

AD-3
Ct No.01
Jalpaiguri
14.09.2023
B.Pal

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

WPA 2032 of 2023

DIPSIKHA SAHA
VS
THE STATE OF WEST BENGAL AND ORS.

Mr. Soumyajyoti Dutta,
Ms. Druti Roy,
Mr. Gopal Sah...

.....for the petitioner

Mr. Subir Kumar Saha,
Ms. Bedashruti Bose

.....for the State

Mr. Subham Chanda

...for the respondent no.4

1. The petitioner challenges the partial refusal of Child Care Leave sought by the petitioner. The petitioner is an English teacher in a particular school. As per the Memorandum dated July 17, 2015 relied on by the petitioner, issued by the Government of West Bengal, Finance (Audit) Department, the petitioner as a teacher is entitled to Child Care Leave to look after the needs of her child up to 18 years for purposes like

examination, sickness etc. The petitioner has a 15 years-old daughter for whose medical treatment and examination the petitioner sought for Child Care Leave from August 7, 2023 to October 5, 2023. However, by the impugned resolution, the respondents granted leave only till August 27, 2023, without citing any proper reason for refusal regarding the rest of the period asked for.

2. It is argued that although the respondents have cited the second terminal examination of the school for partial refusal, the same was concluded long back, being held from August 7, 2023 to August 11, 2023 and could not be a justification for refusal of the leave.
3. Learned counsel also places reliance on a judgment of the Supreme Court rendered in *Kakali Ghosh versus Chief Secretary, Andaman & Nicobar Administration and Ors.*, where the Supreme Court, while considering similar Circulars of the Central Government, had observed that the findings of the High Court therein were not based on the guidelines by the Central Government. It was further observed that

no reason had been shown by the competent authority for disallowing the rest of the period of leave.

4. Learned counsel further argues that the Supreme Court also held that although leave cannot be claimed as of right as per Rule 7, which was under consideration there, under sub-rule (2), leave can be refused or revoked by the competent authority in the case of exigencies of public service. In the present case, such 'public service' has not been shown by the school.
5. Learned counsel appearing for the respondent no.3, District Inspector of Schools, places reliance on a report filed in Court today and kept on record, wherein it has been clearly enumerated by the DI that the number of days of Child Care Leave in the petitioner's leave account is 376 as of now. The petitioner has taken leave for 73 days out of 151 working days in the present academic session till August 27, 2023. It is further stated in the said report that the petitioner availed Child Care Leave for 229 days while serving at a

previous school and for 125 days in another school, totaling 354 days till August 27, 2023.

6. Learned counsel for the DI further submits that the petitioner's personal interest has to be pitted against the interest of the students of the school as a whole who are suffering due to repeated absence of the petitioner, who is argued to be the only English Teacher in the school.
7. Learned counsel appearing for the headmistress also files a report and corroborates the stand of the DI.
8. In reply, Learned counsel for the petitioner reiterates that apart from the petitioner, there are two other English teachers, including the headmistress herself, in the school. That apart, the petitioner is yet to exhaust the total number of Child Care Leaves allotted to the petitioner as per the Memorandum of the State Government.
9. A perusal of the resolution impugned herein shows that the respondents primarily cited, for partial refusal, the fact that the petitioner has taken Child Care Leave from January 16 to March 11, 2023 in the current session. Moreover, the

respondents also cited the fact that the second terminal examination would be held in the school during the period for which the petitioner sought for Child Care Leave.

10. Insofar as the second contention of the respondents is concerned, the same falls flat in view of the petitioner having annexed a document to the writ petition to indicate that the second terminal examination of the school was held between August 7 and August 11, 2023 and has long been over. Moreover, the reserve teachers shown in the duty chart for the said examination, also annexed to the writ petition, indicates that there are many others than the petitioner in the roster of the school.

11. As per the Memorandum dated July 17, 2015, the total number of days to which a regular female teaching employee of a Government sponsored/Non-Government aided school is entitled is 730 days, that is, for a maximum period of two years.

12. The ground cited by the petitioner, being the examination of her daughter and the sickness of

the said child, in support of which certain documents have been annexed to the writ petition, are legitimate and valid grounds as per the said Memorandum for asking for such leave.

13. Clause (ii) of the Memorandum stipulates that during the period of such leave the female employee shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.
14. Since the petitioner is entitled to a total number of 730 days on the ground of Child Care Leave, there is nothing to justify the refusal of the respondent of such plea of the petitioner.
15. Apart from one of the grounds being untenable in so far as the second terminal Examination of the school was long over, even the other ground cited, that is, the petitioner having taken similar leave from January 16 to March 11 of this year on similar ground, is also not tenable, since if a female teacher is able to show sufficient justification for seeking Child Care Leave, there is nothing in law or procedure to prevent the respondent from granting such leave to the

petitioner. Even if such leave is not a matter of right as such, a plausible reason has to be cited by the authorities for refusing the same, as per the report cited by the petitioner.

16. Of course, such grant leave is subject to an upper limit of 730 days. In the event the petitioner exceeds the said 730 days in total, the School as well as the respondent authorities shall be entitled to refuse such Child Care Leave and, if necessary, to deduct the salary from the petitioner if further leave is availed of by the petitioner, unless the petitioner is otherwise entitled to paid leave. However, in the present case, the impugned resolution does not cite any valid reason for refusing the rest of the period of leave to the petitioner.

17. The insistence of the DI on production of medical certificate from a Government hospital is not supported by any Rule or Regulation. Merely because the DI is an instrumentality of the Government, the insistence upon certificates by a Government hospital, in the absence of anything to vitiate the prescriptions and medical certificate

produced by the petitioner from private doctors and clinics/hospitals, is unreasonable.

18. In the absence of anything being produced by the respondents to vitiate the medical certificate and prescription produced by the petitioner, I am of the opinion that the respondent-Authorities acted without jurisdiction in refusing the rest of the leave to the petitioner.
19. Since it has been argued that the petitioner has not joined as yet after commencement of the leave granted to her on August 7, 2023, it is deemed that such absence is in continuance of the Child Care Leave to which the petitioner is entitled up to October 5, 2023, as prayed for by her in lieu of Child Care Leave within the provisions of Memorandum dated July 17, 2015.
20. Hence, the impugned resolution of the respondent authorities is hereby set aside.
21. The petitioner's Child Care Leave is deemed to stand extended till October 5, 2023 as per her application.

22. However, the petitioner shall, immediately thereafter, join service and perform her duties diligently.

23. There will be no order as to costs.

24. Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)