

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 1665 OF 2015.

Dr.Ms.Pooja Jignesh Doshi .. Petitioner
Vs
The State of Maharashtra and another .. Respondents

Mr.Nikhilesh Pote, for the Petitioner.

Mr.M.M.Pabale – Addl. Government Pleader, for Respondent No.1.

*CORAM : PRADEEP NANDRAJOG, C.J. &
N.M.JAMDAR, J.*

Date : 3 July, 2019.

P.C. :

1. Unable to bear a second child and forming the opinion that a sibling was needed for Master Saurav, a son born to the Petitioner; with consent of her husband the Petitioner chose the route of surrogacy. The surrogate mother gave birth to a baby girl on 5 November 2012.

2. But prior to it, with reference to the expected date of delivery, the Petitioner sought maternity leave to take care of the surrogate child. The same has been denied to the Petitioner on the

ground that the Leave Rules and the policy governing the Rules do not permit maternity leave for a surrogate child.

3. The issue is no longer *res-integra*. In the decision dated 22 July 2015 in Writ Petition No.3288 of 2015 *Dr.Mrs.Hema Vijay Menon vs. State of Maharashtra*, a Division Bench of this Court relying upon a decision of the Delhi High Court dated 17 July 2015 in the case of *Rama Pande vs. Union of India*, held that even in case of birth by surrogacy the parents who have lent the ova and the sperm would be entitled to avail leave. The mother being entitled to maternity leave and the father paternity leave.

4. The decision of the Division Bench has attained finality and thus we declare that the Petitioner would be entitled to maternity leave for child born through surrogacy.

5. The Petitioner is held entitled to the relief sought for in terms of prayer clause [C]; being that the Earned Leave and Half-pay Leave availed of by her should be entered in the record as maternity leave for the purposes of the leave account and that the said leave availed by the Petitioner during various intervals be converted into maternity leave.

6. The Writ Petition is disposed of.

N.M.JAMDAR, J.

CHIEF JUSTICE