



Malavika Ramanand  
Associate

## HIMACHAL PRADESH HIGH COURT ON MATERNITY BENEFITS

### A. Introduction

The High Court of Himachal Pradesh (**HC**), in the case of *State of Himachal Pradesh v. Sita Devi*,<sup>1</sup> held that maternity leave is a fundamental right under Article 29 (*Protection of interests of minorities*) of the Indian Constitution (**Constitution**).

### B. Brief Facts

1. Sita Devi (**Devi**), who was an employee engaged on a daily-wage basis by the state of Himachal Pradesh (**State**), had availed maternity leave for three months in 1996, following the delivery of her child.
2. Devi had completed 156 days of continuous service, as opposed to the requisite 240 days to avail maternity leave. 240 days of continuous service was the legal requirement at that time; whereas, currently, as per the Maternity Benefit Act, 1961 (**MBA**), the minimum service requirement is 80 days.
3. Devi contended that due to her pregnancy and subsequent delivery, she could only work for 156 days as against the minimum requirement of 240 days.
4. The Himachal Pradesh Administrative Tribunal (**Tribunal**) had granted Devi maternity leave holding that her period of maternity leave would be “deemed to be continuous service” under the Industrial Disputes Act, 1947.
5. The State then filed the current petition in the HC, and argued that there had been no provision for granting maternity leave to female daily wage workers in 1996, and therefore, the Tribunal erred in granting such leave to Devi.

### C. Order

The HC:

1. Did not find merit in the State’s contentions and observed that India is a signatory to various international covenants and treaties, which protected women and children.
2. Observed that the right of a woman employee to avail maternity leave/benefits “*has now been established as supreme by the enactment of the [MBA].*”
3. Observed further that India was to enact labour laws which were in conformity with the recommendations of the International Labour Organisation, read with Article 42 of the Constitution, which states: “*the State is required to make provision for securing just and humane conditions of work and for maternity relief.*”

<sup>1</sup> *State of H.P. and Ors. vs. Sita Devi* (12.06.2023 - HPHC): MANU/HP/0857/2023.

4. Relied on the principles of the 2004 Supreme Court (SC) case of *Municipal Corporation of Delhi vs. Female Workers*,<sup>2</sup> where the SC held that the provisions of the MBA entitled maternity leave to women engaged on a casual basis, on muster roll basis, or daily wage, and not only those in “regular employment”.
5. Noted that Devi could not be expected to undertake hard labour at an advanced stage of her pregnancy, as it would be detrimental to her health.
6. Held that: “*It is otherwise no longer res integra that a female employee [irrespective] of the capacity in which she is working is entitled to maternity leave at par with her female counter parts, who otherwise are regular employees.*”
7. Held further that the objective of maternity leave is to protect the dignity of motherhood and stated: “[...] *maternity leave is intended to achieve social justice to women, motherhood and childhood.*”
8. Concluded that maternity leave is a fundamental human right, which could not have been denied by the State, and thus the State’s actions were in violation of Article 29 (*Protection of interests of minorities*) of the Constitution.

-----

This Counsellence Connect contains information in a nutshell on a recent change in law. This is not legal advice and must not be treated so. For legal advice, please contact us at: [info@counsellence.com](mailto:info@counsellence.com). Past issues of Counsellence Connect are available on the ‘Newsletters’ page of our website. ([www.counsellence.com](http://www.counsellence.com)).

---

<sup>2</sup> MANU/SC/0164/2000.