2000) 3 SCC 224**, came to the conclusion that maternity leave has to be provided in all kinds of employment, including for women who are a muster roll employees of a corporation. Adopting the same principle, this Court in the case of **Indu Joshi v. State of Uttarakhand and others, 2013 (2) U.D., 344** as well as the Division Bench of this Court in the case of **Deepa Sharma v. State of Uttarakahnd and others, Writ Petition (S/B) No. 54 of 2015,** decided on 15.12.2016, have held that even a contractual employee is entitled for maternity leave. When no distinctions have been made by the court while granting maternity benefit right, the same principle ought to be adopted while considering child care leave as well.

36. Ideally speaking a child care leave can be given to both the parents, father as well as mother, as the actual "beneficiary" here is neither the father or the mother but the child. It is the best interest of the child which is at the core of the concept of the child care leave. There seems to be some corrections here, as we have been informed at the Bar that as far as Central Government employees are concerned, as CCL may now also be available to single father. However, that is not the question before this Full Bench. We have been asked to give our opinion on a limited area which are the two questions before us which relate to child care leave to a person who is a contractual employee and what should be done in the absence of any legislation on the subject.

37. We have absolutely no doubt in our mind that even a contractual employee engaged for a period of 12 months is entitled for a child care leave and this entitlement has to be read in the Government order dated 30.05.2011 itself.

38. We say this because CCL is primarily for the benefit of a child. A child whose mother happens to be employed on a contractual basis with the Government, has the same needs as any other child. A denial of CCL to a government contractual employee would in effect mean a denial of the rights of a child. Rights which a child would have under Articles 14 and 21 of the Constitution of India.

39. However, it is apparently a contradiction in terms to suggest that a contractual employee, whose employment itself is for a period of 12 months, should be given 730 days child care leave. Obviously this cannot be done. Sri B.D. Pandey, the learned counsel for the petitioner, too fairly concedes that a contractual employee such as the petitioner, cannot be granted child care leave for 730 days. Gauhati High Court while admitting child care leave for a contractual employee in its judgment has said that for contractual employee it should be done on pro rata basis because a practical approach is needed while determining as to how much leave is to be granted. However, what would be the pro rata basis has not been explained. We respectfully agree with the view of the Gauhati High Court which is that a child care leave should be given even to a contractual employee. We have been given various suggestions at the Bar as to

the number of days a child care leave can be given. How much then should be this child care leave?

40. After giving our considered thought on this aspect, we have come to the conclusion that child care leave should be for the same number of days as an earned leave, which a regular employee gets in a year. We say this also because in G.O. dated 30.05.2011, it has been mentioned that CCL shall be treated on the same footing as earned leave, and will be sanctioned in the same manner. We have been told that the State Government employees are entitled for 31 days of earned leave in a year. The same principle ought to be adopted here as well and an employee whose entire employment is for one year, if he/she fulfils the other parameters given in the Government Order dated 30.05.2011 i.e. she has two children, who are less than 18 years of age, will also be entitled for the child care leave. G.O. dated 30.05.2011 further stipulates that CCL shall not be given as a matter of right, and no one will go on CCL without its proper sanction. The same principle shall be applicable for a contractual employee as well. Normally child care leave should not be denied. It could only be denied by the employer on very pressing valid and plausible reasons, which must be specifically stated, when such a request for child care leave is being denied.

41. In view of what we have stated in the preceding paragraphs of this order, our determination to the two questions before us is as follows:-

(A) As regarding the first question on principle we agree with the proposition that even a person employed

on contractual basis is entitled for child care leave, but this is with a rider. A contractual employee whose employment is only for one year, cannot be granted child care leave for 730 days. Such an employee can be granted paid child care leave for 31 days, on the same terms and principles as "earned leave", as is given to other employees in G.O. dated 30.05.2011. We may add that Rule 81-B(1) read with subsidiary Rule157-A(i) of the Uttar Pradesh Fundamental Rules (Financial Hand Book Vol II Part II to IV), as applicable in the State of Uttarakhand, provides that Earned Leave shall be credited in advance, in the leave account of every Government servant in two half yearly installments in each calendar year. Sixteen days earned leave shall be credited on the first day of January and fifteen days earned leave on the first day of July of every calendar year. The earned leave shall be credited at the rate of 2½ days for each completed calendar month of service which the Government servant is likely to render in a half year of the calendar year in which he/she is appointed. Normally it should be given, when it is denied, cogent, plausible and valid reasons must be given.

(B) As regarding the second question, which is extremely wide, we may straight away answer that Courts do not legislate. A Court interprets an existing law. In the present context, however, though there is no statute or Rule for child care leave even for a regular employee, yet there is a "Government Order (dated 30.05.2011)", which is a provision of law, which presently governs the field. This law provides for a child care leave for a regular Government employee for 730

days. We have only read into this provision the rights of a contractual employee as well. In other words, Government Order dated 30.05.2011 shall also be applicable for a contractual employee, but with limitation, which we have specified while answering the first question.

42. Let the petition be now placed before the appropriate Division Bench for further orders.

**(Alok Kr. Verma, J.) (Sudhanshu Dhulia, J.) (Ramesh Ranganathan, C.J.)**
24.07.2020

Avneet/