

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 30811 of 2017

Chhabirani Sinha @ Chhabirani Sinha (Deoyan)

Versus

The State of West Bengal & Ors.

Mr. Sarajit Sen

Mr. Tapas Sinha Roy

.....For the Petitioner

Heard on : 18.02.2022

Judgment on : 24.02.2022

Krishna Rao, J.: Though vide order dt. 12.11.2018 directions were issued upon the respondents to file Affidavit-In-Opposition and accordingly 28.11.2018 affidavit is filed but since then no one is appearing on behalf of the respondents. On 15.02.2022 notice was also served upon the Counsel for the respondent by the Counsel for the petitioner but inspite of service of notice, none appeared on behalf of the respondent.

The petitioner is working as Assistant Teacher in Goghat Bhagabati Balika Vidlaya (H.S). The son of the petitioner who was aged about 1 ½ years was suffering from Typhoid and the presence of the petitioner with her minor son was necessary to take care of the child, the petitioner could not

attend the school from 12.07.2016 to 07.08.2016 and the petitioner has requested for Child Care Leave. The Headmistress of the School refused to grant Child Care Leave to the petitioner over phone and accordingly the petitioner had sent a written request to the school authorities for grant of Child Care Leave by enclosing medical prescription of the son of the petitioner.

The school authorities instead of granting Child Care Leave to the petitioner, the leave of the petitioner was treated as medical leave from 12.07.2016 to 07.08.2016.

On 08.08.2016 the petitioner reported her duty but the son was not fully recovered from illness, the petitioner again went on Child Care Leave from 09.08.2016 till her son recover from illness.

Vide letter dt. 31.08.2016 the Headmistress of the school informed the petitioner that considering the general interest of the students and also the applications given by the other lady teachers for CCL, the Managing Committee of School has not accepted the application for CCL. After rejection of the request of the petitioner for CCL on 01.09.2016, the petitioner has again made an application for CCL from 12.07.2016 to 07.08.2016 and from 09.08.2016 the petitioner reported her duty.

The school authorities have not granted CCL to the petitioner but the petitioner was on leave till 28.09.2016, for taking care of her ailing child. The respondents have issued show cause upon the petitioner as to why disciplinary proceeding shall not be initiated for unauthorized absence of the petitioner. The petitioner has submitted her reply but the same was not accepted and charge sheet was issued against the petitioner.

The departmental proceeding initiated against the petitioner was subsequently dropped as per the decision taken by the Managing Committee with the warning to discharge her duty in proper manner failing which appropriate action will be taken against her.

The respondents have treated the leave period of the petitioner from 12.07.2016 to 07.08.2016 as medical leave and remaining period from 09.08.2016 to 28.09.2016 without pay.

The Counsel for the petitioner submitted that as per the Memorandum No. 5560-F(D) dt. 17.07.2015, a female employee to take maximum period of two years, i.e. 730 days as Child Care Leave. The petitioner relied upon clause (iii) (iv) and (v) of the said memorandum which reads as follows:-

(iii) It may not be granted more than 3 (three) spells in a calendar year.

(iv) It may not be granted less than 15 days is a spell.

(v) Child Care Leave shall not be debited against leave account.

The Counsel for the petitioner further submitted that the petitioner enjoyed first spell of CCL from 08.03.2016 to 22.03.2016 and the petitioner is entitled to get other two spell and accordingly the petitioner had applied for second spell from 12.07.2016 to 07.08.2016 and third spell from 09.08.2016 to 28.09.2016 in the same year but the respondents have illegally rejected the request of the petitioner for grant of CCL.

Counsel for the petitioner relied upon the judgment passed by this Court in the case of Purnima Sarkar & Ors. -vs- State of West Bengal & Ors. Reported in (2018) 11 CHN 112.

The Counsel for the petitioner further submitted that the impugned letter dt. 31.08.2016 may be set aside and to direct the authorities for treating the period from 12.07.2016 to 07.08.2016 and 09.08.2016 to 28.09.2016 as CCL and to grant salary of the petitioner for the said period.

Though the respondents are not appearing but have filed their Affidavit-In-Opposition and in the Affidavit-In-Opposition, it is stated that the petitioner is in the habit of coming late in the school, not taking classes and her behaviour is also not good with other staffs. The petitioner had already availed CCL from 08.03.2016 to 25.03.2016 and thereafter without any intimation the petitioner was absent from 12.07.2016 to 25.03.2016 and all of a sudden on 08.08.2016 the petitioner attended duty and put her signature in attendance register and again without any intimation from 09.08.2016 the petitioner remain absent from duty only. On 24.08.2016 the petitioner had submitted application for CCL from 12.07.2016 to 07.08.2016 and 09.09.2016 till joining her duty. It is further revealed from Affidavit, that the Managing Committee rejected the request of the petitioner for grant of CCL and the same was communicated to the petitioner.

Considered the submission made by the Ld. Counsel for the petitioner's documents available on record and the judgment relied by the Counsel for the petitioner.

Admittedly the petitioner is a permanent Assistant Teacher in Goghat Bhagabati Balika Vidlaya (H.S). Initially the petitioner applied for CCL from 08.03.2016 to 22.03.2016 and the same was granted. The son of the petitioner who was aged about 1 ½ years had suffered from Typhoid and accordingly the petitioner had not attended her duty and had applied for

CCL to take care of her minor child from 12.07.2016 but the same was rejected. When the petitioner joins her duty on 08.08.2016 found that absence of the petitioner was treated as medical leave. Again from 09.08.2016 the petitioner went on leave to take care of her ailing child and till 28.09.2016 and in the mean time the petitioner had applied CCL but the same was rejected on 31.08.2016 and the petitioner was treated without salary.

The Memorandum dt. 17.07.2015 allows female employee to take maximum period of two years, i.e. 730 days as CCL. Clauses (i) to (ix) provide condition for taking such leave more important the clause in the instant case is clause (iii) and (iv) as mentioned (supra). As per clause (iii) CCL may not be granted more than three spells in a calendar year.

In the present case the petitioner has obtained 1st spell of CCL from 08.03.2016 to 22.03.2016 and the petitioner intend to avail other two spells from 12.07.2016 to 07.08.2016 and 09.08.2016 to 28.09.2016 on account of the illness of her 1 ½ years child.

In the instant case, the school authorities had not prescribed any rules for seeking CCL and the same was prescribed by way of resolution which reveals from the Affidavit-In-Opposition filed by the respondents. In the absence of any rules by the Managing Committee, the action of the Managing Committee is not granting CCL to the petitioner and treating the leave of the petitioner on medical leave and without salary is not justified. It is settled law that the authorities under the State cannot take decision on their whims and fancies and can only act as per prescribed law.

In the instant case though the school authorities have not prescribed any law for grant of CCL but the authorities have to act in accordance with the Memorandum dt. 17.07.2015 which is applicable in the instant case.

In view of the above, this court has no other alternative but to set aside and quash the communication dt. 31.08.2016 issued by the Headmistress Goghat Bhagabati Balika Vidlaya (H.S), Hooghly. The school authority is directed to treat the leave of the petitioner from 12.07.2016 to 07.08.2016 and 09.08.2016 to 28.09.2016 as Child Care Leave and to release salary of the petitioner from 09.08.2016 to 28.09.2016 within a period of four weeks from the date of communication of the order.

WPA No. 30811 of 2017 is thus disposed of.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)