

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM-9136-CWP-2020
CM-10555-CWP-2020 in/and
CWP-2922-2020
(Heard through VC)
Date of decision:29.10.2020**

Anju Bala

....Petitioner

V/s.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Aman Chaudhary, Advocate
for the applicant/petitioner.

Mr. Hitesh Pandit, Addl.A.G., Haryana.

Ritu Bahri, J. (Oral)

CM-10555-CWP-2020

For the reasons mentioned in the application, the same is allowed and the applications dated 18.05.2020 and 01.10.2020 as Annexures A-3 and A-4 are taken on record.

CWP-2922-2020 (O&M)

The petitioner is seeking direction in the nature of certiorari for quashing order dated 23.01.2020 (Annexure P-9) passed by the Principal of the College rejecting the Child Care Leave ('hereinafter referred to as 'CCL') to the petitioner with further direction to quash letter dated 26.06.2018 (Annexure P-5) which are contrary to the Statutory Rules of 2016 and grant 635 days CCL in terms of Rule-46 of the Haryana Civil Services (Leave) Rules, 2016 (Annexure P-2) as per the application dated 01.02.2019 (Annexure P-3) seeking CCL from 08.04.2019 to 01.01.2021 (635 days).

The facts not in dispute between the parties are that the petitioner is working as Senior Lecturer in Electronics and Communication Engineering in the CDL Govt. Polytechnic, Nathusari Chopta (Sirsa)-respondent No.3. The petitioner has two children. Her elder son is studying in Hyderabad and her younger daughter who is less than 18 years, is presently studying in Class-XI in Sirsa and is preparing for the IIT-JEE Entrance Examination and other competitive examinations in that field. A copy of birth certificate dated 02.01.2003 of her daughter is Annexure P-1. The petitioner has to accompany her daughter to Kota, Rajasthan from where her daughter is taking coaching for the above said entrance examination. The petitioner has placed on record Rule 46 of the Haryana Civil Services (Leave) Rules, 2016 (Annexure P-2) with regard to grant of CCL to women employees working on regular basis, adhoc basis and work charged basis. The petitioner was granted CCL for 31 days from 29.01.2018 to 28.02.2018 vide order dated 25.01.2018. Thereafter she made application dated 01.02.2019 to grant her 635 days CCL, however, she was asked to give application for 135 days only. The petitioner again made an application dated 20.06.2019 and applied for 135 days CCL and leave was sanctioned from 04.07.2019 to 15.11.2019 (135 days) vide order dated 19.07.2019 (Annexure P-7). Thereafter she again made application dated 14.01.2020 for CCL from 03.02.2020 to 16.06.2020 (135 days), which was rejected vide order dated 23.01.2020 (Annexure P-9) keeping in view instructions dated 26.06.2018 (Annexure P-5).

The petitioner is seeking quashing of instructions dated 26.06.2018 (Annexure P-5) on the ground that these instructions are

(hereinafter referred to as 'Rules, 2016') (Annexure P-2) and without amending the Rules, the instructions cannot be made a ground to reject her rightful claim for 635 days CCL.

As per the interim directions given vide order dated 03.02.2020, the petitioner was to proceed on CCL w.e.f. 04.02.2020 for 135 days during the pendency of the writ petition. The petitioner has filed CM-9136-CWP-2020 for modification of interim order dated 03.02.2020. As per para 3 of this application, the petitioner had proceeded on CCL w.e.f. 04.02.2020 to 17.06.2020 (135 days) pursuant to interim order dated 03.02.2020. The petitioner joined her duty on 07.07.2020 and her request made on 18.05.2020 for extension of CCL till the next date of hearing i.e. 10.07.2020 was not accepted. Now the respondents want to initiate disciplinary proceedings for absence from duty without leave instead of treating this period as CCL or earned leave. It is further stated that the salary of the petitioner for 13 days i.e. from 18.07.2020 to 31.07.2020 and for 07 days i.e. from 01.08.2020 to 07.08.2020 has not been released to her. Applications dated 20.07.2020 and 17.08.2020 (Annexure A-1 and A-2) in this regard are pending before respondent No.3.

After notice of this application, the respondents were directed to consider CCL application as per Rules, 2016. The petitioner's daughter would attain the age of majority on 02.01.2021 and thereafter no case for CCL could be entertained.

An affidavit dated 14.10.2020 of Mr. K.S.Jamwal, Joint Director, Technical Education Department, Haryana, on behalf of respondents has been filed in reply to CM-9136-2020. The respondents

have placed on record a letter dated 08.10.2020 (Annexure R/1) whereby CCL for 135 days has been sanctioned from 04.02.2020 to 17.06.2020. With respect to further extension of CCL, the stand taken is that the petitioner has availed CCL from 04.07.2019 to 15.11.2019 (135 days) and as per the terms and conditions of the instructions dated 26.06.2018 (Annexure P-5), an employee can avail CCL only once during odd or even semester (January to June or July to December in a given academic year). In this backdrop, request of petitioner for further extension of CCL from 03.02.2020 to 16.06.2020 (135 days) had been rightly rejected.

Learned counsel for the petitioner has referred to a judgment passed by this Court in ***CWP-21506-2017 titled Dr. Kanchan Bala V/s. State of Haryana and others***, decided on 10.10.2017 to contend that CCL cannot be declined because of insufficient staff in institute. While referring to this judgment, he has further argued that in that case the petitioner was Medical Specialist in an ESI Hospital, Jagadhri and there was insufficient Medical Specialist staff in that hospital. The Govt. cannot take advantage of its own fault to deny CCL and since the petitioner's daughter was studying in Class 12 which is very crucial year as regards the academics of a school going child, petitioner was held entitled for CCL.

A perusal of this judgment shows that CCL was being denied on the ground of insufficient staff. This Court while referring to Rule 46 (11) of the Haryana Civil Services Rules, 2016 has observed that this Rule was challenged before the Division Bench by way of filing CWP-3549-2017, which was disposed of as having been rendered infructuous. However this Court allowed the writ petition by directing the respondents to

grant CCL to the petitioner within 15 days till the date her daughter attains the age of 18 years or till the date of the last examination (10+2), whichever is earlier and 15 days' time was given only to facilitate respondents to engage a Medical Specialist on contract basis.

Learned counsel for the State has referred to a judgment passed by this Court in ***CWP-1481-2011 tilted Anoopika Randhawa V/s. State of Haryana and others*** which was filed by a Lecturer (History) challenging the orders dated 24.09.2010 and 11.11.2010 whereby her claim for grant of CCL has been rejected and recovery is sought to be effected from the pay already disbursed to her for the month of September 2010. In this case on merits, this Court had dismissed the writ petition while referring to Supreme Court judgment passed in the case of ***State of Punjab and others V/s. Dr. Sanjay Kumar Bansal, 2009 (3) S.C.T. 611*** wherein it was held that special leave was not matter of right and it depends on the administrative exigencies whether an employee can be given special leave for a period of 5 years. Applying same ratio with respect to CCL, this Court held that when authorities had denied CCL to the petitioner, this Court would not interfere in the above said orders as CCL cannot be demanded as a matter of right and under no circumstances an employee can proceed without prior sanction by the competent authority. He has further referred to a judgment given by Gauhati High Court in the case of ***Sewali Deka Talukdar V/s. The State of Assam and others*** whereby the petitioner had challenged the rejection of CCL for 2 years. After going through the stand taken by the respondents in the written statement, the Gauhati High Court has observed as under:-

31. Be that as it may, there are certain indications on the part of the authorities to grant the child care leave for a period of one year as recommended by the Director of Medical Education and also not totally opposed by Medical College and also the petitioner has submitted that she would be satisfied if the authorities grant child care leave in multiple spells with each spell having at least six months period with reasonable break in between the spells, so that she can take care of well being of her child for undergoing the aforesaid training.

32. Considering the aforesaid submission made by the learned counsel for the petitioner, and also keeping in mind the requirement of the State as mentioned above, and materials on record, this Court is of the view that it would be appropriate if the authorities grant child care leave to the petitioner initially for a period of six months for the first spell, followed by other spells with breaks in between the spells for about a month or two months as may be decided by the authorities, provided the entire child care leave does not exceed 730 days, as provided in the aforesaid notification, so that the petitioner can take care of her child, and the health care system also does not unduly suffer on account of long absence of the petitioner.

The Gauhati High Court granted six months CCL in the first spell and in the second spell after a break of about one or two months and further held that health care system should also not suffer on account of long absence of the petitioner. The petitioner was denied CCL on the ground that she was serving as a Registrar in a Department of Haematology and as per the report submitted by Head of Department of the Department of Clinical Haematology, Gauhati Medical College & Hospital is being run with very minimal manpower and absence of single manpower would result in a lot of extra burden in rendering optimum service and the CCL was further being denied on the ground that CCL was not a matter of right but it

was the discretion of the authorities. However before the Court, the stand taken by the respondents was that CCL cannot be granted in one spell for a period of two years and it has to be counted for 3 spells within a break in a calendar year. Keeping in view this stand, the CCL was sanctioned for six months in first spell and in the second spell after a break of about one or two months. The ground that it would cause extra burden on the other employees was rejected.

The ratio of this judgment can be applied to the facts of the present case as well. In the present case, as per the stand taken in the affidavit dated 14.10.2020, the second application dated 01.10.2020 for extension of CCL from 01.10.2020 till 01.01.2021 is resisted on the ground that the Principal has forwarded her application by observing that process of accreditation for NBA for the discipline of Electronics & Communication Engineering in the Institute is under process and presently the petitioner is only the senior faculty in the said discipline. In response to para 14 of the affidavit filed by the respondents, learned counsel for the petitioner contends that if the petitioner is granted CCL, she will give an undertaking that she will visit the Institute and will complete the process of accreditation for NBA and will make all efforts that students should not suffer. Moreover in the facts of the present case, the petitioner's daughter is taking coaching from Kota, Rajasthan for preparation of IIT-JEE Entrance Examination and other competitive examinations after completing 10+2 exams and this is the most crucial year in her daughter's career and the petitioner cannot be denied CCL by referring to the instructions dated 26.06.2018 (Annexure P-5). The petitioner has already availed two times CCL of 135 days each

17.06.2020). She is staying with her daughter in Kota. It is further stated in the writ petition that the husband of the petitioner is a Govt. employee and he has to look after his old parents and her son is studying in Hyderabad and she is the only person who can accompany her daughter in Kota from where her daughter is taking coaching. As per Rule 46 of Rules, 2016 (Annexure P-2), judgment of Gauhati High Court as well as the judgment of Dr. Kanchan Bala, shortage of staff could not be made a ground to decline CCL. The petitioner has nobody else in the house to accompany her daughter and in that backdrop she has right to be considered for CCL as per her second application dated 01.10.2020 (Annexure A-4).

Learned counsel for the petitioner has further placed on record orders (Annexure P-10 colly) whereby CCL has been granted to similar situated persons who are working in different Govt. Senior Secondary Schools of Haryana. With respect to the orders of granting CCL (Annexure P-10 colly), these orders have not been denied by the respondents in the affidavit cum reply dated 14.10.2020.

As far as this writ petition is considered her leave claim has been sanctioned vide order dated 08.10.2020 (Annexure R-1). This petition is being disposed of by giving direction to the respondents to pass appropriate order within one week on petitioner's application dated 01.10.2020 (Annexure A-4) to grant her 135 days CCL (i.e. from 18.06.2020 till 01.01.2021) by taking undertaking from her that she will assist the Institute in the process of accreditation for NBA in the discipline of Electronics and Communication Engineering. Her case is to be considered keeping in view the provisions of Rule 46 of Rules 2016 and the

deny her CCL. Hence, the instructions dated 26.06.2018 (Annexure P-5) which are contrary to the Rules, 2016 (Annexure P-2) are quashed.

CM-9136-2020 stands disposed of.

29.10.2020
Divyanshi

RITU BAHRI
(JUDGE)

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No