

244 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.12745 of 2019 (O&M)
Date of decision :20.02.2023

Tania Makkar Petitioner

versus

State of Punjab & anr. Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Navjot Singh Wahniwal, Advocate
for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

None for respondent No.2.

PANKAJ JAIN, J. (ORAL)

Petitioner herein prays for a writ in the nature of certiorari quashing the impugned order dated 25.07.2018 (Annexure P-6) whereby the prayer made by the petitioner for grant of Child Care Leave (CCL) stands rejected.

The petitioner was appointed as Computer Teacher under a Project vide order dated 17.10.2008, in a pay scale of Rs.10,300-34800 with Grade pay of Rs.3800/- on contract basis. The services of the petitioner were regularized w.e.f. 01.07.2011. The appointment letter of the petitioner has been placed on record. Relevant covenant as contained in the same governing the conditions *qua* benefit of leave reads as under :-

“13. The employee will get casual leave and other leaves according to Punjab Civil Services Rules.”

The petitioner applied for CCL owing to illness of her child. The request made by the petitioner was ordered to be rejected in the following terms :-

“Computer Faulty are the employees of PICTES Society and there is no provision for Child Care leave under PICTES Society.”

Learned counsel for the petitioner submits that the order (Annexure P-6) cannot be sustained in view of specific covenant as contained in the Appointment Letter of the petitioner to the effect that she will get casual leave and other leaves in accordance with provisions contained in Punjab Civil Services Rules.

Per contra, learned State counsel submits that the Rules were made applicable only to regularize the services of the employees including the petitioner. So far as the Service Rules are concerned the same are in process of being framed and thus the claim of the employees for leave shall be adjudicated only after finalization of the Rules. Similar is the stand of respondent No.2 wherein it has been claimed as under :-

“6. That with regard to contents of paragraph number 6 of the writ petition, it is submitted the applicability of the Punjab Civil Services Rules was mentioned in the notification-dated 02.12.2010 as well in the appointment letter (Annexure P-2) only for regularizing the services of the Petitioner/ Computer Teachers. However, now the Answering Respondent - PICTES, in consultation with the State Government, is in a process of framing the service regulations for governing the service conditions of the Computer Teachers and after the finalization of the service regulations all the computer teachers will be governed under the said service regulations.

7. That the contents of paragraph number 7 of the writ petition are admitted being a matter of record. It is again reiterated the applicability of the Punjab Civil Services Rules was mentioned in the notification-dated 02.12.2010 as well in the appointment letter (Annexure P-2) only for regularizing the services of the Petitioner as well as computer teachers.

8. That the contents of paragraph number 8 of the writ petition are wrong and denied. It is once again reiterated that since the petitioner is an employee of the Answering Respondent - PICTES and there is no Rule/Regulation of the Answering Respondent - PICTES vide which the petitioner became eligible for Child Care Leave, therefore, her case for Child Care Leave was not considered. However, in view of leave policy (Annexure R-1) of Society, petitioner can apply for Causal leave, earned Leave or Half Pay leave.”

I have heard learned counsel for the parties and have gone through the records of the case.

The precise question involved is :-

Whether the claim of the petitioner for grant of CCL would be covered as per the provisions contained in PCS Rules or not? There is no dispute that the service of the petitioner was regularised vide Annexure P-2. The same contains conditions governing such regular appointment. Condition No.13 reads as under :-

“13. The employee will get casual leave and other leaves according to Punjab Civil Services Rules.”

There is also no denial to the fact that the PCS Rules do provide for CCL. The relevant rule reads as under :-

“(vi) Child Care Leave

- 8.128-B. (1) Subject to the provisions of this rule a woman Government employee having minor children below the age of eighteen years, may be granted Child Care Leave for a maximum period of one year (ie. 365 days) during her entire service for taking care of two eldest surviving children, whether for rearing or to look after any of their needs such as examination, sickness and the like, on production of a documentary proof.*
- (2) Such leave may be granted in more than one spells, but it shall not be granted in more than three spells in a calendar year. However, it shall not be granted for a period of less than fifteen days.*
- (3) The grant of leave under this rule shall be subject to the provisions of rule 8.15. If the exigencies of public service so require, the authority empowered to grant leave, may refuse to sanction leave to a Government employee or may cancel the leave already sanctioned in any case.*
- (4) Child Care Leave shall be sanctioned as in the case of earned leave and no Government employee shall proceed on such leave without obtaining prior approval of the competent authority*
- (5) Child Care Leave shall not be granted under any circumstances to a Government employee, who remains on an unauthorized absence from duty and applies for it.*
- (6) During the period of such leave, the Government employee shall be entitled to leave salary equal to the pay drawn immediately before proceeding on leave.*
- (7) This Leave shall not be debited against the regular leave account of the Government employee. However, a separate Leave Account for this Leave shall be maintained in a proforma, as may be specified and the entries relating to this Leave shall be made in the Service Book of the concerned employee.*
- (8) Child Care Leave shall not be sanctioned in the case of a woman Government employee,-*

(a) against whom a disciplinary proceeding has been instituted or who is under suspension; or

(b) who is under probation period: Provided that an authority empowered to grant leave may grant leave to such a Government employee after considering a medical certificate, countersigned by a medical authority not below the rank of Civil Surgeon, to the effect that the minor child is suffering from some serious ailment which warrants mother's immediate personal care; or

(c) who has been appointed on daily wages, work- charged or contract

basis.

(9) Leave already availed or being availed of by a Government employee shall, under no circumstances, be converted into Child Care Leave.

Clarification-

- (i) Child Care Leave in connection with the examination or illness of a minor child living abroad, shall be sanctioned on the basis of a certificate issued in this regard by the concerned educational institution or by an authorized doctor, as the case may be. The woman Government employee, who avails Child Care Leave in respect of a minor child living abroad, shall have to comply with all the rules/instructions for proceeding on ex-India leave and eighty per cent period of such leave shall have to be spent in the country where the child is living;*
- (ii) before Child Care Leave is sanctioned relating to the examination of a minor child, who lives in a hostel in India or abroad, the Government employee shall have to clarify how the needs of such a minor child will be looked after by her,*
- (iii) Leave Travel Concession shall not be permitted during Child Care Leave; and*
- (iv) a spell, which begins during a calendar year and ends in the next calendar year, shall be deemed as a spell pertaining to the calendar year in which the spell begins."*

The stand of the respondents is beyond comprehension. Both the respondents admit that there is no Rule, as of today framed by the Corporation to govern the service condition of the employees yet repeated reference is being made to the Rules which are in the process of being framed.

In the considered opinion of this Court, once the appointment letter of the petitioner specifically provided that her right to leave shall be governed by the provisions of PCS Rules and there is no other Rule in vogue as on today, the only inevitable conclusion that can be reached is that the claim of the petitioner has to be processed in terms of PCS Rules.

Resultantly, the impugned order Annexure P-6 which other wise also this Court finds to be cryptic and bereft of any reason cannot be sustained and is hereby ordered to be quashed. Respondents are directed to consider the claim of the petitioner in terms of the provisions as contained in PCS Rules within a period of one month from the date of receipt of certified copy of this order.

Ordered accordingly.

Since the main case has been decided, the pending civil miscellaneous applications, if any, also stand disposed off.

(PANKAJ JAIN)
JUDGE

20.02.2023
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No