

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1834-2020 (O&M)

Decided on: 12.02.2021

Dr.Anupama Tandon

....Petitioner

Versus

State of Haryana & others

....Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Abhishek Sethi, Advocate, for the petitioner.

Mr.Shivendra Swaroop, AAG, Haryana.

(The proceedings are being conducted through video conferencing,
as per instructions.)

G.S. SANDHAWALIA, J. (Oral)

Though, prayer in the present writ petition, filed under Articles 226/227 of the Constitution of India, is made for issuance of directions to decide the grant of Child Care Leave from 20.07.2020 to 13.06.2021 on account of her son sitting in the Senior Secondary Examination, the said prayer has been rendered infructuous, in view of the interim directions which had been issued on 23.01.2021 by the Co-ordinate Bench. The respondents, in compliance of the said order, have passed the necessary order on 17.02.2020 (Annexure R-1) granting the benefit of 329 days.

Resultantly, the only dispute left in the present writ petition is the order dated 01.01.2020 (Annexure P-13) whereby 30 days of Child Care Leave was permitted to be adjusted against the Earned Leave of the letter dated 19.11.2019 (Annexure R-4). A perusal of the same would go on to show that it was on account of the fact that the petitioner had applied for Child Care Leave from 22.01.2019 to 21.04.2019 for 90 days. She did not report for duty on 24.03.2019 and only reported on 23.04.2019 and therefore, for the said period, 30 days recommendation had been made that the same be treated as Leave of Kind Due.

Counsel for the petitioner has mainly argued that the petitioner had applied for grant of Child Care Leave on account of the fact that she was single mother and the child was living with the mother at Rajasthan, sanction had only been granted for 60 days till 22.03.2019 on 04.12.2018. She had immediately applied on 13.12.2018 giving the schedule of the examination which was of the CBSE papers which the child had to

undertake. It was also mentioned that she was entitled for the same in 6 spells in a year and she was asking it for the first time. The said request was forwarded by respondent No.3 to respondent No.2.

The respondents conveniently slept over the matter and did not pass any order. It is apparent that the petitioner, thereafter, had stayed back for the extra period of one month on account of the child giving the examination and she helping out the child. It was only in November, 2019 the matter was processed but the petitioner was never informed that her representation was not being acted upon or has been denied. The order dated 04.12.2018 (Annexure P-5) also does not show for what reasons the period of leave had been curtailed to 60 days instead of 90 days, which she had asked for. Rule 46 of the Haryana Civil Services (Leave) Rules, 2016 provide that the Child Care Leave is admissible for a maximum period of 730 days in the entire service to take care of the two eldest surviving children below the age of 18 years only. The said leave was not to be demanded as a matter of right and no one can proceed on Child Care Leave without the prior proper sanction of the leave by the competent authority. Said rule reads as under:

“46. Grant of child care leave:-

A competent authority may grant Child Care Leave to a woman Government employee subject to following conditions:-

- (1) Child Care Leave shall be admissible for a maximum period of 730 days during the entire service for taking care of her two eldest surviving children below the age of 18 years only.
- (2) 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 proper sanction of the leave by the competent authority.”

But the fact remains that the petitioner had applied and the said benefit had been restricted without any valid or justifiable reason. It is settled principle that even administrative orders should carry some reason so that they can be examined for what reason the said benefit was

denied. Counsel for the petitioner has also submitted that the petitioner has not exceeded her maximum period of 730 days even if the period of 329 days which is for the subsequent period, as directed by this Court, is taken into consideration. In such circumstances, this Court is of the opinion that in the facts and circumstances, that she had gone on leave for the purpose of helping her child to give the examinations, her claim for the Child Care Leave had wrongly been restricted to 60 days. In such circumstances, the subsequent order which has also been passed dated 01.01.2020 (Annexure P-13), cannot be upheld whereby the period of 30 days had been ordered to be adjusted against Earned Leave. Accordingly, the same is quashed.

Resultantly, the present writ petition is allowed and the period of leave from 23.03.2019 to 21.04.2019 be treated by the respondents as Child Care Leave availed.

12.02.2021
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No