

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.3460 of 2021
Date of Decision: 16.03.2021**

Deepika Singh

Petitioner

Versus

Central Administrative Tribunal, Chandigarh & Ors.

Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Mr. Dhiraj Chawla, Advocate for the petitioner.

SANT PRAKASH, J (Oral):

The instant petition has been preferred under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari, quashing order/judgment dated 29.01.2021 (Annexure P-4) whereby the Central Administrative Tribunal (for short, 'CAT') has dismissed original application filed by the petitioner, rejecting her claim for grant of maternity leave from 04.06.2019 to 30.11.2019 for her first child namely Viren Pratap Singh, born on 04.06.2019; as well as to quash orders dated 03.09.2019 and 21.01.2020, (Annexures P-2 and P-1, respectively) whereby the respondents have rejected the request of petitioner for grant of maternity leave and converted the same into Earned Leave; with a further prayer to issue an writ of mandamus directing the respondents to sanction maternity leave from 04.06.2019 to 30.11.2019 by treating a newly born baby (Viren Pratap Singh) as her first child and to regularize the leave period.

2. Succinctly, the petitioner is working on the post of Nursing

Officer in Post Graduate Institute of Medical Education and Research, Chandigarh-respondent No.3. On 18.02.2014, the petitioner solemnized marriage with Amir Singh as per Hindu rites and rituals. While it was the first marriage of petitioner, her husband namely Amir Singh performed second marriage, his earlier wife namely Sunita Singh having been passed away on 16.02.2013. From the first marriage of Amir Singh, he had two children namely Aryan Singh (born on 01.02.2001) and daughter Kanishka Singh (born on 03.03.2005). On 04.06.2019, a child namely Viren Pratap Singh was born from the wedlock of petitioner and Amir Singh.

3. Petitioner applied maternity leave from 27.06.2019 to 23.12.2019 and availed the same. On 03.07.2019, respondent No.3 sought clarification pertaining to some facts including two children from the first wife of her husband to which she submitted a detailed reply dated 24.07.2019 mentioning all the facts. On 03.09.2019, respondent No.3 rejected the request of petitioner for maternity leave keeping in view the fact that she availed child care leave earlier by showing two surviving children and thus for the third child, the maternity leave was not admissible as per rule and consequently vide office order dated 21.01.2020 the period of leave w.e.f 30.05.2019 to 03.06.2019; 04.06.2019 to 27.10.2019; 27.10.2019 to 06.11.2019; and 07.11.2019 to 31.11.2019 was treated as earned leave, medical leave, half pay leave and extraordinary leave, respectively. The period of extraordinary leave was ordered to be not counted towards increment.

4. Aggrieved petitioner preferred original application thereby challenging orders dated 03.09.2019 and 21.01.2020 before CAT, which was contested by the respondents by filing written statement submitting that

the petitioner had applied for and availed Child Care Leave in respect of children, born from the first marriage of her husband, on many occasions from the institute. She also entered the names of aforesaid two children from the first wedlock of her husband, in the office record and availed the facility of medical treatment for them. As she was having two surviving children, maternity leave was not admissible to her.

5. After hearing learned counsel for the parties and perusing the available record, original application preferred by the petitioner was rejected by the CAT vide impugned order dated 29.01.2021, which has been challenged by the petitioner in the instant petition.

6. Learned counsel for the petitioner has contented that the impugned orders are illegal and unsustainable in the eyes of law, inasmuch as, it is a matter of record that petitioner solemnized marriage with Amir Singh on 08.02.2014 being her first marriage, while her husband was a widower having two children namely Aryan Singh and Kanishka Singh from his first marriage. Accordingly, she got entered the names of aforesaid two children and her husband in her service record. However, these peculiar facts do not empower the respondents to deprive the petitioner of her legitimate right to seek maternity leave for the first child born to her on the artificial analogy of having two surviving children from the first marriage of her husband.

7. Learned counsel for the petitioner, however, has conceded that provisions of The Maternity Benefit Act, 1961 are applicable to the Central Government employees and do not apply to the case of the present petitioner. Referring to Rule 43 of Central Civil Services (leave) Rules 1972 (for short 'Rules 1972'), he has claimed that she has got only one surviving

child. Learned counsel further submitted that in any case Rule 43 of Rules 1972 cannot be interpreted in the manner which defeats the very purpose and object of framing the same i.e., benefit of maternity leave of 180 days to a female Government Servant for the proper care of her newly born child and as such, the two children born from the previous marriage of her husband cannot be treated to be children of petitioner for the purpose of aforesaid rule when she gave birth to her own biological son (Viren Pratap Singh). Hence, the petitioner was entitled to the benefit of maternity leave.

8. We have heard learned counsel for the petitioner and perused the record.

9. The facts of the case are not disputed. Petitioner married with Amir Singh on 18.02.2014. Amir Singh had two children namely Aryan Singh and Kanishka Singh from his earlier wedlock. Amir Singh's earlier wife namely Sunita Singh expired on 16.02.2013, whereafter he married with the petitioner and a child namely Viren Pratap Singh was born on 04.06.2019. Petitioner applied for maternity leave whereupon respondents sought some clarification and vide impugned order, rejected her claim on the ground that since she had already two surviving children and availed CCL on that basis, her request was not accepted. The claim of the petitioner that child born by her was required to be treated as her first child for the purpose of maternity leave, was not admissible under rules.

10. Admittedly, the petitioner got entered the names of Aryan Singh and Kanishka Singh born from the first wedlock of her husband in the office record and availed Child Care Leave for both the children on many occasions, which fact was not denied by the petitioner herself even before the CAT.

11. For proper adjudication of the matter Rule 43 of Rules 1972 is reproduced here under:-

“(1) A female Government servant (including an apprentice) with less than two surviving children may be granted maternity leave by an authority competent to grant leave for a period of (180 days) from the date of its commencement.

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(C) Subject to the provision of the rule women Government servant may be granted child care leave by an authority competent to grant leave for a maximum period of 730 days during her entire service for taking care of her two eldest surviving children, whether for rearing or for looking after any of their needs, such as education, sickness and the like.”

12. A bare perusal of the aforesaid rule would reveal that maternity leave can be granted to a female Government servant only if she has less than two surviving children. Though, the petitioner is not the biological mother of the two children born from the first wedlock of her husband, she cannot deny the fact that now she is the mother of them also after having married to Amar Singh. In this way, the petitioner has already two surviving children. Not only this, she has also availed CCL for them from the respondent Department. In this view of the matter, any child born to her is to be considered as a third child. We are of the considered view that the CAT has rightly observed in the impugned order that “.....for all practical

purposes, the applicant has two surviving children. As such, any child born to her now can only be considered as a third child.”

13. In view of the forgoing discussion, we do not find any perversity or illegality in the impugned orders and resultantly the writ petition is dismissed.

**[Jaswant Singh]
Judge**

**[Sant Parkash]
Judge**

16th March, 2021
Avin/Ali

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |