

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

**WRIT PETITION NO. 2362 OF 2018**

|                             |                |
|-----------------------------|----------------|
| The Union of India and ors. | ...Petitioners |
| Versus                      |                |
| Smt. Shivlinga B. Jogan     | ...Respondent  |

Mrs Anjali Helekar I/b Mr. A.R. Gole for the Petitioners.  
Mr. A.S. Rao i/b Mr. S.P. Saxena for the Respondent.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &  
M. S. SONAK, J.**

**DATE : 09.07.2018.**

**ORAL JUDGMENT:**

- 1] Heard learned counsel for the parties.
- 2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition is to the judgment and order dated 28.10.2016 made by the Central Administrative Tribunal (CAT), Mumbai allowing O.A. No. 39 of 2016 instituted by the respondent seeking benefits of child care leave.

4] In fact, the petitioners – UOI, had instituted Review Application No. 2 of 2017 seeking a review of the impugned judgment and order dated 28.10.2016 in O.A. No. 39 of 2016. This review application was dismissed by the CAT by detailed order dated 16.3.2017. In this petition, however, there is no challenge to this order dated 16.03.2017.

5] The only relief granted by the CAT to the respondent is that her leave of about 50 days, be treated as child care leave in terms of Rule 43-C of the Central Civil Services Rule (Leave Rules) . Even in financial terms, the relief does not amount to much. However, Ms Helekar, learned counsel for the petitioners- UOI, submits that it is important for the Union of India to set right the legal position, which, according to her, has been wronged by the view taken by the CAT in the impugned judgment and order. She submits that the impugned judgment and order is almost entirely based upon Rule 43-C as it stood prior to its amendment with effect from 27.8.2011. She submits that in Rule 43-C as it stood prior to its amendment, there was no reference to benefit of child care leave being restricted to an applicant 's *“two eldest surviving children”*.

6] Since the amended Rule 43-C was not noted by the CAT, the impugned judgment and order takes the view that the word “*eldest*” as it appears in O.M. dated 29.9.2008 is *ultra vires*, since, this virtually seeks to supplant a statutory rule as opposed to supplement the same. Ms Helekar submits that were the CAT to notice the amended Rule 43-C, there would be no occasion for such an observation or for such relief. She points out that in the review petition, the amended Rule 43-C was brought to the notice of the CAT, however, the CAT took the view that the petitioners were not diligent and therefore, no case had been made out for exercise of review jurisdiction.

7] Ms Helekar submits that in the present case, admittedly, the respondent had applied for child care leave for the period 5.2.2015 and 26.3.2015. She submits that the respondent has three children, out of which, the two eldest children, had already crossed the age of 18 years in the year 2015. Ms Helekar submits that the respondent was therefore, not entitled for child care leave in respect of third child, taking into consideration the amended provisions of Rule 43-C. Ms Helekar, therefore, submits that this is the fit

case which warrants interference with the view taken by the CAT.

8] Mr. A.S. Rao, learned counsel for the respondent, submits that the case of the respondent was governed by the unamended Rule 43-C, in which, there was no reference whatsoever for restriction of the child care benefit to two eldest surviving children. He submits that it is for this reason that even the petitioner, nowhere, made reference to the amended Rule 43-C. He points out that the impugned judgment and order of the CAT runs into almost 38 pages and the judgment in the review petition runs into further 36 pages. He points out that in the original application, the petitioners – UOI attempted to justify its action on the basis of DoPT's O.M. dated 29.8.2008, which had made reference to the word “*eldest*”. Mr. Rao submits that the DoPT's O.M. dated 29.8.2008, was clearly *ultra vires* Rule 43-C as it stood in the year 2008 because, this Rule, had not made any reference to the word “*eldest*”. Mr. Rao submits that the provision for child care life is a beneficial provision indicated in furtherance of directive principle of State policy. He submits that hardly any benefit has been granted to the

respondent and the petitioners, at the instance of respondent's colleague Mrs. Leka Nair are only bent upon harassing the respondent. Mr. Rao submits that the view taken by the CAT promotes substantial justice and therefore, this court may not exercise its extra ordinary and equitable jurisdiction to upset even the limited relief granted by the CAT to the respondent.

9] The rival contentions now fall for our consideration.

10] From the perusal of the record and upon due consideration of the rival contentions, it does appear that both the parties failed to point out the amended Rule 43-C to the CAT. AS a result, the CAT was required to devote considerable time to dispose of. The impugned judgment and order dated 28.10.2016, as pointed out by Mr. Rao, runs into almost 38 pages. The petitioners, the respondent, as also the CAT, entirely proceeded on the basis of unamended Rule 43-C, when in fact, the matter should have been governed by amended Rule 43-C of the CCS Leave Rules. We can understand, the respondent who is a private party, making a mistake in quoting the correct rule. However, both

Union of India and its officers should have been vigilant enough to point out the amended Rule 43-C, so that, much time and effort of the CAT could have been saved in a matter of this nature.

11] We see no good reason to interfere with the view taken by the CAT in the impugned judgment and order on the basis of unamended Rule 43-C, which is what the CAT, was made to believe, was relevant rule governing the subject matter of the O.A. However , since the matter had to be governed by Rule 43-C as amended with effect from 27.8.2011, remand might be necessary after setting aside the impugned judgement and order, so that, the matter can be re-examined by the CAT on the basis of amended Rule 43-C. This, however, does not seem to be a fit case to remand the matter to the CAT for reconsideration, primarily for two reasons discussed hereafter.

12] In the first place, the relief granted to the respondent in the present case is extremely limited. The relief, in all, amounts to grant of child care leave for about 50 days. There is no dispute that the respondent had to her credit of

10 days of other admissible leave. Therefore, in effect, all that the CAT has done is to grant the respondent leave of about 40 days or thereabouts. Since, in the meanwhile, the petitioners recovered the amounts equivalent to such 40 days leave, the relief granted by the CAT amounts to refund of the said amount, without any interest thereon to the respondent. This is not a refund of any substantial sum. In the facts and circumstances of the present case, by granting relief, the CAT, has promoted substantial justice. The jurisdiction under the Article 226/227 of the Constitution of India is basically an equitable jurisdiction. Interference in exercise of such jurisdiction is discretionary and not mandatory upon the petitioner making out some legal point in support of the petition. (***See: Rajasthan State Industrial Development and Investment Corporation vs. Subhash Sindhi Cooperative Housing Society, Jaipur and ors. - (2013) 5 SCC 427***)

13] In ***Roshan Deen vs. Preeti Lal - (2002) 1 SCC 100***, the Hon'ble Supreme Court has held that the look out of the High Court should therefore, not merely to pick out any error of law through an academic angle but to see

whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.

14] Secondly, in this case, the petitioners is more blame than the respondent, because it was for the petitioners – UOI to at least point out the amended provision of Rule 43-C to the CAT in the first instance. Admittedly, such a provision was never pointed out and the entire matter was argued on the basis of unamended provision. It is only after the impugned judgement and order was made and the time came for its implementation that a review petition was filed to point out the amended provision of Rule 43-C.

15] The CAT, by a detailed judgment, again, running into 36 pages has dismissed the review petition, *inter alia*, on the ground that the petitioners – UOI was not at all diligent in the matter and in any case, no ground for exercise of review jurisdiction had at all been made out. The petitioners-UOI has not even bother to challenge the judgment and

order dated 16.3.2017 made by the CAT dismissing the review petition.

16] The findings as regards the lack of diligence, therefore, are left undisturbed. Although, there is no period of limitation prescribed for instituting writ petition, lack of diligence, which amounts to laches is a good ground for not exercising such equitable jurisdiction. Taking into consideration the meagre relief awarded by the CAT to the respondent coupled with lack of diligence on the part of the petitioner, including, but not restricted to not even pointing out the correct provision to the CAT and thereby virtually wasting valuable time of the CAT, we do not think that this is a fit case to interfere at least with the relief, which the CAT has granted to the respondent.

17] However, since, the anxiety of the petitioners – UOI was that the legal position be clarified, we do clarify that in the present case, the relevant Rule which was applicable was Rule 43-C of the CCS Leave Rules as amended with effect from 27.8.2011 and since this relevant and amended Rule was not even brought to the notice of the CAT when it

made the impugned judgment and order dated 28.10.2016, obviously, the said impugned judgment and order cannot be treated as a precedent to govern any similar cases, which might arise in the future. Such a clarification, in our opinion, will suffice the interests of Union of India.

18] With the aforesaid clarification, therefore, we dismiss this petition. Rule is discharged. There shall, however, be no order as to costs.

**(M.S. SONAK, J.)**

**(ACTING CHIEF JUSTICE)**

Dinesh  
Sadanand  
Sherla

Digitally signed by  
Dinesh Sadanand  
Sherla  
Date: 2018.07.13  
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