

W.P.A. 20560 of 2019

Nasreen Shazda
-vs.-
State of West Bengal & Ors.

Mr. Mr. Shamit Sanyal
Ms. Manika Ray

... for the petitioner

Mr. Shamim Ul Bari

... for the State

Mr. Nadeem Sulaiman

... for the Madrasah Board

Mr. Atarup Banerjee
Mr. Abu Sohel

... for the respondent No.
7, 8, 9

Mr. Prosenjit Mukherjee
Mr. Nirmalya Kr. Das
Mr. Madhurima Sarkar

... for Madrasah Service
Commission

The subject matter of the instant writ application are letters dated 17.02.2017 and 22.02.2017 issued by the Ghola Noapara Girls' High Madrasah (Higher Secondary) refusing to treat the leave applied by the petitioner as child care leave.

The brief facts of the case are that the petitioner is an Assistant Teacher in the Madrasah in question. By a letter dated 03.02.2017, received by the Madrasah on 06.02.2017, the petitioner applied for child-care leave for a period from 17.02.2017 and 22.02.2017 and absented herself, even before a formal decision is communicated to her. Similarly, second period (29-08-2017 to 14-09-2017)

for the child care leave was applied on 27.08.2017.

For the first period, since the Madrasah received an application by post a day before the petitioner absented herself and since no immediate replacement was available, leave could not be sanctioned and the period was treated as unpaid leave.

Likewise given the petitioner's conduct earlier and for serious shortage of teaching staff, the Managing Committee also could not take any decision with regard to the petitioner's second application. The petitioner once again went on leave even without formal sanction.

It is submitted that even a third application for leave for the period from 01.02.2018 to 22.02.2018 has been similarly treated as leave without pay by the Madrasah.

This court finds absolutely no reason to entertain the prayers of the petitioner.

While it is true that the child care leave is vital and essential for any teacher who is a parent, one cannot ignore the interest of a large number of children in the Madrasah who need instruction, care and guidance regularly.

Child care leave is indeed an entitlement of service but the same requires sufficient notice to the Madrasah in question and due sanction. A teacher cannot hold a school to ransom and absent herself on the pretext of child care leave knowing fully well that there is serious shortage of teaching staff in the Madrasah in question.

The fact that the petitioner is a member of the Managing Committee and a teacher representative thereat, makes her conduct more shocking and dubious.

This court is, therefore, of the view that unilateral availing of the child care leave of the petitioner is illegal and unacceptable and the Madrasah in question was justified in treating the same as unpaid leave.

In so far as, the communication dated 31.08.2017 issued by the Madrasah in question to the petitioner and referring the issue to the Board.

This court has been informed by the Madrasah that the they have received a communication from the Board dated 28.02.2018 to take necessary action against her as per the guidelines of the Managing Rules of the Board and to submit relevant documents for approval.

This court is of the view that the decision of the Madrasah to treat the absence of the petitioner as on leave without pay, is appropriate and correct in the facts of the case and the same shall be entered into her service records.

With the above observations, the instant writ application stands **dismissed**, however, without any order as to costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Rajasekhar Mantha, J.)

