

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: 9th August, 2011
Judgment Delivered On: 26th August, 2011

+ W.P.(C) 3188/2011

Smt.Kusuma Kumari Petitioner
Through: Mr.Hasan Anzar, Advocate

versus

UOI & ORS. Respondents
Through: Mr.Rajiv Mishra, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Appointed as a constable with Central Industrial Security Force in the year 2000, the petitioner was attached with a Battalion and assigned duties at the Bangalore International Airport in the year 2008. On 22.10.2008, she was granted casual leave for a period of 14 days and was required to report for duty on 17.11.2008 after availing leave on non-working days prefixing and suffixing the leave period. On 17.11.2008 the petitioner admittedly arrived at the airport and marked her attendance in the General Diary kept at the control room, but did not report for duty.

2. What happened on 17.11.2008 is an admitted fact with a minor variation in the rival versions. Admittedly, petitioner submitted a letter of resignation on said date, which was not accepted. Admittedly, having left the letter of resignation with the Commandant of the Battalion, petitioner left the airport and never returned. Admittedly, before she submitted her resignation, the petitioner demanded Child Care Leave for a period of 9 months and admittedly the Commandant of the Unit told the petitioner that due to shortage of human power he was unable to sanction leave immediately and asked her to avail the said leave in the month of January 2009. The petitioner claims that since Child Care Leave due to her was unjustifiably refused, her minor son, ailing from Bronchitis and recurring Pneumonia since birth required immediate care, she was compelled to submit the resignation and not report for work thereafter. The Department would urge that howsoever compelling may be the circumstances in which the petitioner found herself, she could not pre-judge her own cause. Child Care Leave could not be claimed as a matter of right at any given point of time; sanction of leave was subject to the administrative requirements i.e. exigencies of service. The department would highlight that petitioner's husband was also employed as a Sub-Inspector with CISF and the two could manage their duties in a manner where, if indeed required, either parent could be with the child.

3. The letter of resignation submitted by the petitioner impulsively on 17.11.2008 was rejected by the Commandant vide letter dated 19.11.2008, who additionally

informed the petitioner that her claim for grant of Child Care Leave was not a matter of right but was subject to fulfilment of operational requirements.

4. It was followed by an exchange of several letters/communications between the parties i.e. the petitioner and her Commandant, in which the petitioner stuck to her stand that Child Care Leave was her right and the Commandant taking the view that Child Care Leave was subject to not only operational requirements but additionally the fact that an office order dated 18.11.2008 required Earned Leave to be exhausted before Child Care Leave could be availed of. The petitioner was repeatedly directed to report for duty. By May 2009 the petitioner requested that she be sanctioned Earned Leave to which she was informed that the requirement of law being that she should formally join duty and then submit a leave application be complied with. But for reasons best known to the petitioner she just sat back in the house and did not join duty for even a single day.

5. In view of the continued absence of the petitioner, on 5.6.2009 a charge memo was issued to her alleging the following misdemeanour:-

“ARTICLE-I

“CISF No.002360155 Lady Constable Kusum Kumari of CISF BIA Bengaluru is unauthorizedly overstaying on leave/absent without leave w.e.f. 17.11.2008 without any valid permission or grant of leave from the competent authority. The above said act on the part of CISF No.002360155 Lady Constable Kusuma Kumari tantamount to gross indiscipline and unbecoming a member of the Armed Force of the Union. Hence the charge.”

6. Asst.Comndt. R.P.Khanna was appointed as an Inquiry Officer to record evidence and submit a report and at the inquiry 4 witnesses were examined and suffice would it be to state that the witnesses deposed with respect to the service record of the petitioner that having availed 14 days Casual Leave and required to join duties on 17.11.2008, petitioner did not join duty though she marked her arrival at the airport on 17.11.2008 and submitted a resignation, rejection whereof was conveyed to the petitioner as also various communications sent to the petitioner to join service and the communication addressed to her informing her that due to operational reasons and secondly due to her not having exhausted Earned Leave, Child Care Leave could not be sanctioned to her and in spite thereof the petitioner not only did not join till date when the charge sheet was issued but even subsequent thereto.

7. Petitioner participated at the inquiry and after the department led evidence, made a statement in defence in which she reiterated that due to her minor son suffering from chronic Bronchitis and recurring Pneumonia she could not leave him alone in the house and highlighted that her mother-in-law had returned to the village and this was her compulsion to be with her ailing son.

8. Relevant would it be to highlight that the petitioner did not tender a single medical document pertaining to the alleged sickness of her son when she made a statement before the Inquiry Officer, but we find that in the record of the Inquiry Officer photocopies are to be found as per which Master Ayush Yadav aged 4 years had remained under

medical treatment of one doctor Pramod N.P. But we would highlight that none of the documents find a mention in the statement of the petitioner and none has been exhibited or marked. No witness in defence was examined by the petitioner.

9. The Inquiry Officer submitted a report holding that the charge was proved. The report is dated 5.2.2010.

10. It appears that the Commandant had caused a local inquiry to be made by sending lady Inspector Indu M.Kumar to the residence of the petitioner to find out whether petitioner's son was so unwell that the petitioner required to be with her son for 24 hours a day, 7 days a week and 12 months in an year. Lady Inspector Indu M.Kumar submitted a report on 19.9.2009 as under:-

"The Commandant,
CISF, BIA Bangalore

Sub:- Verification of person available at her home-
Reg

Sir,

Please refer to your office letter No.V-15099/CISF/BIF/DISC/2009/5270.

As directed vide your letter cited above, it was verified by me personally that No.002360155, L/Ct. Kusuma Kumari is residing with her husband SI/Ex V.K.Yadav and 4 year old son in the held:- C/o Mr.Vijay Singh, House No.03, 1st main-vinayak Nr. Ideal Hospital, Bageler cross road, Bangalore-63. From the appearance of her son it seems that he is having good and sound health and not having any serious illness at present. It is also submitted that he is a regular student in class-LKG of Air force Public School, Yelahanka from this academic year. Submitted please.

Sd/-

19.09.2009
(Indu M.Kumar)
Insp/Exe
'B' Coy."

11. Furnishing the report of the Inquiry Officer to the petitioner for her response, concurring with the report of the Inquiry Officer and holding that the charge of unauthorized absence from duty without sufficient cause was established, penalty of dismissal from service has inflicted upon the petitioner against which statutory appeal filed before the Deputy Inspector General CISF, has been rejected vide order dated 17.06.2010.

12. The petitioner challenges the order levying the penalty as also the order rejecting the statutory appeal.

13. All and sundry grounds have been pleaded in the writ petition, but at the hearing held, the contention urged was that the respondents, arbitrarily and in blatant ignorance of petitioner's necessity to attend to her ailing child, denied her the rightful Child Care Leave and thus the petitioner had sufficient cause not to report for duty.

14. Indeed, learned counsel for the petitioner had conceded that having availed leave till 17.11.2008 and marking arrival at the airport on 17.11.2008 the petitioner left after submitting a letter of resignation with her Commandant and never returned in spite of being repeatedly told to report for duty and the rejection of her resignation letter. Learned counsel conceded that the petitioner received various communications in which she was told firstly that Child Care Leave could not sanctioned due to operational requirements of the Battalion and later

on due to the reason the petitioner was required to first exhaust the Earned Leave. But, counsel urged that Child Care Leave was the right of the petitioner and the same could not be made contingent to operational requirements or the petitioners first requiring exhausting Earned Leave. A technical plea was urged that the Commandant could not have relied upon the report of Inspector Indu M.Kumar which was not a part of the inquiry record and had been obtained at the back of the petitioner.

15. Now, assuming the Commandant was not justified in refusing Child Care Leave sought by the petitioner, the question would be: Whether the petitioner could become a judge in her own cause. Could she take a unilateral decision that the Commandant was wrong and she was right in availing self leave? If this is accepted, there would be administrative chaos. The leave rules require leave to be sanctioned and not unilaterally availed of. If the petitioner felt that she was right in asserting that Child Care Leave was her right and not contingent upon operational requirements of the Battalion or her exhausting Earned Leave, she ought to have approached a Court of competent jurisdiction to challenge the denial of leave to her. Under no circumstance can any Court countenance a self righteous action unilaterally availed of by an employee for the reason if this Jurisprudence is to be accepted, there would be administrative chaos.

16. Thus, we need not decide whether the department was wrong in denying Child Care Leave to the petitioner; firstly projecting a stand on the operational requirement of the

Battalion and later on, on the plea that the petitioner should first exhaust the Earned Leave lying to her credit.

17. It is true that the Commandant could not have relied upon the report of lady Inspector Indu M.Kumar as the same was obtained behind the back of the petitioner, but we note that the Commandant has not rested his decision on the said report, but has referred to the same as an additional material apart from the one which has surfaced at the inquiry and probably the over judicious approach of the Commandant who thought that he may have the facts verified at his own personal level has resulted in a technical breach committed by the Commandant.

18. We need to highlight that the Inquiry Officer held inquiry proceedings on various dates i.e. 30.8.2009, 28.9.2009, 17.10.2009, 22.10.2009 and 18.11.2009, on all dates the petitioner appeared. If she could appear at the inquiry, it is proof that she never required to be with her son for 24 hours each day. Besides, her husband is a Sub-Inspector in CISF and was posted in the same city. We see no reason why the petitioner and her husband would not request for their duty roster to be so fixed that either parent could be with the child, if indeed, the child required constant parental company.

19. We have been noticing a very unfortunate trend and in respect whereof we have repeatedly lamented; the trend being of Government employees shirking responsibilities and duties. Where in the private sector would an employee be tolerated who just sits back at home? Nowhere. It is true that women have to be encouraged to take up jobs and

every support needs to be extended to them, but where both spouses are working, neither or either can claim a right to work on their terms. A working couple, having the benefit of double salary, are obliged to arrange their personal affairs in a manner that the obligation towards work is discharged. A balance has to be struck by them vis-a-vis their personal obligations towards the family and the obligations towards the job.

20. The matter, in the instant case, can be looked at from another angle. Whatever be the provocation, the petitioner tendered her resignation and did not ever withdraw the same. She had served only for less than 10 years when she submitted her resignation. If the same was accepted she would have earned no pension or benefit inasmuch as qualifying service had not been rendered. In other words, even if we were to take a lenient view and direct that petitioner's resignation be accepted, it would make no difference as regards pecuniary benefits or pecuniary liabilities are concerned.

21. We find no merit in the writ petition which is dismissed, but without any orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(SUNIL GAUR)
JUDGE

AUGUST 26, 2011
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