

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 07.10.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.31589/2015

M.Manjula

..Petitioner

Versus

1. The Director General of Police
Directorate General, CRPF,
CGO Complex, Lodhi Road
New Delhi 110003.
2. The Addl. Director General of Police
South Zone, CRPF, Chandrankutta,
Hyderabad 500 005.
3. The Inspector General of Police
Southern Sector, CRPF,
Road No.10 C, Jubilee Hills,
Near MLA/MPs Colony
Gayathri Hills, Hyderabad 500033.
4. The DIGP/Principal
Central Training College [CTC]
CRPF, Coimbatore-17.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of mandamus directing the respondents to consider the petitioner's application dated 04.09.2015 and grant 685 days Child Care Leave [CCL].

For Petitioner : Dr.R.Gouri

For Respondents : Mr.K.Gunasekaran, SPCCG

ORDER

By consent, the writ petition is taken up for final disposal.00

2 The petitioner joined the services of the Central Reserve Police Force [CRPF] as Constable on 02.04.1992 and on

selection, she was appointed as Assistant Sub-Inspector of Police [Ministerial] on 18.12.1995 and promoted to the rank of Sub-Inspector of Police [Ministerial] with effect from 10.05.2010 and ever since her appointment in CRPF, she claims to have worked in many parts of the country, the details of which are as follows:-

Sl.No	UNIT/OFFICE	LOCATION	PERIOD	
			FROM	TO
1	104 BC RAF	Aligarh	02.04.1992	08.08.1995
2	105 BF RAF	Pallipuram	29.08.1995	15.10.1995
3	GC GNR	Gandhi Nagar [Guj]	18.12.1995	15.10.1998
4	GC Pune	Pune	16.10.1998	29.11.2003
5	GC BLR	Bangalore	24.01.2004	22.08.2007
6	GC Hyd	Hyderabad	03.09.2007	20.07.2012
7	CTC CBE	Coimbatore	02.08.2012	To date

3 The petitioner would further state that her husband is working in the institute run by CRPF as an Assistant Sub-Inspector [Lab Technician] and their daughter and son are aged about 18 years and 16 years respectively and they are studying 12th and 11th standards respectively in this academic year 2015-2016. The petitioner has completed four years of tenure at Coimbatore on 02.08.2016 ; but she was transferred to Western Sector Headquarters, CRPF, Mumbai. The petitioner also, in this regard made a representation. The petitioner further state that the son of the petitioner who is studying 11th standard, is also affected by Seizure disorder and-Partial and in ECG report, he has been diagnosed as Bilateral Temporal Epileptogenicity and he is taking continuous treatment from a Neurologist in Srishti Neuro Clinic, Coimbatore. The petitioner is also under treatment with regard to menstrual cycle and she needs continuous treatment and her presence is also vital for the reason that her daughter is studying 12th standard and her son, studying 11th standard and in this regard, submitted a representation dated 16.01.2015 to the 2nd respondent with a request to cancel her transfer to the Western Sector Headquarters, Mumbai and to retain her at CTC, CRPF, Coimbatore, till the completion of her normal tenure, which ends during August 2016. The petitioner has also drawn the attention of this Court to the Office Memorandum which deals with the grant of Child Care Leave to the Women Government employees and prayed for appropriate orders. The apprehension expressed by the petitioner is that in spite of the said representation, the order of transfer has not been cancelled and the petitioner is directed to join the transferred post at Mumbai and hence, she came forward to file this writ petition.

4 Learned counsel for the petitioner has drawn the attention of this Court to the Judgment of the Hon'ble Supreme Court of India dated 15.04.2014 made in Civil Appeal No.4506/2014 [KAKALI GHOSH Vs. CHIEF SECRTARY, ANDAMAN AND NICOBAR ADMINISTRATION AND OTHERS] and would submit that the Hon'ble Supreme Court, in the light of the above facts and circumstances, has taken into consideration various circulars and held that at the time of sanctioning the Child Care Leave, the authorities may draw phased programme for grant of leave to the applicants, by turn with due regard to the principles enunciated under the above said circulars and in the light of the same, the petitioner is entitled to the relief prayed for by her in this writ petition.

5 Per contra, Mr.Gunasekaran, learned Senior Panel counsel for the Central Government, who accepts notice on behalf of the respondents 1 and 2, has invited the attention of this Court to the letter of the Deputy Inspector General of Police, Group Centre, CRPF, Avadi, Chennai-65, dated Nil/October/2015 and would submit that at least 5 staffs had applied for the Child Care Leave and the petitioner is the 6th applicant and on account of the same, the administration is facing administrative problem and the Deputy Inspector General of Police, CTC, CRPF, Coimbatore, has also considered the representation submitted by the petitioner for her retention at Coimbatore to avail the Child Care Leave and prays for appropriate orders.

6 This Court heard the rival submissions made on either side and also perused the materials placed before it.

7 It is relevant to extract the decision of the Hon'ble Supreme Court of India in KAKALI GHOSH's case [cited supra], which is as follows:-

"13.On perusal of circulars and Rule 43-C, it is apparent that a woman government employee having minor children below 18 years can avail CCL for maximum period of 730 days, i.e., during the entire service period for taking care of upto two children. The care of children is not for rearing the smaller child but also to look after any of their needs like examination, sickness etc. Sub Rule [3] of Rule 43-C allows woman Government employee including commuted leave not exceeding 60 days ; leave not due up t a maximum of one year, can be applied for and granted in continuation with CCL granted under Sub Rule [1]. From

plain reading of Sub Rules [3] and [4] of Rule 43-C it is clear that CCL even beyond 730 days can be granted by combining other leave if due. The finding of the High Court is based neither on Rule 43-C nor on guidelines issued by the Central Government. The Tribunal was correct in directing the respondents to act strictly in accordance with the guidelines issued by the Government of India and Rule 43-C.

14. In the present case, the appellant claimed for 730 days of CCL at a stretch to ensure success of her son in the forthcoming secondary/senior examinations [10th/11th standard]. It is not in dispute that son was minor below 18 years of age when she applied for CCL. This is apparent from the fact that the competent authority allowed 45 days of CCL in favour of the appellant. However, no reason has been shown by the competent authority for disallowing rest of the period of leave.

15. Leave cannot be claimed as of right as per Rule 7, which reads as follows:-

"7. Right to leave

[1] Leave cannot be claimed as of right.

[2] When the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Government servant." However, under sub-rule [2] of Rule 7 leave can be refused or revoked by the competent authority in the case of exigencies of public service.

16. In fact, the Government of India from its Ministry of Home Affairs and Department of Personnel and Training all the time encourage the Government employees to take leave regularly, preferably annually by its Circular issued by the Government of India M.H.A.O.M. No. 6/51/60-Ests. [A] dated 25th January 1961,

reiterated vide Government of India letter dated 22/27th March, 2001. As per those circulars where all applications for leave cannot, in the interest of public service, be granted at the same time, the leave sanctioning authority may draw up phased programme for the grant of leave to the applicants by turn with due regard to the principles enunciated under the aforesaid circulars."

8 This Court, in the light of the above facts and circumstances, directs the 4th respondent to consider and dispose of the petitioner's representation dated 04.09.2015c on merits and in accordance with law in the light of various guidelines / circulars issued by the Department of Personnel and Training of the Government of India, from time to time as well as the above cited decision rendered by the Hon'ble Supreme Court of India and pass orders within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. Till then, the 4th respondent is directed to defer the decision to transfer the petitioner to Western Sector Headquarters, at Mumbai.

9 The writ petition is disposed of accordingly. No costs.

-Sd/-
Assistant Registrar

//True copy//

सत्यमेव जयते
Sub Assistant Registrar

AP
To

1. The Director General of Police
Directorate General, CRPF,
CGO Complex, Lodhi Road
New Delhi 110003.
2. The Addl. Director General of Police
South Zone, CRPF, Chandrankutta,
Hyderabad 500 005.

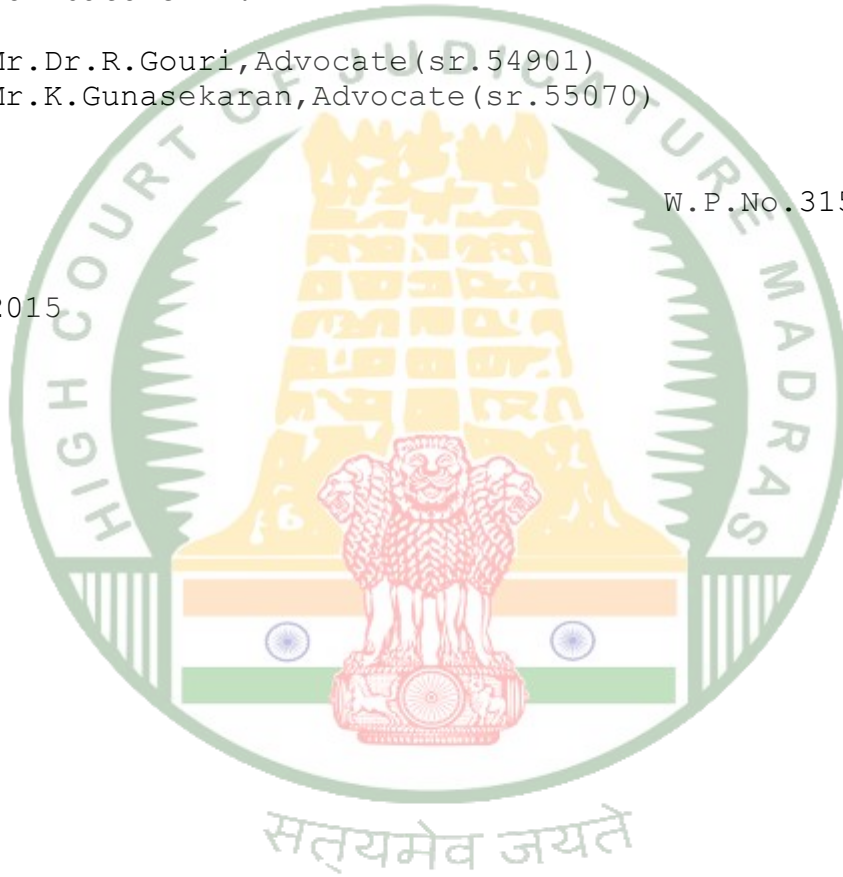
3. The Inspector General of Police
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4. The DIGP/Principal
Central Training College [CTC]
CRPF, Coimbatore-17.

+1 cc to Mr.Dr.R.Gouri, Advocate (sr.54901)
+1 cc to Mr.K.Gunasekaran, Advocate (sr.55070)

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AK(co)
cp 19/10/2015



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