

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.21506 of 2017

Date of Decision: October 10, 2017

Dr. Kanchan Bala

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Abhishek Sethi, Advocate, for the petitioner.
Mr. R.K. Doon, Addl. Advocate General, Haryana.
Mr. Anurag Goyal, Advocate

Amol Rattan Singh, J. (Oral)

As noticed in the order dated 09.10.2017, the Principal Secretary to the Government of Haryana, Department of Labour, has filed an affidavit, stating in response to the previous order dated 29.09.2017, that though a requisition was sent for recruitment of Medical Officers to the Haryana Public Service Commission (HPSC) and an objection thereto was raised in the month of October 2016, i.e. one year ago, which objection has been removed with a fresh requisition sent on 29.09.2017 (obviously after a query had been made by this Court vide its order dated 25.09.2017).

Thus, the petitioner is being denied child care leave on the ground that there are insufficient number of Medical Specialists available in the ESI Hospital at Jagadhari, with only one other Medical Specialist available other than the petitioner.

Whereas, very obviously this Court is fully aware of the fact that allowing the petitioner to avail of child care leave eventually makes the

public suffer, as regards medical aid, what is impossible to ignore is the fact that the Government kept sitting on the objections raised by the HPSC as regards a requisition sent more than one year ago for recruitment of doctors, and has only woken up to its own duty after a query has been put by the Court.

Hence, even though Rule 46 of the Haryana Civil Services (Leaves), 2016, stipulates in sub-rule 2 thereof that child care leave shall not be demanded as a matter of right and no one can, under any circumstances, proceed on child care leave without prior sanction and further, sub-rule 11 stipulates that child care leave would not be granted if it disrupts the functioning of offices/institutions/schools etc., the Government, in my opinion, the Govt. cannot be allowed to take advantage of its own fault, to deny a right which has been statutorily recognized by it, and correctly recognized, seeing the future of children who would make future doctors/engineers/bureaucrats etc. of the country.

The petitioners' daughter is stated to be studying in Class 12 (10+2), which is undoubtedly a very crucial year as regards the academics of a school going child, upon which admission to future professional courses etc. depends. Therefore, in the opinion of this court, the stand taken by the respondents, in the circumstances enumerated herein above, is wholly irrational and cannot be accepted.

It is also to be noticed that as had been submitted to this Court yesterday by Mr. Anurag Goyal, Advocate, he has challenged the aforesaid condition stipulated in Rule 46 (11) of the aforesaid Rules by way of filing CWP no.3549 of 2017, in which case also the petitioner is stated to be a doctor, to whom child care leave was being denied in almost identical circumstances.

The Division Bench which is seized of the aforesaid matter, while allowing the petitioner to continue on child care leave, has fixed the matter for hearing now on 04.12.2017.

Be that as it may, in the circumstances enumerated herein above, this petition is allowed and the petitioner is ordered to be granted child care leave within 15 days, uptill the time that she is entitled to such leave, i.e. till the date that her daughter attains the age of 18 years, or till the date of the last examination (10+2) of her daughter, (once the date sheet is revealed), whichever is earlier. The time given (of 15 days) for the leave of the petitioner to begin, is to enable the respondents to engage a doctor on contract basis in the meanwhile.

Consequently, to ensure that the public does not suffer from lack of medical aid, as is projected by the respondents (which is in all probability correct), they are directed to employ a Medical Specialist on contract basis, if they so wish, by making an advertisement for such

recruitment within 10 days.

A copy of this order be given to the learned counsel for the parties under signatures of the Special Secretary of the Bench.

October 10, 2017
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(Amol Rattan Singh)
Judge

Whether speaking/reasoned:	Yes
Whether reportable:	Yes