

27.06.2023
P.A.

MAT 417 of 2022

With

CAN 1 of 2022

**The Headmistress, Goghat Bhagabati
Vidyalaya (H.S.) & Anr.**

-Vs

**Chhabirani Sinha alias Chhabirani Sinha
(Deoyan) & Ors.**

Mr. M Sen

Mr. Pratip Kumar Chatterjee

Ms. Oisani Mukherjee

... for the appellants

Mr. Sarajit Sen

Mr. Tapas Singha Roy

... for the respondent

no.1/writ petitioner

Mr. Tapan Kumar Mukherjee

Mr. Tapas Kumar Dey

... for the State

Party/ Parties is/are represented in the order of
their name/names as printed above in the cause title.

The record is taken up for passing order.

The instant appeal has been preferred against the
Judgement and Order dated 24.02.2022 passed in WPA
No. 30811 of 2017.

Through the impugned Judgement and Order the
Hon'ble Single Bench has quashed the communication
dated 31.8.2016 issued by the Headmistress, Goghat
Bhagabati Balika Vidyalaya (H.S.), Hooghly, with a
further direction to treat the leave of the respondent/writ

petitioner from 12.07.2016 to 07.08.2016 and 09.08.2016 to 28.09.2016 to be child care leave(for short CCL) and has also directed to release the salary of the writ petitioner from 09.08.2016 to 28.09.2016 and has thus disposed of the said writ petition.

The appellants in the instant lis are the Headmistress and the President of the Goghat Bhagabati Balika Vidyalaya (H.S.), Hooghly while the respondent No.1 is the writ petitioner and the other respondents are State respondents.

The Ld. Counsel appearing on behalf of the appellant has submitted that during the month of March 2016 the respondent writ petitioner was absent from school from 08.03.2016 to 25.03.2016 for which period CCL was granted. The Ld. Counsel has further submitted that the period from 12.07.2016 to 07.08.2016 was not granted as CCL instead the said period has been adjusted from the accumulated medical leave. He has further submitted that only on 08.09.2016 the respondent/ writ petitioner sent a representation to the President of the said school requesting her to grant CCL. Ld. Counsel has further submitted that a notice was issued to the writ petitioner and the writ petitioner on 16.9.2016 submitted her reply and thereafter on 4.11.2016 the members of the managing committee unanimously observed that the reply to the show cause notice was not satisfactory and

accordingly charge sheet was issued against the writ petitioner.

The Ld. Counsel has further submitted that at the same point of time when the respondent /writ petitioner sought for CCL three other lady teachers of the said school had applied for grant of CCL. He has further submitted that submission of petition for grant of CCL being submitted by other three teachers along with writ petitioner made an unruly state of affairs and it was then impossible to impart education to the students.

He has further submitted that the managing committee of the school taking into consideration the entire facts and circumstances refused the prayer of the writ petitioner for grant of CCL. Being aggrieved by the order of the school the respondent/writ petitioner preferred the writ petition.

The Ld. Counsel appearing on behalf of the appellant submitted that the respondent writ petitioner is working as assistant teacher in Goghat Bhagabati Balika Vidyalaya (H.S.) and she has a son then aged about one and a half year, who was then suffering from typhoid and as such the presence of the respondent writ petitioner was absolutely necessary for her minor son to take care of the child. He has further submitted that the writ petitioner was unable to attend the school from 12.7.2016 to 28.09.2016 and had requested for CCL which the

headmistress of the said school refused to grant and the same was conveyed to her over phone.

The Ld. Counsel has further submitted that as such the respondent /writ petitioner had sent a written request to the school authority for grant of CCL by enclosing medical prescription of her son. The school authorities instead of granting CCL treated the leave of the petitioner as medical leave. Thereafter on 8.8.2016 the petitioner joined the school but again had to go on leave from 09.8.2016 as her son had not recovered from illness. He has further submitted that vide a letter dated 31.8.2016 the Headmistress of the school informed the writ petitioner that considering the general interest of the student and also the application given by the other lady teacher for CCL the managing committee of the school has not accepted the application for CCL for the period extending from 12.7.2016 to 7.8.2016 and for the period from 9.8.2016 to 28.09.2016. He had further submitted that the school authority issued show cause notice upon the writ petitioner as to why disciplinary proceeding shall not be initiated for unauthorized absence by the writ petitioner.

Reply was sent by the respondent/writ petitioner but the same was not accepted and charge sheet was issued against the writ petitioner.

He has further submitted that the departmental proceeding initiated against the writ petitioner was

subsequently dropped as per the decision taken by the managing committee with the warning to discharge her duty properly failing which appropriate action will be taken against her. The Ld. Counsel has further submitted that the school authority has treated the leave of the petitioner from 12.07.2016 to 07.08.2016 as medical leave while the period from 09.8.2016 to 28.09.2016 has been treated as leave without pay.

Ld. Counsel appearing on behalf of the respondent writ petitioner has placed the Memorandum no. 5560-F(D) dated 17.07.2015 wherein it has been stated that CCL cannot be granted for more than 3 (three) spells in a calendar year and each spell shall not be less than 15 days and CCL shall not be debited against leave account. The Ld. Counsel has further submitted that the respondent writ petitioner enjoyed the first spell of the CCL from 08.03.2016 to 22.03.2016 as such the respondent writ petitioner was entitled to get two more spells as such the respondent writ petitioner had applied for CCL for the second spell from 12.07.2016 to 07.08.2016 and for the third spell from 09.08.2016 to 28.09.2016. As such the Ld. Counsel has prayed for rejecting the instant appeal.

From the facts and circumstances it is apparent that the school authority has no prescribed rule for grant of CCL, so the school authority has to act in accordance with the Memorandum dated 17.7.2015.

“The matter regarding extension of benefit of the Child Care Leave for a maximum period of 2 (two) years i.e. 730 days to the regular female teaching and non-teaching employees of Government sponsored/Non-Govt. aided Schools, Boards, District Primary School Councils, School Service Commission as well as to the regular female employees of Panchayat Raj and other Local Bodies, Undertakings, Corporations, Statutory Bodies was under active consideration of the State Government.

Now after careful consideration, the Governor is hereby pleased to decide to extend the said benefit to the regular female employees of the educational institutions, establishments, organizations, entities etc. as mentioned above subject to the following conditions -

- i) The same will be admissible during the entire period of service for taking care of upto 2(two) children upto 18 years of their age whether for rearing or to look after any of their needs like examination, sickness etc.*
- ii) During the period of such leave, the female employees shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.*
- iii) It may not be granted in more than 3 (three) spells in a calendar year.*
- iv) it may not be granted for less than 15 days in a spell.*
- v) Child Care Leave shall not be debited against the leave account.*
- vi) It may be combined with leave of the kind due and admissible.*
- vii) Child Care Leave should not ordinarily be granted during the probation period except in case of certain extreme situations where the leave sanctioning authority is fully satisfied about the need of Child Care Leave to the probationer. It may also be ensured that the period for which such leave is sanctioned during probation is minimal.*
- viii) Other terms and conditions as applicable to sanctioning Earned Leave shall be applicable in the matter of sanctioning Child Care Leave.*
- ix) An account of the purpose shall have to be maintained under proper attestation by the leaves sanctioning authority.*

This order shall take effect from 1st August, 2015.”

From the aforesaid facts and circumstances it is apparent that the respondent /writ petitioner was then an assistant teacher and was not under probation and the period of leave extends from 12.7.2016 to 07.08.2016 and again from, 9.8.2016 till 28.9.2016 which is after 01.08.2015, from which date the said Rules for CCL came into effect.

As such the respondent writ petitioner is entitled to have the CCL for the two periods extending from 12.7.2016 to 07.08.2016 and again from, 9.8.2016 till 28.9.2016 and is entitled to salary.

From the aforesaid discussion it is clear that the Hon'ble Single Bench has not misdirected itself.

In the aforesaid facts and circumstances this Court does not find any ground for interference with the impugned order.

As such **MAT 417 of 2022** with **CAN 1 of 2022** is **dismissed**.

(Supratim Bhattacharya, J.) (Subrata Talukdar, J.)