

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

204

CWP-25221-2023 (O&M)

Decided on :15.12.2023

Mini Nanda

. .Petitioner

Versus

State of Haryana and others

. . . Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Ranjivan Singh, Advocate for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

HARSIMRAN SINGH SETHI , J. (Oral)

In the present petition, the prayer of the petitioner is for the grant of child care leave which request of the petitioner has been declined by the respondents vide the order dated 06.10.2023 (Annexure P-12) which has been challenged by the petitioner in the present petition.

Certain facts needs to be mentioned for correct appreciation of the issue in hand.

The petitioner is working as an Assistant Research Officer (A. R. O) on which post, she was appointed on 02.07.2014. While posted in the field, the said post of petitioner was designated/termed as Assistant District Statistical Officer (A. D. S. O). The petitioner is currently posted as Assistant District Statistical Officer (A. D. S. O) in the office of District Statistical officer, Kurukshetra.

The petitioner got married on 09.12.2020 and was blessed with a baby boy on 28.08.2022. The petitioner availed the benefit of maternity leave upto 24.02.2023 and rejoined her duty on 27.02.2023.

Before joining back the duties i.e. during the maternity leave, the petitioner applied for the grant of Child Care Leave w.e.f 06.03.2023 to

01.03.2024. As the request of child care leave was not granted, on the expiry of maternity leave, the petitioner joined back the duty on 27.02.2023. After joining back the duties, the petitioner again requested for child care leave, which was rejected on 01.03.2023 by the department concerned on the ground that due to the shortage of the staff, it is not possible to accept the request of the petitioner for child care leave. On 07.03.2023, the petitioner again applied for the grant of child care leave from 05.03.2023 to 14.03.2024.

Keeping in view the said request, the petitioner was allowed the child care leave for a period of 01 month starting from 20.03.2023 to 18.04.2023. The grant of only one month Child Care leave was challenged by the petitioner by filing CWP No. 7451-2023 and during the pendency of the said petition, the petitioner was granted the child care leave for another three months i.e. upto 04.09.2023. Keeping in view the said grant of three months child care leave, the writ petition was disposed of having not been pressed vide order dated 27.07.2023 (Annexure P-6).

After the expiry of three months child care leave, the petitioner again requested for the grant of child care leave vide application Annexure P-8. It is a conceded fact that the petitioner did not join back the duty after the expiry of three months child care leave and remained absent from duty without authority/sanction.

The present petition has been filed challenging the order dated 06.10.2023 by which, the further request for the child care leave has been declined by the respondents on the ground that due to the shortage of the staff, the department is unable to provide any substitute, as requested for.

Learned counsel for the petitioner submits that the child care leave is a right with the women employee so as to look after the minor child

and hence, as the child of the petitioner needs her care, the respondents were under obligation to grant the child care leave to the petitioner.

The present petition was taken up for consideration on 14.12.2023 and in the presence of both the parties, the department had agreed that the child care leave admissible to the petitioner will be given in case the petitioner performs the duty for a period of one day in each week so that there is no pendency of the working and the work of the department does not suffer. Learned counsel for the petitioner agreed to the said request of department.

Keeping in view the said agreement, the department passed an order dated 14.12.2023 itself that the child care leave is granted to the petitioner with the condition that on every Tuesday, the petitioner will have to perform her duty so that the work of the department does not suffer.

Today, learned counsel for the petitioner submits that the petitioner is not agreeable to the said condition put by the department for the grant of child care leave and she wants her child care leave "*in toto*" without there being any condition put therein.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Before adjudicating with the claim of the petitioner, the rules regarding the grant of the child care leave needs to be adhered to. The respondents have appended the said rules in their reply as Annexure R-3. The provisions qua the grant of child care leave, as envisaged under Haryana Civil Services (Leave) Rules, 2016 are as under:

"46. Grant of child care leave.— A competent authority may grant child care leave to a woman Government employee subject to following conditions:- (1) Child care

leave shall be admissible for a maximum period of 730 days during the entire service for taking care of her two eldest surviving children below the age of 18 years only.

(2) Child care leave shall not be demanded as a matter of right and no one can, under any circumstances, proceed on child care leave without prior proper sanction of the leave by the competent authority. H A R Y A N A C I V I L S E R V I C E S (L E A V E) R U L E S , 2 0 1 6 39 (3)

Child care leave shall be admissible during the probation period, provided the probation period shall be extended by the period of child care leave availed. (4) This leave

may not be availed for a spell of less than 30 days. (5)

Recognized holidays including sundays and vacation falling during the period of leave shall also be treated as

child care leave. (6) Leave not due (without production of medical certificate) may be granted under these rules

beyond the period of 730 days of child care leave . (7)

Any other kind of regular leave may be prefixed or suffixed to child care leave. (8) The leave account of child

care leave shall be maintained in the prescribed proforma and be kept in the service book. (9) Period of any other

kind of leave already availed or the period of unauthorized absence shall not be converted into child

care leave with retrospective effect. (10) No child care

leave shall be admissible for third or next child irrespective of age. (11) Child care leave will be allowed

to women Government employees with the intention to

facilitate them to take care of their children at the time of need but it does not mean that child care leave shall disrupt the functioning of the offices/ institutions/schools etc. Therefore, it shall be the duty of sanctioning authority to keep this in view. (12) The competent authority for grant of such leave shall be as under:-

<i>Appointing Authority</i>	<i>Group C & D employees</i>	<i>Full powers</i>
<i>Head of Department</i>	<i>Group B employees</i>	<i>Full Powers</i>
<i>Administrative Secretary</i>	<i>Group A employees</i>	<i>Full Powers</i>

Note.— This rule shall also be applicable to women employees appointed on adhoc basis and work charged employees, however, not before completion of minimum two years service and not beyond the date of discharge or termination on whatsoever reason."

A bare perusal of the above rules shows that as per the Rule 46 (2), the child care leave cannot be demanded as a matter of right and no one can, proceed on child care leave without prior sanction of the leave by the competent authority. Further, as per rule 46 (11), the child care leave will be allowed to the women Government employees with the intention to facilitate them to take care of their children at the time of need but it does not mean that child care leave shall disrupt the functioning of the offices/institutions/schools etc and the functioning of the offices/institutions/schools etc is to be ensured while granting the child care leave to women employee.

In the present petition, the stand taken by the respondent-State is that the petitioner is the only employee in the whole department concerned to perform the duty on the post of Assistant District Statistical Officer (A. D.

S. O) at Kurukshetra. The duties which the petitioner needs to perform are mentioned in paras No. 9 & 10 of the reply filed by the respondents which includes the preparation of the budget, compilation of data, compilation of price index and other duties which are very relevant for preparing the budget, presentation of which budget is only months away and in the absence of any Assistant District Statistical Officer (A.D.S.O) working, the work assigned to the department concerned cannot be achieved which will hamper the preparation of budget and also other financial decision which are to be taken for the betterment of public at large.

Keeping in view the said fact, the petitioner's plea for the grant of child care leave was declined by the respondents, which decision has been reconsidered by the department so as to allow the petitioner the benefit of child care leave subject to the condition that the petitioner will have to perform duty on every Tuesday of a week, which offer was at one stage accepted by the learned counsel for the petitioner but later declined.

Once, the grant of child care leave is not absolute right without there being any terms and conditions, the same can only be extended in case the work of the department does not suffer. Further, even while extending the child care leave, the respondents are under obligation to see that the leave should be granted with some conditions so that, the employee also avail the leave and can perform the duties on a particular day in a week especially when the employee is working on a single cadre post and there is no other substitute available to perform the duties on the post in question.

In the facts and circumstances of the case, the respondents agreed to grant the petitioner child care leave with the request that the petitioner will attend the duty on every Tuesday. Though the petitioner agreed to the said terms and conditions of the department concerned during

the hearing, but at the time of passing of the order, the petitioner has resiled from the said commitment stating that the petitioner wants the child care leave without there being any restriction of working for the department concerned. .

From the conduct of the petitioner, it can be presumed that the petitioner intends to take child care leave not only to take care of her child but to avail the benefit of salary also. This fact is clear that the petitioner is unauthorizedly absent and is not performing the duties since 05.09.2023 i.e. after the child care leave granted to the petitioner had expired.

An employee who is unauthorizedly absent and prima facie has misconducted, even otherwise has no right to seek any benefit admissible under the rules. The employee concerned has to work in accordance with the rules governing in the service and an employee who is absent without there being any sanction of child care leave in her favour, cannot be allowed to raise the plea that the terms and conditions for the grant of leave should be according to her especially when, according to the rules granting the leave for the child care, the authorities have been given the power to ensure that the working of the department does not suffer.

Keeping in view the facts and circumstances of the present case, where the petitioner was allowed the benefit of child care leave subject to the condition that she will work on Tuesday in every week which though initially accepted by the petitioner, but as of now resiled from the said undertaking and no justification has come forward so as to accept that the plea of the petitioner for the grant of child care leave without there being any condition especially when there is no one in the department who can substitute for the petitioner and is competent to discharge the duties of the post in question especially keeping in view the job profile of the petitioner

and the preparation of budget which is to be done in the near future.

No ground is made out for the grant of child care leave to the petitioner as being claimed by the petitioner in the present petition, the present petition is dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

15.12.2023

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Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*