

GAHC010001892018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/282/2018

SUMANA SAHA
W/O RANJIT DAS, SAHA NAGAR, WARD NO.4, BARPETA ROAD, PO-
BARPETA ROAD,DIST. BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION(SECONDARY) DEPTT., DISPUR, GUWAHATI-6

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

3:THE INSPECTOR OF SCHOOLS
BARPETA DISTRICT CIRCLE
BARPETA
ASSAM

4:THE PRINCIPAL
SAJANI KANTA HIGHER SECONDARY SCHOOLS
BARPETA ROAD
BARPETA
ASSAM-781315

5:THE PRESIDENT
SCHOOL MANAGEMENT AND DEVELOPMENT COMMITTEE
SAJANI KANTA HIGHER SECONDARY SCHOOL
BARPETA ROAD

BARPETA
ASSAM-78131

Advocate for the Petitioner : MR. MD S HOQUE, MR. M DEKA, MS. S N RENGMA, MR. S. RAHMAN

Advocate for the Respondent : MR. A DEKA (SC, SECONDARY EDU. DEPT.),

**BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR**

ORDER

Date : 06.08.2024

- 1.** Heard Mr. S. Hoque, learned counsel for the petitioner as well as Mr. U. Sarma, learned Standing counsel, Secondary Education Department, for the respondent Nos. 1, 2 & 3.
- 2.** On the recommendation made by the Selection Committee of Sajani Kanta Higher Secondary School, the Inspector of Schools, Barpeta District Circle, by a Letter dated 04.08.2010, approved the petitioner's selection for appointment as Assistant Teacher in English on contractual basis at Sajani Kanta Higher Secondary School, Barpeta Road, Barpeta. Thereafter, the petitioner joined to the said post on 05.08.2010. The contractual appointment of the petitioner as Assistant Teacher in English was extended from time to time and is continuing till date.
- 3.** While the petitioner was serving as such, the petitioner was granted Child Care Leave w.e.f. 02.01.2016 to 17.12.2017 by the President of the School Management and Development Committee of the said school on an interval of 90 days from time to time by different orders.
- 4.** The petitioner, thereafter, approached the Principal of Sajani Kanta Higher Secondary School on 16.12.2017 requesting to permit her to join to the post of

contractual Assistant Teacher in English. However, the Principal of the said school refused to permit the petitioner to join back to the school and accordingly, the petitioner has approached this Court by way of the present writ petition.

5. The respondent No. 2, i.e. the Director of Secondary Education Department has filed counter affidavit and in Paragraph No. 4 therein, it is stated that the Child Care Leave w.e.f. 02.01.2016 to 17.12.2017 was granted by the President of School Management and Development Committee of the said school by various orders on an interval of 90 days. However, no copies of such orders were forwarded to the Inspector of Schools, BDC, Barpeta. It is also stated that the Principal of the said school, by Letter dated 15.11.2018, stated that the President of the School Management and Development Committee of the said school had granted the Child Care Leave to the petitioner without any resolution of the School Management and Development Committee. Further, at Paragraph No. 5, it is stated that there is no provision for child care and maternity leave during 2014 to 2017 for the contractual employees working under the Secondary Education Department.

6. The learned counsel for the petitioner, relying on the Notification, dated 31st July, 2015, issued by the Secretary to the Government of Assam, Finance (Estt.-A) Department, which provides for grant of 2 (two) years (730 days) Child Care Leave to women employees of Assam Government, submits that the petitioner, though she may be contractual employee, is entitled to Child Care Leave in view of the ratio laid down by this Court in the case of ***Doli Gogoi Vs. State of Assam***, reported in ***(2017) 2 GLJ 673***. He, therefore, submits that as the petitioner is entitled to Child Care Leave in terms of the ratio laid down in the case of ***Doli Gogoi (supra)***, the petitioner should be permitted to join back

to her post.

7. This Court has considered the submissions made by the learned counsel for the parties.

8. A perusal of the Notification, dated 31.07.2015, would indicate that a decision was taken by the Government of Assam to grant Child Care Leave to women employees of the State Government and on the basis of such decision, Subsidiary Rule 121(2) has been inserted. The Notification provides that women employees having minor children, i.e. up to 18 years of age, may be granted Child Care Leave by the authorities competent to grant leave for a maximum period of 2 years (730 days) during their entire service for taking care of upto two minor children whether for rearing or to look after any of their needs like examination, sickness etc. Therefore, the grant of such leave to a woman employee would relate to looking after the needs of her minor child. However, such Child Care Leave cannot be demanded as a matter of right and an employee cannot proceed on Child Care Leave without prior sanction of such leave by the Competent Authority.

9. In the case of ***Doli Gogoi (supra)***, reference was also made to a judgment dated 24.06.2016 passed by this Court in WP(C) No. 2145/2016, wherein it was held as under :

“This is a beneficial provision and, perforce, must receive liberal construction at the hands of the authorities. Article 42 of the Constitution of India, which is a directive principle of state policy, lays down that the State shall make provision for securing just and humane conditions of work and for maternity leave. Equality of man and woman is the cornerstone of our Constitution. Endeavour should be to provide and ensure humane conditions of work for woman employees. In the Indian context, it would not be an overstatement to say that it is the women members of the family who mostly shoulder the responsibility of bringing up the

children. With growing number of women employees, this aspect of the matter cannot be overlooked. It is said that children are the future of the country. Therefore, looking after their physical, emotional and academic needs during the growing stage assumes crucial significance. It is in the light of the above that the provision of SR 121 (2) of Fundamental Rules and Subsidiary Rules (FR & SR) are required to be considered. Moreover, Article 21 of the Constitution, which deals with Protection of Life and Personal Liberty, has been given an extended meaning by the Supreme Court in a catena of judgments. Essence of Article 21 is that every person has a right to live his or her life as a human being with dignity. Right to life includes the "finer graces of human civilization" Right to Life guaranteed under Article 21 embraces within its sweep not only physical existence but the quality of life and would include all those aspects of life which go to make life meaningful, complete and worth living. Right of every child to a full development has also been recognized as a facet of Article 21. It is in the backdrop of our constitutional philosophy that the provision of Child Care Leave is required to be understood and considered. Though a woman employee cannot go on Child Care Leave without obtaining the necessary sanction of the competent authority, but certainly the concept of Child Care Leave is something which is wholly in consonance with Article 42 and, therefore, is not to be doled out as a charity. Ordinarily, Child Care Leave as provided in SR 121 (2) should not be refused. To that extent, the view expressed by respondent No.4 appears to be wholly out of sync with the thinking of the State leading to insertion of SR 121(2) in the FR and SR."

10. Thereafter, this Court held in ***Doli Gogoi case (supra)*** that while the benefit of Child Care Leave may not be denied to the contractual employees, being a beneficial provision, having regard to the duration of such contractual engagement, the benefit may have to be extended on *pro-rata* basis.

11. Coming to the present case in hand, there is no denial on the part of the respondents that after the petitioner was initially appointed w.e.f. 05.08.2010, the petitioner is still continuing as a contractual Assistant Teacher in English in the said Sajani Kanta Higher Secondary School, Barpeta Road, Barpeta. As

already held by this Court that the grant of Child Care Leave is a beneficial provision and the petitioner having already been granted the Child Care Leave by the Competent Authority, i.e., the President of School Management and Development Committee of Sajani Kanta Higher Secondary School, Barpeta Road, Barpeta, this Court does not see any impediment on the part of the Principal of the said school to permit the petitioner to join back to her post. It is also to be noted that the Principal of the said school has not filed any affidavit in the present case.

12. Under the circumstances, as the petitioner has been granted Child Care Leave w.e.f. 02.01.2016 to 17.12.2017 on an interval of 90 days by various orders passed by the Competent Authority, i.e. the President of School Management and Development Committee of the said school, this Court directs the Principal of Sajani Kanta Higher Secondary School, Barpeta Road, Barpeta to permit the petitioner to join back to her service as an Assistant Teacher in English on contractual basis forthwith.

13. However, taking into consideration that the petitioner has not given her service from 18.12.2017 till date, the petitioner shall not be entitled to any arrear salary from 18.12.2017 till the date of her joining.

14. With the aforesaid observations and directions, this writ petition is disposed of.

JUDGE

Comparing Assistant