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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2942/2021 & CM APPLs. 8862-8863/2021

LT. COL. M.B. ROSHINI

..... Petitioner

Through: Mr. Ankur Chhibber, Advocate with
Mr. Nikunj Arora, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: mr. Arun Bhardwaj, Advocate with
Mr. Sahaj Garg, GP with Lt. Col.
Mr. Sandeep Singh, Advocate.

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Date of Decision: 18th March, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed with the following prayers:-

“a. Issue a Writ of Certiorari for quashing of the order dated 20.01.2021 to the extent whereby the Petitioner has been posted out to 151 Base Hospital, Guwahati, Assam as GD Matron and of the signal dated 24.02.2021 whereby the request of the Petitioner, regarding extension of tenure on the grounds of children's education, submitted by the Petitioner has been rejected; and

b. Issue a Writ of Mandamus directing the Respondents to allow the Petitioner to continue at the current place of posting by deferring the order dated 20.01.2021 for a period of 01 year, i.e. till the time the Petitioner's daughter completes her

XII class in view of the posting policy issued by the Respondents on 19.02.2014 and 25.04.2018 and also keeping in mind the facts and circumstances of the Petitioner; and

c. Pass any such orders as the Hon'ble Court may deem fit in the light of above mentioned facts and circumstances of the case."

2. On the first date of hearing, Mr. Arun Bhardwaj, learned counsel for respondents had pointed out that the petitioner had been repeatedly seeking and getting extension of tenure in Delhi since 05th September, 2017.

3. However, on a direction of this Court, Mr. Bhardwaj had stated that, without prejudice to the rights and contentions of the respondents, a superior officer would speak to the petitioner in a bid to amicably resolve the matter.

4. On 04th March, 2021, this Court was informed by Mr. Bhardwaj that as petitioner's daughter was going to join Class XII in April, 2021, the petitioner would be allowed to retain her present official accommodation in Delhi till 30th April, 2022. He was directed by this Court to obtain instructions as to whether the leave that the petitioner was entitled in the years 2021 and 2022 would be granted in case the petitioner joins her duty at Guwahati.

5. Today, Mr. Bhardwaj has handed over a copy of the letter dated 17th March, 2021 written by Col.. Dir MNS (Adm). The same is taken on record. The said letter reads as under:-

"1. Ref Hon'ble Court Order on WP No 2942 of 2021 filed by Lt Col MB Roshini Vs UOI and Others dated 16 Mar 2021.

2. The details of leave which may be availed by the a/m petitioner consequent to her exercising the option of retaining the accommodation on academic grounds of her daughter while proceeding on permanent posting to 151 BH are as follows:-

a) **Annual Leave.** 60 days annual leave is admissible in each calendar year as per Leave Rules for the Services Volume I-Army dated 01 Nov 2018.

b) **Casual Leave.** The maximum amount of casual leave admissible during a calendar year is 20 days. Leave upto 20 days at a time may be granted at the discretion of the sanctioning authority as per Leave Rules for the Services Volume I-Army dated 01 Nov 2018.

c) **Child Care Leave.** Grant of CCL to women officers in the Defence Forces will be applicable as per GoI Letter No B/33922/AG/PS-2(b)/687/D(AG) dt 04 Mar 2014 and amended vide GoI Letter No B/33922/AG/PS-2(b)/1447/D(AG) dt 14 Aug 2019.

d) **Furlough Leave.** As per Leave Rules for the Services Volume I-Army dated 01 Nov 2018 the period of leave admissible as furlough is two months for every three calendar years.

3. Accordingly, the petitioners has fwg provisions of leave for the academic session of 2021-2022:-

Ser No	Type of Leave	No of days	Remarks
(a)	Annual Leave	60 Days in 2021 60 days in 2022	Subject to service exigencies
(b)	Casual Leave	20 days in 2021 20 days in 2022	Subject to service exigencies
(c)	Child Care Leave	60 days in 2021 60 days in 2022	Subject to service exigencies 30 days at an instance maybe availed. Until her daughter attains 18 years of age. (DOB of the child is 21-05-2004 as per records held)

4. It is submitted that the competent authority to grant leave is the Comdt of the unit where the petitioner is posted and in this regard directions will be passed to 151 BH to grant leave to the petitioner as and when asked for the purpose of education of petitioner's daughter during the academic year 2021-2022.

However, this shall not be construed as a blanket sanction for the grant of leave.

5. It is further submitted that as mentioned in Leave Rules for Armed Forces 2018, leave cannot be claimed as a right, its grant is always subject to exigencies of service.

6. Whereas all efforts will be taken to ensure the grant of a/m leave to the petitioner however, leave is liable to be denied by the competent authority if the circumstances at the time of granting leave are not favorable.

7. The aforementioned facts may be brought before the notice of the Hon'ble High Court of Delhi through the CGSC detailed to defend the case on the Next Date of Hearing.

8. This issues with the approval of Offg DGMC (Army).

Sd/-

*(Sudharmma Devi P)
Col Dir MNS (Adm)''*

3. This Court has no doubt that the Commandant of the Guwahati Unit, where the petitioner is to join, shall take a liberal view as and when petitioner applies for leave.

4. In the event, the petitioner is of the view that the petitioner has been denied leave unreasonably, it shall open to her to mention the present matter. It is clarified that this order has been made in the special facts of the present case and shall not be treated as precedent.

5. With the aforesaid liberty, the present writ petition and applications stand disposed of.

MANMOHAN, J

ASHA MENON, J

MARCH 18, 2021/js