

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 291 of 2019**

(Arising out of the order dated 25.2.2019 passed in WPS No.1287/2019 by learned Single Judge)

1. Dr. Kalpana Rathore, W/o Mr. Suraj Rathore, aged about 31 years, resident of Village Portha, Tehsil Sakti, District Janjgir Champa (CG)

---- Appellant

Versus

1. State of Chhattisgarh, Through Secretary of Department of Health & Family Welfare, Mahanadi Bhawan, Capital Complex, Naya Raipur (CG)
2. Director Directorate Of Health Services Indrawati Bhawan, Mantraya New Raipur (CG)
3. Chief Medical & Health Officer, District Health Officer, Janjgir Champa (CG)
4. Block Medical Officer, Community Health Centre Sakti, District Janjgir Champa (CG)

---- Respondents

For Appellant	:	Shri Raza Ali, Advocate
For Respondents	:	Shri Gagan Tiwari, Dy. Government Advocate

Hon'ble Shri P. R. Ramchandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per P.R. Ramchandra Menon, CJ

30/07/2019

1. Whether an employee appointed by the Government for a specific term under a contract would be eligible to claim the benefits of 'Child Care Leave', which as per the relevant Scheme is only for a maximum period of 730 days during her entire service, for taking care of her two elder surviving children, is the point to be considered and answered in this appeal preferred by an employee.

2. The factual matrix reveals that the appellant, who is a qualified Doctor, was given appointment by the authorities of the State, as a 'Medical Officer' on 'contract basis' for a period of 02 years from 23.9.2017. It is the case of the appellant that, her marriage took place in the year 2017 and she delivered a baby on 12.4.2018. She had applied for maternity leave which originally was rejected by the respondents/ authorities concerned. This made her to approach this Court by filing WPS No.3716 of 2018 and after taking note of the scheme of the Statute / Maternity Benefits Act, 1961 and the binding precedents, it was categorically held by a learned Single Judge that the appellant, irrespective of her stature, whether as a contract employee or otherwise, was entitled to get the 'Maternity Leave' benefit under the Maternity Benefits Act, 1961. Pursuant to the said verdict, the appellant was granted maternity leave. Thereafter the appellant, by virtue of the policy formulated by the State and introduction of 'Child Care Leave', particularly in the light of provisions brought about by the Central Government providing for 'Child Care Leave' for a maximum period of 730 days in the entire service for taking up the care and well-being of the minor child, submitted an application for grant of 'Child Care Leave' from 4.9.2018 to 3.9.2019 i.e. for 365 days. The total 'Child Care Leave' of two years, which could be taken under different spells, is only for the care of two elder children and never beyond. Since the appellant was having only one child, she sought to avail 'half' of the said tenure as "Child Care Leave' i.e. 365 days. This was considered and rejected by the authority concerned, stating that the appellant was not a 'regular employee' but a 'contract employee' and that the 'Child Care Leave' could be claimed and sanctioned only in

the cases of 'regular employees'. This, according to the appellant, is totally alien to the scheme of 'Child Care Leave' and the relevant provisions of the law and hence the same was subjected to challenge in the writ petition filed as 'WPS No.1287 of 2019'. When the matter came up for consideration before the writ Court, the learned Single Judge made some observation with reference to the extent of leave sanctionable as 'Child Care Leave' and held that, since the writ petitioner was appointed only for a period of 'two years' as a contract employee and the 'Child Care Leave' was for a total period of 730 days, virtually the petitioner would not have to work on any day; which will defeat the purpose of appointment and take it beyond the scope of 'Child Care Leave'. It was accordingly that, interference was declined and writ petition was dismissed, which is sought to be interdicted in this appeal.

3. Learned counsel for the appellant submits that, under exactly similar circumstance, 'Child Care Leave' has been sanctioned by various High Courts (such as: by a Single Judge of High Court of Madhya Pradesh in WP No.9347 of 2017; a Division Bench of High Court of Allahabad in Civil Misc. Writ Petition No.24627 of 2017; a Division Bench of High Court of Uttarakhand in WP (S/B) No.54 of 2015). In the verdict passed by the learned Single Judge of the High Court of Madhya Pradesh, as clearly evident from the discussions in Para-2, the question was with regard to the eligibility of a 'contractual employee' to get the benefits of 'Child Care Leave'. Observing in the next paragraph that the point was no more *res integra*, the same having been decided in WP No.15523 of 2016 (relevant portion has

been extracted therein) and also with reference to the scope of Section 27 of the Maternity Benefits Act, 1961, as considered by the Supreme Court in **Municipal Corporation of Delhi v. Female Workers (Musteroll)** reported in **(2000) 3 SCC 224**, it was held that the writ petition was liable to be allowed and it was ordered accordingly. But, the fact remains that the various judicial precedents referred to and relied on by the learned Single Judge to sustain the finding, were in relation to the provisions under the Maternity Benefit Act, 1961 and never with regard to the payment of 'Child Care Leave'. Since there was a finding as to the eligibility to obtain maternity benefits in terms of the relevant provisions of the Maternity Benefits Act, 1961, the learned Single Judge proceeded to hold that the writ petition filed claiming 'Child Care Leave' was also liable to be granted, which accordingly was granted. In other words, the basic difference between the maternity leave, which is covered by the Maternity Benefits Act, 1961, and the 'Child Care Leave', which is under a particular 'scheme' framed by the Central Government or the State Government, as the case may be, as a matter of policy, was not properly adverted to.

4. Coming to the judgment rendered by a Division Bench of High Court of Allahabad, it is relevant to note that the Central Government had notified a scheme for the payment of 'Child Care Leave' for a total period of 730 days in the entire service, which could be availed off by different spells in connection with the care and protection to be given to the children, insofar as they did not attain majority. Various provisions under the Maternity Benefits Act, 1961 were also adverted

to. The Bench observed that, as per Section 5 (2) of the Maternity Benefits Act, 1961, no woman would be entitled to the 'maternity leave' unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than 'eighty days' in the twelve months immediately preceding the date of her expected delivery. A reference to the Rule 153 of the Fundamental Rules has also been made, whereby it has been stipulated in the second proviso to sub-rule (1) that maternity leave shall not be granted for more than 'three times' during the entire service. Referring to the introduction of the 'Child Care Leave' in respect of the Central Government employees vide Office Memorandum No.13018/2/2008-Estt. (L) dated 11.09.2008, as taken note of in Para-22, the Bench observed in the next paragraph, that the aforesaid decision of the Central Government had already been adopted by the State of U.P. for its employees vide Government Order dated 8.12.2008 & 24.3.2009. Later, certain modifications were made by the Central Government to the Rules, which also came to be adopted by the State Government, vide Government Order dated 11.4.2011. It was in the said circumstance, that a finding was rendered in Para-24 that the State Government had adopted the same policy as enforced by the Central Government for grant of 'Maternity Leave' as well as 'Child Care Leave' to its employees.

5. In the case considered by a Division Bench of the Uttarakhand High Court, the claim was for 'Maternity Leave' w.e.f. 7.1.2015 to 7.6.2015, which was not sanctioned by the leave sanctioning authority and hence it was subjected to challenge. The Bench observed that

irrespective of the nature of employment, the petitioner, who was appointed as 'Lecturer (Sociology)' on contractual basis, was also entitled to get the benefits of the Maternity Benefits Act, 1961. Some observation has been made towards the end of the judgment, to the effect that, going by the various provisions of law, eligibility to get the 'Maternity Leave' & 'Child Care Leave' shall not be rejected; in turn giving some directions in this regard as contained in Para-21 of the said judgment. In other words, the discussions, findings and granting of relief virtually went beyond the prayers raised in the writ petition, where it was only limited to granting of maternity benefits under the Maternity Benefits Act, 1961.

6. Coming to the instant case, the learned counsel representing the State submits that the position stands entirely on a different footing. It is only by virtue of the policy of the State that the concept of 'Child Care Leave' was sought to be adopted, in terms of the Scheme notified by the Central Government. At the same time, it was never intended to be made applicable to the 'contractual employees' and it was actually intended only for the 'regular/permanent employees'; alerting all concerned that maximum leave shall be 730 days in the entire service career.
7. In the above context, reference is made to the various proceedings, in particular the Annexure P-7, which says that the maximum extent shall be only 730 days; the maximum leave of 730 days can be availed during the entire service and that, it has been equated to the position as covered by the 'Earned Leave', as stipulated in Clause-3. The application has to be submitted in the prescribed Form-1A, as

mentioned in the Clause-4 at Page No.17 of Annexure P-7. Reference is also there to the relevant Leave Rules of the State, of the year 2010 i.e. Chhattisgarh Civil Services (Leave) Rules, 2010 (for short 'the Leave Rules, 2010'), as given under Clause-11 of Annexure P-7. Coming to the Form-1A, under Clause-8, particulars of the 'Earned Leave' have been called for, besides various other relevant aspects. These are some of the points which denote that it is intended only for the 'regular employees' and not for any 'contractual employee', to get any 'Child Care Leave'.

8. The crucial aspect to be noted is that, the Leave Rules, 2010 were amended as per Notification bearing No.F 2014-71-00183/ Finance/ Rules/ IV dated 4.10.2018 by the Government and Section 38-C providing for 'Child Care Leave' was introduced, which is to the following effect:-

“38-C Child Care Leave- (1) Subject to the provisions of this rule, a woman Government servant may be granted child care leave by the Competent Authority for a maximum period of 730 days during her entire service for taking care of her two eldest surviving children.

(2) The leave cannot be claimed as a matter of right.

(3) For the purpose of sub-rule (1), “Child” means,-

(a) a child below the age of eighteen years (including legally adopted child); or

(b) a child with a minimum disability of forty percent (without any age limit) as specified in Notification No. 16-18/97-N 1.1 dated the 1st June, 2001, Government of India, Ministry of Social Justice and empowerment.

(4) Grant of child care leave to a woman Government servant under sub-rule (1) shall be subject to the following conditions, namely:-

(a) it shall not be granted for more than three spells in a calendar year. If the period of leave sanctioned also continues into the next calendar year then the spell shall be counted in such year in which the leave was applied or in which major part of the leave applied falls. Calendar year means the period commencing from 1st January to 31st December of the year.

(b) Ordinarily, it shall not be sanctioned during the probation period. However, in special circumstances if

the leave is sanctioned during the probation period then the probation period shall be extended by the period equivalent to the period for which the leave has been granted.

(5) During the period of child care leave, the woman Government servant shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

(6) Child care leave shall not be debited against the leave account and this leave may be combined with any other kind of leave.

(7) The account of this leave shall be maintained separately and entry shall be made in the service book of the concerned women Government servant.”

9. Learned Government Counsel submits that the 'Child Care Leave', having incorporated as part of the Leave Rules, 2010, can be claimed and sanctioned only in terms of the said Rules. Rule 2 (1) of the Rules, 2010 stipulates the 'extent of application' and Rule 2 (1) (d) specifically says that it shall not apply to the persons employed on contract, except when the contract provides otherwise. For convenience of reference, Rule 2 (1) of the Leave Rules, 2010 is extracted as given below:-

“2. Extent of application.”-(1) Save as otherwise provided in these rules, these rules shall apply to all Government servants who are in service on the date, of coming into force of these rules and who are appointed to the civil services and posts in connection with the affairs of the State, but shall not apply to: -

- (a) persons in casual or daily rated or part time employment;
- (b) persons paid from contingencies;
- (c) persons employed on work-charged establishments;
- (d) persons employed on contract except when the contract provides otherwise;
- (e) persons in respect of whom special provisions have been made by or under the provision of the Constitution or any other law for the time being in force;
- (f) persons serving under a State Government Department on deputation from the Central Government or any other source, for a limited duration;
- (g) members of the All India Services.”

10. From the above, it is quite clear that, unlike the rule position in the other States (which was considered by various other High Courts and

sought to be relied upon by the appellant), in the State of Chhattisgarh, the Leave Rules introduced as per Rule 38-C of the Leave Rules, can be applied, availed and sanctioned only subject to the relevant provisions. Insofar as there is a clear bar in reckoning the contract service, the appellant, admittedly being a 'contract employee', is not entitled to get the 'Child Care Leave', though she is eligible to get the benefits of the 'Maternity Leave' by virtue of the specific provisions under the said Statute and as declared by judicial precedents.

11. In view of the clear exclusion of the 'contract employees' from the purview of persons eligible to have the benefits of 'Child Care Leave', as stipulated under Rule 2 (1) (d) of the Leaves Rules, this Court is of the firm view that the claim of the appellant is wrong and unfounded. We do not find any reason to interdict the judgment passed by the learned Single Judge.

12. The appeal fails and it is dismissed accordingly.

Sd/-
(P.R. Ramchandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-