

[2022] 7 S.C.R. 557

DEEPIKA SINGH

v.

CENTRAL ADMINISTRATIVE TRIBUNAL AND OTHERS

(Civil Appeal No. 5308 of 2022)

AUGUST 16, 2022

[DR DHANANJAYA Y CHANDRACHUD AMASUNG A S BOPANNA, JJ.]

Service Law(thabak pirba mioi, thabak touriba mioi amadi maduga mari leina ngaklou pina ee duna leirba aign gi oiba chatna kanglon): Central Civil Services (Leave) Rules 1972: r. 43– maternity leave (angang ama pokpaga mari leinana piba suti)– fangfam thoklibasing – nupi oibi sarkar gi thabak touriba mioi – nursing officer aduna mahakki mapuroiba adugi hanna dagi leiba angang anigi haktakta angang sennaba (child care) ga mari leinna piba suti gi kannaba loukhraba matung mahak na hek pokchaba angang ahanba adugidamak maternity leave (angang pokpa/unaba ga mari leinana piba suti) amuk nikhi – tribunal na ayaba pikhide aduga High Court nasu yakhide – makha thangba wayelsang gi wayel bu kaknaba tharkkhiba darkhast aduda lepkhi, Makha thangbagi wayelbu kakpinaba tharakkhiba darkhast aduda makhagi asigumna lepkhi: maternity leave (chabokpa/angang unabaga mari leinana pibi suti) piba gi matangna tongankhraga, nupi amabu mahakki hingliba ahanba macha anibu naoyok naokon tounanabagidamak suti fanggani, karigumba makhoibu yengsinbagi nattraga makhoigi atoppa lairik laisugi matang, ana ayek ki matang amasung asigumna manna fibam/darkar oibasingdidamak oiba yai – chabokpaga mari leinana piba suti nattraga anganggi naoyok naokon-ga mari leinana piba suti ani asi tongan tongan na fangfam thokpa suti singni– nursing officer asigi mapuroiba adugi mamanggi luhongbadagi fangjaba/pokchaba macha ani lei haibasi na maram oirga mahakna hek pokchaba macha adugidamak chabokpaga mari leinna piba suti fangfam thokpa aduda akaiba oiba– angang/macha gi naoyok naokon-ga mari leinana mamangda suti loukhre haibasina maram

oiraga mahakna mahakki chabokpaga mari leinana r.43 gi makhada piriba fangfam thokpa suti adu piroi haiba yaroi– Karigumba thawoina artha ama piba/hanba natraga niyom oigadaba ama semdrabadi, chabokpaga mari leinana suti pibagi pandam amasung pibagi apamba adu icham chamna maithiba oigani-1972 gi Rules makha da piriba chabokpaga mari leinana louba yaba suti asi nupi oibi amabu mahak na touriba thabak aduda makha tana touthaba yanabagidamak amsung thabak aduda akai ba pidanabani – thabak inkhang gi mityengda khannaba matamda angang ama pokpa/unaba haibasi mahousagi oiba thoudok amani aduna, chabok paga mari leinaba suti gi matangda khannaba matamda asigumna yengsingani – makha tana angangi ngak selliba amasung darkar oibasing piriba-mama amasung mapa haibasi nouna luhongba, yokpa (adoption) natraga yengsinba(fostering) hairiba thouwong singgi matung inna ahongba nai– aign gi oiba cheingak khak nattana samaj ki yaifanabagidamak semliba aign/niyomsing na piriba kannabasing asi asigumba tonganba imung amagi saktam asisu chap mannaba mityengda yenggani– leiriba wafam gi matung inna, employee asi gi imung manunggi structure (mawong) asi mahak na mahakki mapuroiba asina pokchaba hannadagi leiramba angang anigidamak mama ama gi thoudang louba asina ahongba purakkhi – wayelsang sing asi asigumba fibam singsi mayoknaba matamda fibam asiga chayetnariba aign gi oiba wafamsing adu karamna chatnahalloidage haibagi mahutta aign adugi pandam yengduna khannagani – maram aduna nursing officer adu chabokpaga mari leinana piba suti adu matam aduda fangfam thoklabani- High Court amadi Tribunal na piba Judgement adu natheiduna thamle.

Tharakkhiba Appeal adubu ayaba piraduna Court na makhagi asigumna lepkhi: 1.1 Constitution gi Article 15(3) gi makhada, nupising gi yaifanabagidamak aign/niyom kaya ama sembagi sakti adu rajya/State sing da piri. Angang ama pokpa amasung angang bu yengsinba gi hak sing asi Article 21 gi makhada piriba mioba amagi privacy (achet akom), ijjat leina hingba amasung hakchang bu atek akai yaodana tamba ga mari leinana piriba hak adugi manung channa mayek sengna sak khangli . Article 42 na amuk rajya amana thabak toufam/sufam/pangthokfam da matik chaba amasung mayamna yanaraba mawongda tamba amasung chabokpaga mari leinana piba suti gi matangda thamliba pandamsing adu fangnanabagidamak aign/niyomsing sembagi ayaba piri. [Para 21][572-B-C]

1.2 India na United Nations ki Convention kayamarum ama mihut thaduna ayaba pibagi sahi tounakhre. UDHR gi Article 25(2) na piri madudi mama oibagi matam amasung angang oiringei matam asi ahenba mityeng amasung mateng fangfam/pifam thok-ee. CEDAW gi Article 11(2)(b) na leibaksing na tougadabasing adu piri “ tolop ka konnana

chabokpaga mari leinana suti piba natraga channaba samaj ki yaifanabagidamak piba kannabasing pinaba houdoknaba.” Hairiba treaty (leibak ani natrga anidagi henbane karigumba wafam amada yanaduna sahi tounaba che) sing asi Constitution ga manana yengbada/chatpada, maternity leave asi numit 180 ni piba haina 1972 ki Rules ki Rule 43(1) na comtemplate (munna khannaba/khannagadabani) touri. Maternity leave ki wafamsina tongankhrraga, nupi amana child care leave (haibadi angang yokpa thakpa, sennaba ga mari leinna leinana piba suti) asi mahakki hingliba ahanba macha anibu yengsinba, sennaba haibadi lairik laisu tambaga mari leinana natraga ana yekkka mari leinana natraga asigumba atoppa fibamsinggidamak fangfam thok-ee. Rule 43-C gi makhada Child care leave asi piriba niyomsigi makha da piriba oithokpa yaba maramsing/fibamsing adugi matung inna angang unaba/pokpa matam dakhak nattana matung tarakpa matam amada hekta fangba/louba yai. Animak asi tongan tongan na fanggadaba hak sing aduni. [Paras 22, 23][572-D; 573-G-H; 574-A-B]

1.3 Houjik mangda leiriba case asigi wafamsing asina utli madudi Appellant asigi mapuroiba/(loinaba mioi) asi hanna mamang da luhongluraba mioini, nupi adu leikhidraba matungda Appellanat ka amuk nouna luhongbani. Appellant ki mapuroiba asigi ahanba luhongbadagi fangba macha ani lei asina maram oirga mahak na hek pokchaba machagidamak fangfam thokpa maternity leave aduda akaiba leiroy. Mahak na mamangda mahakki mapuropibagi hannadagi leiba macha anigidamak child care leave loukhibagi wafam asi matamdugi authority singgi miyengdadi minungsigi yumfamdai pikhibani haina loukhi. Nupa/nupi khaina nupi oibida piriba thoudang amasung samaj asina pamliba/yengliba mawong /mityeng asi na takli madudi matam punnamakta angang sennabagi thabak asi chang mannadaba potlum ama oina nupisingda piri. Organisation for Economic Co-operation and Development (OECD) na “time-use” ki matangda louba/pangthokpa survey(chaorakna yengba) gi matung inna, india da leiba nupisingna houjik houjik ki matam asida numit amada khutsumal/toubimal amata fangdana nongmada 352 minutes gi thabak sui, masi nupasingdagi saruk 577% helli. Mamal fangdana sukhiba thabak aduda sijinnakhiba matam gi saruk 12 di angang sennaba gi thabakna oi. Masigi matangda yengbada, yengsin khotchinbagi thabak ta maternity leave, peternity leave (mapa amana mahakki angang ama fangba/unabaga mari leinana louba suti) natraga child care leave (punna mama natrag mapana fangba yai) haibanachingba kannaba sing asi Rajya natraga thabak piriba sing na piba tangaifade. 1972 gi Rules ki makhada nupi oibi amana thabak ama mamal ga loinana touba/changba yrabasu nupi oibising na angang/macha bu yengsinbagi Daitya asi toufam thokpa oina tounari.

Appellant na 1972 ki Rules ki makhada maternity leave louba asida mamang da child care leave loukhiba na maram oiraga ayetpa oiba yaroi. [Para 24][574-C-F]

1.4 Mang da leiriba case asiga channaba artha/niyom leitrabadi/pidrabadi, maternity leave pibagi pandam amasung pibagi apamba adu icham chamna maithi ba piba oigani. 1972 ki Rules ki makhada maternity leave piba gi pandamdi nupi oibi amana mahakna touriba thabak aduda kaidana makha tana chatthaba yananabani. Asigumba niyomsing asi leitrabadi/natrabadi nupi oibising asi Samaj gi leiriba fibam sing asina maram oiraga suti piba natraga kannaba/mateng pinaba atei thouram/thurang yattrabadi yamna sathiba mwongda angang hek pokpaga thabak tagi pothanaba maram oi. Thabak piriba mioi/mafam amatana angang pokpa haibasi piriba thabak adugi pandam dugi mityeng da natte haina louba/uuba yaroi. Angang pokpa/unaba haibasi piriba thabak adugi mityengda yengbada mahousagi oiba thoudok amani haina loughani/sagatkani, maternity leave ka meri leinana leiriba niyom sing adu mityeng asigi matung inna sagatkani. Para 25][574-G; 575-A]

1.5 Family (imung) haiba wakhallon asigi matangda aign gi oina amasung samaj asida chatnariba/khannariba wafamdi imung haibasi hongba naidaba mama amasung mapa (matam pumbada lengdraba) amasung machasing asikhakna khujing oi haibasini. Mioi amagi imung gi leiriba fibam/kayat asi oirakpada mateng mangliba wafamsing amadi imung kayamarum amana mathakta palliba apamba/aningba(expectation) chusinnaba ngamdaba, hairiba wakhallon anisi mathak ta palliba imung ama gi kayat asi karino haiba wakhallon asina natheiri. Yum(domestic) aduna semba mari/yum aduda yumfam oiraga leinaba mari, luhongdana leiminnaba natraga queer (linggha mannadaba) sing gi marakta thamba mari haribasing asi gi mawongda Imung manung amagi leinariba mari(relationships) adu oiba yai. Imung ama haibasi maram kayammukna maram oiraga mama natraga mapa amakhaktamak leiba yaia, maramsing adugi manung channa loinariba nupa natraga nupi na leikhidaba, setnakhiba natraga khaidoknakhiba haibasingi yaori. Masiga chap manana angang amabu yengsillba amasung fibam matam pumnamak ta ngakpi senbiriba mioi (mahousana mama natraga mapagi thoudang louba) sing adusu nouna luhongba, angang adubu atoppa mioina aign ki matung inna yokkhiba natraga angang adubu matam kharagi oina kanagumba mioi amana ngakpi senbiba tarabadi hairiba fibamsing asigi matung inna hongba nai. Asigumba nungsi nungol gi oiba masaksing amadi imung manung gi oiriba saktam asi khudamnafam oidrabasu mahousadagi houna chumduna laklaba wafamni. Asigumna khudamnafam oidraba imung amagi saktamsing asisu aign na piriba nagklousing khak nattana samaj ki chaokhat khongthang gi damak semlaba aign sing na piriba kannabasing adusu fangfam thok-ee. Aign

ni haiduna semduna thamliba chatnabi niyom adugi mateng louba nattraga aign adubu yengba matamda mahousadagi taioinnaba imung amabu kannaba piba yadanaba mawongda yengloidabani. Nupi amana mayamna khalliba adugi tongan ba mawongda mama oibi amagi thoudang louriba adugidamak tasu hairiba mityeng asi thamgani. [Para 26][575-B-E]

1.6 Appellant ki imung ki saktam asi mahakna mahakki loinariba nupa adugi ahanba lohongbadagi leiramba angang singgidamak mama ama oibagi thoudang louba matungda honglakhi. Appellant na PGIMER da maternity leave pibiyu haina nijaba matamda PGIMER gi mang da leiriba wafamdi Appellant asi ga mari leinaba wafamsing asiga aign gi matung inna thamliba/leirba wafamsing nattraga oiba yaroidaba/channada fibam oikhi. Court sing asina asigumba fibam ama mayoknaba matamda, makhoina fibam aduda wahang-oiriba/khannafam thokliba aign adubu semkhibagi wakhallon/maram aduda yenglaga chatnahangani amadi aign adubu chatnahanba yadanaba wakhallondagi netheiduna chatkani. [Para 27][575-F]

1.7 Appellant asi maternity leave fangfam thokkhi. Ahumsuba Respondent na Appellant da pirkkhiba warolda mahakna fangfam thok-ee haina niriba adu Rule 43 gi chatna kanglongi wangmadani haibasini. Yetliba/singnariba High Court na pikhiba Judgement amasung CAT na pikhiba Judgement pu natheiduna thamle. Appellant asibu Rule 43 gi makhada Maternity leave piragani. [Para 28][575-G-H; 576-A]

KH Nazar v. Mathew K Jacob (2020) 14 SCC 126 : [2019] 14 SCR 928; Badshah v. Urmila Badshah Godse (2014) 1 SCC 188 : [2013] 10 SCR 259; Municipal Corporation of Delhi v. Female Workers (Muster Roll)(2000) 3 SCC 224 : [2000] 2 SCR 171; Justice K.S. Puttaswamy (Retd.) v. Union of India (2017) 10 SCC 1: [2017] 10 SCR 569; Suchita Srivastava v. Chandigarh Administration (2009) 9 SCC 1 : [2009] 13 SCR 989 –referred to (case asida pusinduna neinakhiba/yengkhiba).

Organisation for Economic Co-operation and Development, ‘Time-Use’ (OECD Stat) <[https:// stats.oecd.org/Index.aspx? datasetcode = TIME_USE#](https://stats.oecd.org/Index.aspx?datasetcode=TIME_USE#)> accessed 22 August 2022 – referred to(case asida pusinduna neinakhiba).

Case Law Reference (pusinduna khannakhiba/neinakhiba case sing)

[2019] 14 SCR 928 (referred to Para 15) Para 15 bu yengkhiba/khannakhiba

[2013] 10 SCR 259 (referred to Para 16) Para 16 bu yengkhiba/khannakhiba

[2000] 2 SCR 171 (referred to Para 20) Para 20 bu yengkhiba/khannakhiba

[2017] 10 SCR 569 (referred to Para 21) Para 21 bu yengkhiba/khannakhiba

[2009] 13 SCR 989 (referred to Para 21) Para 21 bu yengkhiba/khannakhiba

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5308 of 2022.

CWP No. 3460 of 2021 na Punjab amasung Haryanagi Chandigarh da leiba High Court na pikhiba Tarik 16.03.2021 gi Judgment amasung Order da gi lakpa.

Akshay Verma, Ms. Sushma Verma, Ms. Savita Dhanda, Advocate Singna Appellant gi damak.

Vikramjit Banerjee, ASG, Gurmeet Singh Makker, Ms. Alka Agarwal, Anmol Chandan, Anukalp Jain, Amit Sharma, Anirudh Sharma, Sudarshan Rajan, Mahesh Kumar, Ramesh Rawat, Hitain Bajaj, Rohit Bhardwaj, Ashutosh Gupta, Advocate singna Respondent sing gi damak.

Court asigi Judgement asibu Justice **DR DHANANJAYA Y CHANDRACHUD** na laothokkhi.

1. Darkhast asibu Court na khannarani haikhiba/ayaba pikhiba.
2. Masigi Appeal asi Punjab amasung Haryana High Court ki Division bench (wayel mapu ani natraga anidagi henbane famba Court) amana 2021 gi March ki Tarik 16 ta pikhiba Judgement adudagi lakpani.
3. Case asi da khannariba mari leinariba matam aduda Appellant asi mahakpu 2005 ki Novermber 25 ta thabak hapkhiba matamdagi houraga Post Graduate Institute of Medical Education and Research¹ ta Nursing Officer ama oina thou purammi. Appellant na 2014 gi February 18 ta Amir Singh kouba mioi amaga luhongkhi. Appellant gi mapuroiba asi mahakka luhongdringei mamang da haanna luhongluraba mioini, touwigumbasung mahakki haanagi loinabi adu 2013 gi February 16 da leikhidre. Mahakki ahanba luhongba adudagi macha ani fangjakhi, 2001 gi February 1 da fangjaba macha nupa ama amasung 2005 gi March 3 da fangjaba machanupi ama. Mahakki mapuroibagi haannagi luhongbadagi fangba angang anigi ming asibu Official Service record ta chansinduna thamnaba 2015 gi May 4 da Appellant na PGIMER da darkhast ama pisinkhi

¹ “PGIMER”

4. Luhong laba matung Appellant gi hek pokchaba angang ama 2019 gi June 4 da fangjakhi. Central Civil Services (Leave) Rules 1972² gi Rules 43 gi makha da piba maternity leave adu pibiyu haina Appellant na 2019 gi June 6 ta, 2019 gi June 27 dagi 2019 gi December 23 faobagidamak pibiyu haina nijakhi. Appellant asi mahakki mapuroibagi ahanba luhongbadagi fangjaba hingduna leiriba angang ani leiri habasigi matangda PGIMER gi Authority singna clarification(sengdok wa) piraknaba haikhi. Appellant na sugaina piraba paokhum ama 2019 gi June 24 da pisinkhi. Maternity leave pibinaba haijakhiba adu 2019 gi September 3 da ayaba pirakkhidre, piraktaba gi maramdi mahakki haannadagi hingduna leiriba angang ani leiba amadi mahakki mapuroibagi ahanba luhongbadagi fangjaba angang anisigidamak mahakna mamangda child care leave loukhiba asina maram oirgani. Matung tarakpada mahakna fangjariba angang, mahakki ahumsuba machani haina louriba, asi 1972 gi Rules ki chatna kanglongi matung inna channadaba/chatnba yaroidaba wafamni. 2020 gi January 21 da thokpa Office asigi Order amana mahakki suti gi matam 2019 gi May 30 dagi 2019 gi June 3 faoba; 2019 gi June 4 dagi 2019 gi October 27 faoba, 2019 gi October 27 dagi 2019 gi November 27 dagi 2019 gi November 6 faoba amasung 2019 gi November 7 dagi 2019 gi November 31 faoba, hariba matam sing asi mathangsitna earned leave(mahak na thabak touriba adugidamak fangba suti), medical leave(ana ayekka mari leinana fangba suti), half day leave (nongma tangkhai ki tolop fangba suti) amasung extraordinary leave (akhannana fangba suti) oina louragani haibasina. Extraordinary leave (akhannana loubu suti) gi matam asi Fundamental Rules ki Volume-I gi 26(ii) makhada piba Rs. 9300-34800 ki changda tolop henbagi matam hotpada/thibada yaokhide.
5. 2019 gi September 3 amasung 2020 gi January 21 ta PGIMER da leiba Authority singna lepkhiba wafamsing aduda pendraduna Appellant na Chandigarh da leiba Central Administrative Tribunal³ gi mamangda OA No. 155 of 2020 asi pukhatkhi. 2021 gi January 29 gi Judgement amana OA asibu kakthatkhi, holding (lepladuna):
- “10. [] Matou asigumna mayek sengle madudi, maternity leave asi sarkargi thabak toubak amana angang anidagi tana hingduna leirabakhaktada pigani. Mahakna niriba darkhast masamakna utli madudi mahakki mapuroibagi

² “Rules of 1972”

³ “CAT”

hannagi luhongbadagi fangjaba angang ani adu mahakki machani amadi mahakna makhoigidamak kannabasing asi mahakna luhonglaba matungda ayamba matamda loukhre/sijinnakhre. Maram aduna chatnahalliba pandam sing amadi amadi Respondent Department kisu yenglaga, mahakki haannadagi hingliba angang ani leire amasung mahakna Child Care leave amsung atei kannabasing Respondent Department tagi loukhre.

11. Mathakki wafamsing asi yengduna, angang ama mahakna poklabadi angang adubu mahakki ahumsuba machani haina loughani amasung ahanba macha oina louroi/pusilloi. Viren Pratap Singh hairiba angang asi mapuroibaga luhonglaba matung mironduna/naopuduna fangjaba macha oibadi yai. Touwigumbasung mahakki apambagi matung inna Applicant asina atoppa mahakki mapuroibagi mamang gi luhongbadagi fangjaba angang anigi ming bu Office ki record (chejan) da hapkhibani amasung makhoigidamak mahakna Child care leave yaona kannaba loukhre. Rule (chatna kanglon) na meyek sengna amadi chatnabi oina leiri, Applicant ki hingduna leiriba angang ani lei. Matou asumna houjik mahakna angang ama hek fanglabadi angang adubu mahakki ahumsuba angang/macha oina loughani.

12. Mathak ta khannariba wafamsing asi yenglaga, mahak masana ahanba mama oiba/angang unaba oirbasu Respondent singna mahakpu maternity leave pibinaba haijaba yakhidaba adu chummi.”

6. Appellant na Constitution gi Article 226 gi makhada High Court ki mamang da yaningde haina yetliba Judgement asibu tahalakkeha/pirakkheba Tribunal na pikheba Judgement adubu kouraduna Writ Petition⁴ ama thanggatkhi. Yaningde haina yetliba 2021 gi March 16 gi Judgement asida High Court na, darkhast adubu CAT na pikheba Judgement aduda niyom lanba natraga aign gi wangmada oikhide haiba yumfamsida kakkhi. High Court na pikhi/lepki:

“12. Mamangda pankhriba/haikhriba Rule asibu hek yengba maktada Maternity leave asi Sarkar gi thabak touriba nupi amana mahakki hingduna leiriba macha anidagi tana leiba oiba matam da fanggani haibasi Rule asina fongdokli. Petitioner asigi mapuroibagi hannagi luhongbadagi fangba angang ani adugi Petitioner na pokchabi mama oidaba tarabasu mahakna makhoising adubu mahakki macha natte haina Amar

⁴ CWP No 3460 of 2021

Singh da luhonglaba matungda dabi toubu yaro. Asum touduna Petitioner asi hannadagi houna hingduna leirba macha ani leire. Masikhak nattana mahakna hannana Respondent oiriba Department asidagi angangsing adugidamak CCL gi kannaba loukhre. Masigi wafamsing asida mityeng thamduna yengba matamda mahakki angang ama hek fanglaba adu oirabadi angang adu ahumsuba angang oina lougani. Eikhoi gi mityengda CAT na CWP No 3460 of 2021 asida yamna chumba mawongda makhoigi oiba wafamsing adu chatnariba/sijinnariba singgi maramsing yengduna pikhi, Applicant asigi hingduna leiriba angang ani lei. Maram aduna houjik mahakki oina angang ama hek fangbada angang adu ahumsuba angang ama oina lougani.”

7. Child care leave asi Rule 43-C gi makhada pibani. Rule 43-C ta piribasing adu makhada puthoktuna thamle:

43-(C). Child Care Leave (angang sennaba/makhoigi darkar yengsinna ba piba/louba yaba suti)

(1) Child care leave asi Competent authority amana sarkar gi thabak touribi nupi amana mahakki pikliba macha/angang chahi tara-nipaldagi hendaba leiraba amasung mahakki tolop fangna louba suti gi masing henna loukhidaba tarabadi, yamlabada chahi ani faoba suti asi piba yai, haibadi, mahakki thabak touringei gi apunba matangi manungda numit 730 ni angang anifaoba makhoibu nagkpi senbiba, lairik laisugi/parikhyagi matangda yengsinba na chingba singgidamak .

(2) Mahakna Child care leave ta leiringei matam asida mahakna suti asi loudringei gi mang-oinana fangkhiba tolop adugi chang da pigani.

(3) Child care leave asi atoppa makhal gi suti ama hektaga punsinba yai.

(4) Rule 31 gi makhada piba rule 1 natraga Rule 30 gi makhada piba rule 1 gi matung inna ana layenggi oiba saktak che puthokpagi tangaifadaba/darkar oiba tarabasu, pifam/fangfam thokpa suti pidana/fangdana leiba oiba tarabadi (suti pinaba leitraba amasung larik laisu tamnaba natraga atoppa maram amagidamak tolop tangkhai fangna louba numit 60 dagi henna louba suti) yamlabada chahi amafaogi suti, karigumba pibinaba nirakpa thoklabadi, madu Sub rule 1 gi makhada louriba Child care leave adugi makha samthana pigani.

(5) Child care leave asi tangkak ama dagi henna louba yai.

(6) Child care leave asi chumnagi louba yaba suti gi masingdagi kakloi.”

8. High Court na makhoigi oiba wafam aduda lepkhi madudi, mahakna mahakki mapuroibagi hannagi luhongbadagi fangjaba macha gidamak Child care leave loukhiba asina maram oiraga mahak makha tana maternity leave fangfam thoktre haibasini. Mahakna Amar Singh da luhonglaba matungda mahakki hingduna leiriba angang ani leire haina lougani. High Court na uuba fangkhi madudi mahak masina maram oiraga Rule 43 gi makha da piba rule 1 gi matung inna maternity leave piba/fangnanabagidamk darkar oiba haibadi hingduna leiriba angang ani leibagi wafam adu fangba/thunghanba/channahanba ngamdre .

9. 2021 gi July 1 da pangthokpa proceeding da mari leinaba mioisingda Notice/khanghangadaba wafamsing asu khanghankhi. Notice piriba Order adugi matung inna Respondent singna Court ki mamangda thok-khee amasung makhoi gi oiba darkhast adugi mayokta yaningdaba sing adu ayiba oina Affiavit/(Sakhi/washak che) oina pisinkhi.

10. Eikhoina Appellant ki maikei da lepkhiba, Learned Counsel Mr. Mr Akshay Verma, busu tare amasung anisuba, ahumsuba amasung marisuba Respondent gi maikeida lepkhiba learned Counsel Mr Sudarshan Rajan busu tare.

11. Appellant na thanggatliba case adudi mahakna mahakki ahanba macha pokpa/angang unaba matamda Maternity leave pibinaba nijakhi amasung mahakki mapuroibagi hannagi luhongbadagi fangjaba angang ani leibasina maram oiraga 1972 gi Rules gi makhada piba Rule 43 gi matung inna maternity leave pidafam thokte haibsini. Appellant ki maikeida lepkhiba Counsel na thamkhi madudi Appellant na mahakki mapuroibagi hannadagi leiba angang anigidamak child care leave loukhre touwigumbasung madu gi suti makhal adu maternity leave ki suti asiga mannadaba tonganba makhal amani.

12. Respondent sing na thanggatkhiba wafamdi, mapuroibagi hannadagi leiba angang anigidamakta child care leave loukhibana maram oiraga Appellant pu mahakna hek pokchaba angang adugidamak maternity leave fangfam thokte haibasini. Respondent na thamkhiba wafamgi matung inna Appellant asi 1972 gi Rules ki makhada piba Rule 43 gi matung inna mahakki hanndagi hingduna leiriba angang ani leibana maram oiraga maternity leave asi pifam/fangfam thoktre haibasini.

13. Masigi Appeal asida yamna masak thokna khannafam thokpa wafam adudi 1972 ki Rules ki makha da piba Rule 43 gi macha khaina Artha handokpa haibasini. The Central Civil Services (Leave) Rules 1972 hairiba Rules asi Constitution gi Article 309 gi makhada piba

proviso (ahenba/anouba/ngakna chatkadaba wafam) adugi makhada semkhibani. Rule 43 asi makhagi asigumna puthoktuna utli/thamle:

“43. Maternity Leave (angang unaba ga mari leinana piba/louba suti)

(1) Competent Authority amana angang/macha ani gi makhada hingduna leiriba sarkar gi thabak toubi nupi amada (sindamba mioi yaona) numit 180 sangba maternity leave asi masibu houriba numit adudagi houraga piba yai.

(2) Asigumba matam asida, mahakpu suti-gi-tolop haibadi suti loudringeigi hek mang-oinana fangkhiba tolup adu pigani.

NOTE (khangjingadaba):- karigumba mioi ama Employees State Insurance Act, 1948 (34 of 1948) hairiba act asina chatnaba/konsinba tarabadi, Rule asigi makhada pigadaba suti-gi-tolop adu Act asiga mari leinariba matam aduda pigadaba/fanggadaba kannabsing adu kaktharaga/hantha-hallaga pigani.

(3) Sarkargi thabak touribi nupi amagi mahakki apumba thabak touringei matamda karigumba angang louthokpa yaona angang kaibagi fibam thengnaba tarabadi, Rule 19 gi matung inna piriba ana layeng-gi oiba saktak che ama uttuna numit 45 dagi hendaba maternity leave piba yai (masida angang kaya hingli haiba wafam gi darkar oide/khannaroi).

Toubadabu CCS (Leave) Amendment Rules, 1995 asi laktringei mamangda maternity leave loukhiba/pikhiba thoklabadi madugi suti adu masigi sub-rule asigidamak khannabda yaoroi.

(4)(a) Maternity leave asi atoppa makhalgi suti ama hek ta ga punsinnaba yai.

(b) Rule 31 gi makhada piba rule 1 natraga Rule 30 gi makhada piba rule 1 gi matung inna ana layenggi oiba saktak che puthokpangi tangaifadaba/darkar oiba trabasu, pifam thokpa/fangfam thokpa suti pidana/fangdana leiba oiba tarabadi (suti pinaba leitraba natraga larik laisu tamnaba natraga atoppa maram amagidamak tolup tangkhai fangna louba numit 60 dagi henna louba suti) yamlabada chahi anifaogi suti, karigumba pibinaba nirakpa thoklabadi, madu Sub rule 1 gi makhada louriba maternity leave adugi makha samthana pigani.

(5) Maternity leave asi louba yaba suti gi masing/hisap tagi kakloi.”

14. Rule 43 gi marginal note(Section dubu mateng pangnaba,laihannaba hapliba) asi Maternity leave haina piri. Rule asigi Sub- rule (1) na utli madudi Rule asina chatnaba houba matamdagi houraga sarkar gi thabak toubi nupi amana mahakki angang anida gi tana hingduna leiba tarabagi mahakpu numit 180 sangba maternity leave pigani. Rule asigi Sub-rule (2) na utli madudi maternity leave ki matam asida thabak touriba mioi adubu suti adu hek fangdringei/pidringei mang-oinana fangkhiba/pikhiba tolop adu ga chap manana sutigi tolop fanggani. Rule asigi Sub- rule (3) na utli madudi numit 45 dagi henna sangdaba maternity leave amagasu sakrargi thabak touribi nupi amada, mahakki angang kaya leiri haibagi wahangsi tung-oinaraga mahakki apumba thabak touringei manungda angang louthokpa yaona angang kaibagi thoudok ta ana-layeng gi oiba saktak che puthoktuna utlaba matamda pigani. Rule asigi Sub-rule (4) na utli madudi maternity leave asi atoppa makhal ama hektagi suti ga punsinnaba yai/ngammi.

15. Rule 43(1) na piriba chatna kanglonsing asi fibam/matamna purakpa darkar oibadugi matung inna pukningda sagatkani/chingsingani. **KH Nazar v. Mathew K Jacob**,⁵ hairiba case asida masigi Court asina sakkhangba utkhi madudi kannaba pinaba semba aign/niyom sing asi pukchel chaona/pukchel tingna yengsingani.

“11. Kanna ba pinabagidamk semliba aign/niyomsing asi karigidamak semliba/pangthokkadouriba hairiba mityeng asi thamgani. Aign asi suksoi soidana pukchel chamna/tingna yengba mityengda aign adugi pandam, fangge haina khalliba apambasing adu fangnabagidamak yenggani/khanngani. Amasung wahei singduna piriba waheidugi oiba arthadukhakta da yumfam oiduna yaribamakhei sagatloidabani/khannaroidabani. Leigak mapusing na aign ama semba matamda thamkhriba aningba/apamba/wakhallon adubu Court sing na khangdokpa haibasi Court ki mathouni. Asigumba wakhallon/aningba sing asi hek khangdoklaba matungda, aign apumba adu maram chaba mathou gi tung inna Artha hangani/sagatkani.

12. Justice O. Chinnappa Reddy, gi waheida, Kannanabagidamak aign ama semba matamda ningsinggdaba maru oiba wafamsing adudi: (Workmen case, SCC p. 76, para 4)

“4. Aign ama sagatpada khangjingadaba maru oiba wafamsing adu hannana lepthoktuna/khannaduna leirabani. Aign mapum aduda yaorakliba waheising

⁵ (2020) 14 SCC 126

haibadi atoppadagi pusillakliba pukchel chumba/tingba waheising, makhoising adudi ‘social welfare legislation and human rights (Samaj ki chaokhat khongthanggidamak semba aign/niyom amasung mioibagi haak)’ Aign/niyom sing asi Procrustean beds(yamna akaknaba mawong ngaktuna chatpa) ta hapchinba natraga Lilliputian dimensions (chap mannaba potsak adu gi yamna pikthaba mawong) ki mawongda piksil-hanba/hantha-halloidabani. Asigumba aign/niyomsing asi Artha hanba matamda piriba waheising adugi akaknaba Artha hannaba hotnaba asi yaribamakhei touroidabani amasung madubu lanna sijinnbana maram oiranga amangba/asoiba oirak pa yabasing adusu khanggadabani amasung hantha-hannaba hotnagadabani. Judges (Wayel mapu) sing asigumba aign/niyomsing adugi masak-machu, yaoribasing amasung yaoribasing aduna hainingliba takningliba sing adugidamak henna khanfam thokpani (eikhoina Lord Wilberforce na **Prenn v. Simmonds [Prenn v. Simmonds, (1971) 1 WLR 1381 : (1971) 3 All ER 237 (HL)]** ta pikhiba pukning gi warol sing adubu pubani/waibani/loubani).

Masig mannaba wakhallonda Lord Wilberforce nasu thinduna takkhre madudi aign haibasi wahei gi oiba akaknana Artha hannabagidamak leiba ithat ama da natheiduna thamloidabani madudi lon/wahei watagi oiba wakhallon dagi hendokna, makhoibu semkhibagi thoudok wathoksing dagi tokhaidana/natheidana; aign haibasi taseng tasengna lon du khak yengduna Artha halloidabani. Eikhoi gi mangda puthokliba case sing asigi manung da case amada, madudi, **Surendra Kumar Verma v. Central Govt. Industrial Tribunal- cum-Labour Court** hairiba case asida, eikhoina makhagi asigumna hainabagi tanja fangkhi : (Surendra Kumar Verma case, SCC p. 447, para 6)

‘6. ... mioibagi hingbada maru oibasing adugidamak semliba aign/chatnabi kanglonsing asi Artha hanba matamda aign aduda sijinnariba lon/mayek ki awangba thaktu yengaga Artha halloidabani. Mayam gi yaifanabagidamak semliba aign sing asi suksoi soidana fiam-matamgi gi matung inna darkar oiba matamda yamna pak sanna/chaothokna Artha handokkani. Karigumba leingaklon/aign amabu karigumba makhal amagi mi-ot minei/mayam da soiba natraga aranba gi thoudok ka mari leinana piba kannaba/awabadu kokpiba/hantha-hannaba semlabadi, maduda Court na yaoriba waheising adugi

hourakfam natraga Artha handuna leingaklon adugi manung da changnaba hotnaroidabani.

13. Ee-duna thamlaba aign amabu Artha hanba matamda, aign aduna mayoknage khalliba wafam natraga samaj/miyamda asok apan piba wafam/thoudok singna pigadaba awaba nungaitabasing da gi kokhanba/awabadubu hantha-hannaba sagatliba mawong adu karino haina hanna khangdokkani amasung madugi matung inna adugumba wafamsingdubu namthananaba amasung tagaduriba awabasing adubu kokhanba/hantha-hanba yananaba wakhallon amuk sagatkani/pangthokkani.”

16. **Badshah v. Urmila Badshah Godse**,⁶ hairiba case asida justice AK Sikri amasung Ranjana Desai anina famba Court amana rai pikhi madudi Court singna aign amadi samaj anigi marakta leinariba ahangba/awatpa asi mafam chana/matang chana darkar oiba Artha piduna/handuna samjinnanaba/fagatnanaba hotnagadabani:

“13.3. Ahumsubada, asugumba case sing asida, darkar oina hangadouriba Artha adu CrPC gi Section 125 da su pigani/mityeng thamgani. Kana leijadraba nupi ama natraga laibak thiraba angang amana hairiba chatna kanglon asigi makhada tharakpa darkhast singda Court na thengnaribasi samaj asida sottharaba kanglupta leiba mioisingduni. Masibu semkhibagi maramdi Constitution gi Preamble da yaoriba Constitution asina maangliba maanglan, fangge haina thamliba “social justice(samaj asida khetnaba leitaba, mayam punna chatkhatminnaba)” haiba pandam asini. India gi Constituion gi Preamble na mayek sengna khudam piri madudi eikhoina praja masana leibak ngakchabagi lambisida aign gi matung inna changsinduna leibak asigi prajasingbu justice (maram chaba, achumba wayel), liberty (ningtamna hingba amasu leibagi wakhallon), equality (chap mannaba mityengda) amasung fraternity (chap mannaba wakhallon da pangthokpa thabak, thajaba-hingminnabagi apamba) pinanaba/fanghannab hotnagani haibasini. Masida yam na maru-oina Social Justice fangnanaba pandam asi mayek sengna tak-ee. **Maram aduna Court singgi mathakta toufadraba thoudang ama oina Social justice fangnanaba/pinanaba hotnagadabani haiba asi piri. Akaknaba aign gi chatna kanglon ama Artha hanba matamda, Court singna tougadabadi aign amasung prajasing gi marakta leinariba khetnaba/awatpa mari adu samjinba haibasini.**

⁶ (2014) 1 SCC 188

14. Ikui kuidringei matam asida, masi gi maikei sida samaj ki oiba samasya ga mari leinaba case sing da Court na achumba wayel ama fangnanaba wayel chatthaba matamda atoppa lambi kaya ama yengba natraga chatnanaba hotnabada maru oiba mityeng thmgani, masigum ba case sing asibu samaj samasya gi achum aran gi wayel haina su khangnei (social context adjudication) maramdi icham chamba mawong da maikei animakki oiba chayetnariba adutamak yengbaba adu maram chadaba/channaba watpa oiba yai. Samaj ta leiraba sottharaba mioising gidamak chaokhat khongthang gi maikeida achum aran wayel ga mari leinanana ngaklou pinanaba amsung kannaba pinanaba leingaklon kayamarum ama lei. Prof. Madhava Menon na yamna mayek sengna sandokna tak-ee madudi:

“Masibu yamna ikaikhumnaba ga loinana thamjari madudi samaj samasya ga achum aran haibasigi matangda chap manaba mityengda thamba aign gi wakhallon/khanna neinabagi darkar oibadu Parliament amadi Supreme Court na fibam matam kayamukta nouna puthoktuna thamkhre, madudi mannadaba party (yetnariba maikei) singna adversarial proceeding (maikey ani natraga anidagi henbane mayoknaba) amasung Court singbu achumba wayel pinanaba thanggatlakpa matamda soidana khannagani. Samaj ki sel thumgi oiba mannadabasing aduna maram oiraga lairabasing bu mannaba fibam/lanfam amada mayek senghallibasina tongankhrraga, adversarial process (maikey ani natraga anidagi henbane khatnariba yanadaba uttuna chatthariba mawong/thouwong) asimak na asonba party/maikey adugi khudongchadaba da oihalli. Karigumba achum arangi wayel da akaiba piroidaba oirabadi asigumba fibam asida Wayel Mapu aduna yamna hei singna party singgi mannadabasing adubu khangna chatpada nattana sotthariba party/maikey adugi maikeida yenggani. Masigi wakhei asi eikhoina samaj ki mityeng da chatthaba wayel da natraga samaj ta achum aran gi wakhallon thamduna khannaba natraga chatthaba wayel na fanghalli. [Keynote address on “Legal Education in Social Context” delivered at National Law University, Jodhpur on October 12, 2005, available on <http://web.archive.org/web/20061210031743/http://www.nlujodhpur.ac.in/ceireports.htm> [last visited on 25-12-2013]]

...

16. Aign haibasi na mioibasing gi marakta leinagada mari adubu yengsilli. Masina lamchat sajat ki masak mawong adu tak-ee. Court ki thoudang di samaj amada aign

adubu thambagi/sembagi maram amasung aign adu semkhibagi pandam adu fanghannaba mateng pangba haibasini. Adubu Samaj amada aign asi ahingba jiba amgumbani. Masi thoudok wathok/fibam matam amadi leppa naidana hongliba samaj asida leiriba/oiriba fibam da yumfam oi. Karigumba matamda aign gi ahongba asina samaj ki ahongba dagi mang thana chatli amsung masina samaj ta ahong ba purakpagi apamba adugi matung inna su touwi. Case ayambada aign gi ahongba haibasi Samaj ki oiriba asengba masak/ahongba aduna oihanbani. Thanggei sengbamakti samaj ta ahongba laklabada aign su honggadabani. Samaj ki ahongba asina punsigi law (chatna kanglon) oirabasu, samaj ta lakliba ahongba aduda saruk yasinba asi na aign/chatna-kanglon(law) adu gi thawaini. Haiba yai madudi aign gi puwari asi na aign adubu samaj ki ahongba aduda yaosinba gi puwari aduni. Constitution gi oiba amasung aign animakki oiba mityeng thamduna artha hanba matamda, Court singna maning toubagi ayaba adu aign adugi oifam thokpa maram amasung aign adugi pandam anidugi leinariba mari adubu thoidokpa matamda sijinngani.”

(emphasis supplied/maruoiba mityeng natraga wakhallon pisinba)

17. Leingaklon adugi policy (chaokhat khongthangidamak karigumba ama fangnanaba semba chatna kanglon) ama khongjel yangsinnanaba gidamak, Act asi bu yengbada PGIMER da chatnaba yaroidaba oirabasu Maternity Benefit Act 1961⁷ na piriba chatna kanglon sing adudagi ngaklou khara lougani. Adumnamak ti oiraga 1961 gi Act asina utningli madudi hiram asigi matangda londa mannaba(cognate) lengaklon ama sembagi pandam amasung aningba lei.

18. Angang unaba haibasi karino haibadu 1962 Act asigi Section 3(c) na maduna haininglibadu tak-ee. Section 5 na maternity benefit fangbagi haka du piri. Section 5 apumba adu makha puthoktuna utli:

“5. Maternity benefit fangbagi hak.— (1) Act asina piriba chatna kanglongi makha ponna, nupi khudingmak na fangfam thok-ee, mahak na thabak leppa numit apumbagi oina nongmagi fangfam thokpa nongmagi chang da saba peisa/khutsumal aadu maternity benefit oina fanggani, maduna hairibadi, angang unaba numit aduga thangnariba mamanggi matam, angang unaba da changliba matamsing amasung adugi numit adugi thangnaba numit sing asini.

⁷ “Act of 1961”

Explanation.– Masigi Sub section asigidamak, nongmagi chang da piba khutsumal hairagadi nupi aduna angang unabaga mari leinana suti loudringei/tasengna thabak suba/touba laktaba numit adu gi mang-oinana mahak na thabak sukhiba tha ahum adugi oina fangliba khutsumal gi chang aduni, piklabada lepnaduna leiraba khutsumal natraga semdokkhraba Minimum Wages Act, 1948 (11 of 1948) ki makhada , natraga lupa tara, mayamsigi marakta khwaidagi yam baa du.

(2) Karigumba nupi amana thabak sufam aduda mahakki angang unaraba yai haina thariba matam adugi hek mang-oinariba tha taranithoigi manungda numit 80 dagi tadana thabak sukhidaba/toukhidaa taradi mahak pu maternity benefit adu piroi:

Makha tana piri madudi mathak ta palliba chatnagadaba/oigadaba numit 80 gi matam asi kanagumbi nupi ama Assam hairiba rajya asida hongkhiba Taraba amasung hongkhiba matam aduda mironkhiba tarabadi, masigi chatnagaba matam asi nupi adudi chatnaroi.

Explanation.– Sub section asigi makhada nupi amana thabak sufam oiriba mafam aduda numit Kayani thabak sukhi/toukhi haibasi hotnanabagidamak, nupi aduna angang unabaga mari leinana suti loudringeigi mang-oinaba tha taranithoigi manung aduda mahakpu thabak tagi pothhankhiba/lephankhiba amasung tolop/peisa yaona pikhiba suti gi matamsing adusu hotpa asida yaogani.

(3) Nupi amana yamlabada louba yaba maternity benefit asi chayol/hapta kuntaruk oigani madugi manungda angang unaraba yai haina thariba matamdugi mangoinana chayol 8 dagi henna louba yaroi:

Makha tana hingduna leiriba angang/macha ani leiba nupi amana yamlabada fangfam thokpa maternity benefit asi hap ta 12 oigani, mahakpu angang unaraba yai haina thaba matamdugi mangoinana chayol 6 tagi henna louba yaroi:

Makha ta na piri madudi masigi matamsida karigumba nupi asi leikhidaba tarabadi, maternity benefit asi mahakna hinglingei/sidringei matam, siba/leitaba numit tufaogi yaona pigani:

Makha tana piri madudi karigumba nupi amana angang ama unakharaba, angang adubu unaba matamda natraga mahak ki maternity benefit fangfam thokpa numit adugi hek matung, hairiba fibam anisi gi manungda angang adu hingduna leihouba tarabadi thabk piriba mioi aduna maternity benefit fangfam thokpa matam apumbagi

kannabadu pigadabani aduga karigumba angang adusu leikhidaba tarabadi angang aduna hingliba/sidringei amasung siba/leitaba numittufaogi yaona pigani.

(4) Nupi amana aign na yaba mawongda tha ahum sudriba angang ama yokpa tarabadi nattraga Commisioning mother (kanagumbi nupi amagi khuttahngda mama poigadourabi khudam oina surrogacy hairiba mawong asida) amabu angang adubu yokkadouriba mama nattraga commissioning mother aduda hek sinnaba numit adudagi houraga hapta taranithoigi oiba maternity leave fangfam thok-ee, oigadouriba case adugi tung inna (as the case may be).

(5) karigumba nupi amada sinnariba thabak adu yumdagi suba yaba thabak oirabadi, thabak piriba mioi aduna mahakpu thabak adu makha tana maternity leave fangkhraba/(leave ki matam loirba matung) matung da thabak adu thabak piriba mioi aduna piba niyomsing sing matung inna nattraga makhoi ani gi marak ta yanaba amagi makhada yumdagi suba yahanba yai.”

19. Section 5 ki makha Sub-section (1) na nupi amada angang unabaga mari leinana piba fangfam thokpa kannabasing adu hanna lepnaduna leiraba mamalda, mahakna lepkhiba/suti loukhiba asengba matam-angang unba numit ki hek mamang gi numit, angang taseng na unaba numit amasung madugi makha tabada oirakpa numitsing adugidamak pigani. Sub-section (3) na nupi amana angang unabaga mari leinana kaya yamba matam suti loubu yabage haibadu piri. Nupi amana mahak ki thabak mafamda mahakna angang unbaduna maram oiraga mahakki thabak ka mari leinana masigi matam asida fanggadaba khutsumal nattana mahak na angang unaraba matung da angang adubu yengsinnanabagidamak suti louringei manungda fanggadaba kannabasing aduda akaiba pidanabagidamak Parliament na (leibak miyam gi mihutsing gi sabha) masigumba chatna kanglon kaya sing asi semli.

20. 1962 gi Act asi nupi amana mironbagi amadi mama ama oibaga mari leinana suti fangbagi hak amasung nupi amabu mama ama oina amsung thabak touriba mioi ama oina yam na ayet akham leitaba punsi amada mkhoinabu pamlabadi madugi punsi mahing aduda hingba ngamnabagidamak semkhibani. **Municipal Corporation of Delhi v. Female Workers (Muster Roll)**,⁸ hariba case asida wayel mapu ani famba Court amana Constitution gi Articles 14, 15, 39, 42 amasung 43 na piriba toufadraba thoudang sing amasung Universal Declaration of Human Rights 1948⁹ amaung Convention on the Elimination of All Forms of

⁸ 2000 (3) SCC 224

⁹ “UDHR”

Discrimination Against Women¹⁰ gi Article 11 asigi tung inna India na jati masel gi marakta (international) leinaba mari fagatnana toufadraba thoudang sing adugi kannabasing adu 1961 gi Act asigi makhada khutsumal adu Municipal Corporation of Delhi gi makhada icham chamba sinmi ama oina thabak touriba amsung muster roll () da thabak suriba sinmising da fanghangadabani haikhi. Central Civil Services (Leave) Rules 1972 asi Constitution gi Article 15 amadi atei mari leinaba chatna kanglonsin, hak amadi ngaklousing-duna piriba/pamliba pandamsing adubu fanghannabagidamak pukning wakhalda thamduna semkhi.

21. Constitution gi Article 15(3) na State/Rajya sarkar amadi nupising gi yaifanabagidamk leingaklon ga mari leinaba kannaba pinanaba chatna kanglon kaya semba yabagi sakti sinnari. Angang pokpa amasung angangsingbu yengsinbagi hak haibasi mioibaga tatna thanaba yadraba Constitution gi Article 21¹¹ (right to privacy) hairiba hak asigi makha da punsigi oiba hak singgi manung channa, cheksinna hingba, dignity(ijja leina) amasung isagi hakchanggi oiba ijja/byabhar/apamba mawongda liejaba yaba gi saruk amani haina masak khangli. Article 42 na masida amuk maetng pangsiinduna Sarkar aduna mi ama oina maram chana thabak suba da ijja leina/mawong tana thabak suba yananabagidamk amsung angang unaba ga mari leinana thengnaba awaba hanthhannaba/kokhannaba chatna kanglonsing semjaba yabagi saktisu sinnari.

22. Masigi matang asida United Nations (leibak kayamarumgi oiba sabha) gi makha India na yaosinduna leibak asigi mihut thaduna sahi tounakhiba yan ache/yana warol mayam adubusu bhebbhar toufam thok-ee, yengsinfam thok-ee. UDHR gi Article 25(2) na piri madudi mama oibagi matam amasung anang oibagi matam asida ahenba mityeng amsung cheksinna yengsinbibagi tangaiwadaba lei haibasini. CEDAW gi Article 11(2)(b) nasu piri madudi State(leibak) singna mama ama oibaga mari leinana tolop pina suti piba amasung maduga channana samj ki chaokhat khongthang gi maikeida piba yaba kannabasing pigadabani haibasini.

CEDAW gi Article 11 mari leinariba saruk aduba piri madudi:

“Article 11:

1. Mioibagi nupa nupi khaidana hcap manna ba mityeng ama da yengduna khetnaba leiriba sing amasung khetnabaduna maram oina tongannna/hanthana

¹⁰ “CEDAW”

¹¹ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1; Suchita Srivastava v. Chandigarh Administration (2009) 9 SCC 1

yengbiriba adubu muthatnaba/manghannaba darkar oiba-maram chaba khongthangsing loukhatkani, chap manaba hak pinaba, maruoina:

- (a) Thabk sujaba yabagi ha kasi mioiba ama oina tatna taha yadraba mioibagi hak amani;
- (b) Thabak suba ama thabak ama changba matam da chap mannaba darkar oiba amasung thabak inkhang ga mari leinaba thabak thouramsingda chap manaba thakta khannaba;
- (c) Isana apamba sinfam khanjabagi hak amasung thabak toufam gi, thabak aduda mathak thangba mafam kabagi hak, sinfam aduda leiba aki akham leitana ning tamna leijabagi hak amsung thabak sufam da pigaduriba fibam/kannabasing amasung matam matamgi oiba khut sa/sinfamduda ahenba gyan tamsinjabagi hak, nouna amuk khut sa heihanba haibasini.
- (d) Chap manana thabak subagi mamal, maduda piriba kannabasing yaona, amasung chap mannana loinabiba, afaba makhalgi loinabagi mawong thabk adugi matangda yengsinba amasung thabak suriba adu kay yamna fajana suba sudaba haibasisu amani;
- (e) Samaj ta leibada tnagaifadaba cheksin thourang gi hak, maru oina thabk toklaba matung, thabak fangdaga, mayam ga mannadraba amsung chahi yamsillakpa amsung thabak sub ngamdaba, aduga lina loinana peisa fangna suti piba haibasini;
- (f) Angang uunaba (anouba jiba ama puthokpagi thouwong) yaona isagi hakchang dan leinabagi hak amasung thabak sufam da leigadaba cheksin na soida ngamdana thabk suba ngamhannabagi hak.

2. **Luhongbagi fibam amadi mama oibagi fibam na maram oiraga nupisingda chatthaba mannadaba mi-ot minei sing thokhandanaba amasung makhoibu chap chana thabak suba nagmhanba, Rajya/Sarkar singna chap chaba khongthangsing loukhatkani.**

- (a) Miron ba na maram oiraga nattrga maternity leave na maram oiraga thabk thadatpa amsung thabak tahdatpa matamda luhongbagi fibam yengduna mannadaba mawong utpasing asibu akaknaba chatna pathap/aya-yada (sanction) khara yengba nattana thingnabagidamak.

(b) Peisa fangba maternity leave ama nouna semba/puthokpa natraga channaba samaj ki chaokhat khongthang gidamak hannagi thabk au toktaba, ahal akongi thak amasung samaj ka mari leinana piba ayaba/kannabasing semba/puthokpa.

(c) Mama mapa oibasingbu imung manung gi toufadraba thougai kaya amaung thabk mafamgi toufadraba thoudang sing aduga tuna na chatpna ngamnabagidamak darkar oiba samaj ki chaokhat khongthang gi maikei chatna kanglon sembada sougatpa, maru oina angang sennabagi lamda laiannaba/maetng panagna mafam sing semgatpa amasung amadubu yokkhatpa sing asini.

(d) Nupi amana mirollingei matamda mangonda asok apan piba yaba thabak singda akhannaba ngaklou pinabagidamak.

3. Masigi Article (karigumba hiram amagi matangda khanduna iba paodam) Ngaklou piba leigaklon sing asi matam matamgi inna leirba bigyan gi wakhallon amasung chantnaba/chantnadaba gi gyan lousing sijinnaduna semdokpa, sadokpa natraga leingkalond aduna karaifaoba konsinba natraga madubu chatnhandaba ya.”

(emphasis supplied/maruoiba mityeng natraga wakhallon pisinba)

23. Mathakta palliba treaty (leibak ani natraga anidagi henbana yanaduna makhogi mihutsing sahi tounaduna semba yan ache) asina Constitution ga tu nana yengba matamda, 1972 gi Rules 43(1) na ninglibadi numit 180 ni sangba maternity leave piba haibasini. Maternity leave piba asina tongankharaga nupi amana mahakki hingduna leirba macha/angang anigidamak makhosingbu yengsinba natraga makhoigi darkar oibasing pinanaba, haibadi lairik laisugi matang, ana ayekki matang amadi atei asigumba fibamsingda child care leave piba haibasini. Rule 43-C gi makhada child care leave asi angang uunaba matam da khak nattana Rule asigi chatna kanglon gi manung channa piriba oithokpa yaba maramsing sing gi inna angang adu uunaraba matungda matam amada hekta loubu yai, masibu judgement asgi mamang gi saruk kharada louthoktuna utkhre. Animak asi tongantongana fangfam thokpasing ni.

24. Mangda leiriba case asina takli madudi Appellant ki mapuroiba asi hannana luhonglure amasung luhongba adu mahakki loinabina sangsar thadokkkhibana maram oiraga luhongbagi leiba mari adu makha tana leitre amasung madugi tungda Appellant ka luhongkhi. Appellant ki mapuroiba asi gi hanna gi luhongba adudagi fangjaba mapuroiba adu hek pokchaba angang ani leiba sina maram oiraga Appellant masana hek pokchaba angang

adugidamak fangfam thokpa maternity leave adu pidaba yaroi. Mahakna mahakki mapuroubagi hek pokchaba angang anigidamak mamang da child care leave loukhiba adu matamduda authority singna minungsigi ka da yenglaga pikhiba oiba yai. Nupa nupi khaina nupi oibising piriba thoudang amasung samaj asina nupi amana tougadabani haina khalliba/pamliba wakhallon asina tak-ee madudi nupi haibasi matam pumbada namthaduna thamlaga angang sennabagi nupasing ga yengnabada chang mannadraba thoudang asi sinnei/touhalli. Organisation for Economic Co-operation and Development (OECD) na loubu 'time-use' kouba kupna yengsinbagi thouwong (survey) amada, India da leiriba nupising na houjikki matam asida nongmada peisa fangdaba yamdrabada 352 minutes faoba thabak sui, nupa amana pantgthokpa matamdagi chada 577 gi chang hennana nupina sui.¹² Peisa fangdana suba thabak sing gi manung angang sennabasu yaori. Masigi wafam asida, yengsinbibagi thabak sing asi maternity leave (mama oibi amana loubu suti), paternity leave (mapa oiba amana loubu suti) nattraha child care leave (mama nattraha mapa animak na loubu yaba suti) hairibasing asi gi makhada rajya/sarkar amadi atei thabak piribasing sougatpiba asi maru oi. 1972 gi Rules asina chatna kanglon kayamarum piduna nupi oibisingbu peisa fangna suba thabak mafamsingda changba yahallabasu, makhoibu angang sennabgi maruoi ba/tangaifadaba thoudang adu louhalli. Appellant ta child care leave piba na maram oiraga 1972 gi Rule 43 gi makhada piba maternity leave adu pidafam thokte.

25. Karigumba Artha hanba matamda kari maram gi toukhribano haiba miteyngda Artha handrabadi, maternity leave piba/loubu Rule asi semkhibagi maram amadi fangningliba pandam adu icham chamna maithiba piba thokkani. 1972 ki Rules ki makhada piba maternity leave asi gi apambadi kanagumbi nupi oibisingbu makhoiba touriba thabak aduda makha tana leithaba/touthaba yahannanabani. Yamna akiba achumba wafam aduni madudi asigumba chatna kanglon sing asi leiramdrabadi nupi ayambadi samaj asi da leiriba/chatnariba fibam sing asina namduna angang hek uunaraba tungda makhoibu suti amadi asigumba matam asida makhoibu sougatpinaba thourangsing pidrababi/paikhttrabadi thabak ta pothakhiba haibasini. Kanagumba thabak piriba mioi amatana angang unaba hairiba fiabm asibu thabak piba ga mari leinade haina uuba yaroi. Angang uunaba haibasi thabak pibaga mari leinana yengba matamda punsi asigi mahousagi oiba thoudok amani aduna maternity leave ki piriba chatna kanglonsing asi masigi mityeng thamduna khannagani/yengsingani.

¹² Organisation for Economic Co-operation and Development, 'Time-Use' (OECD Stat) <https://stats.oecd.org/Index.aspx?datasetcode=TIME_USE#> accessed 22 August 2022

26. Imung(family) ama gi saktam asi karino haiduna yengba matamda Yamna henna mayam na khanganariba nattraga leiriba wakhallon adudi imung ama haibasi asi aign gi mityeng amadi samaj ki mityengda, amakhak oiba, hongba naidaba mama amasung mapa na sagatpa khal ama (matam pumnamakta lengdraba) amasung makhoigi angang/machasing aduni. Masi oire haina louriba wafam asina makhagi wafam ani asibu natheiri, imung amagi saktam bu honghanba/kaihanbada mateng pangliba thoudok wathoksing amadi imung ayambana asigumba ahongabasing oirakpa gi aningba apambagi wakhallon adubu sougatte habasini. Imung aduda leinariba mari asi yum gi oiba mawong, luhongdana leiba/thamba mari nattraga mannaba masen gi marakta leinaba mari, hairibasing asigi manug da oiningba mawong ama hekta oiba yai. Yum/imung ama haibasi mama nattraga mapa ama khaktana ling yum ama maram kayamarum amana oiraga oiba yai khudam oina loinariba mioi ama leikhidaba, tokhaina leinakhiba nattraga khainakhiba. Matou asigumna angang/macha bu ngakpi senbiriba amsung darkar oibasing bu yengsinbiriba mioi (mahousana mama nattrag mapa amagi thoudang louriba) sing asu nouna luhongba, angang adubu atoppa ama na yokkkhiba nattraga angang adubu kanagumba amagi mityeng makhada leikhiba hairiba mawongsing asida ahongba oi. Nungsinabagi mawong matou amasung imung amagi saktam asi akaknaba leitabadi ayi adubu makhosing adu mahousadagi leirakpa chatnabi asiga chap mannaba mawongni. Asigumna mannadaba imung amagi saktam asi aign gi mityengna chap mannana ngaklou pibada nattana samaj asigi chaokhat khongthang gi maikeida loukhatliba/piriba kannabasing asisu pigani. Aign aduda sijinnariba lon/mayek sing adubu akaknana yengduna/khannaduna mahousagi oiba imung amagi saktamdagi tonganba imung sing adubu sotthaba fibam da leihannaba hotnaroidabani. Masi gi wafamsi kanagumba nupi oibi amana mayam na uuriba/khangliba wakhallon adudagi tonganba mawong mama ama gi thoudang yajaba matamdasu chap manna chumlabu wafam aduni.

27. Houjik mang da leiriba case asigi wafam sina su utli madudi Appellant ki imung manung gi saktam asi mahakna mahakki mapuroibagi hannagi luhongbadagi fangjaba macha sing adugidamak mahak na mama amagi thoudang loukhiba mitkupta ahongba/awonba oikhi.

Appellant na PGIMER da maternity leave pibiyu haina nijaba matamda, PGIMER na leiriba wafam asi khannaba/thengnba matamda asiga channaba chatna kanglon adu chatnahangadouriba/mari leinariba aign asida matik chana nattraga macha khaina yaodaba amadi aign asigi miteyengda uuba fangdaba asini. Karigumba Court sing asi asigumba fibam mayoknaba matamda, makhoina tougadaba adudi mari leinariba aign adubu

sijinnaba/chatnahnaba yadanaba hotnabagi tai-on nana aign adubu semkhibagi maram/pandam adu fangnaba hotnagani.

28. Mathakta palliba maramsing asigidamak, eikhoina leple madudi Appellant asi maternity leave fangfam thokkhi haibasini. Ahumsuba Respondentgi paokhum oina pikhibada mahakpu kannabasing adu fangfam thokte haiba wafam asi Rule 43 na piriba chatna kanglon gi wangmadani. Maram aduna eikhoina pende haina yetliba 2021 gi March 21 da High Court na pikhiba Judgement amsung 2021 gi January 29 da CAT na pikhiba Judgement animak chatnahandre. Appellant thakhiba OA (Office Application) darkhast adu makha ayaba pire haina lourgani amasung Appellant houjikki Judgement asigli matung inna Rulr 43 gi mkhada Maternity leave fanglagani/piragani. Appellant asida pifam/fangfam thokpa kannabasing adu masigi Order asigi matung tha anigi manung Appellant da fanghanagni.

29. Appeal asi maram aduna ayaba pire.

30. Panduna leiriba darkhast sing, karigumba leirabadi, madubu loisille haina lourgani.

Nidhi Jain

Appeal asi ayaba pire.