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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 26th April, 2023*

+ **LPA 437/2018**

MOUNT CARMEL SCHOOL

..... Appellant

Through: Mr. Romy Chacko, Mr. Vedanta Varma, Mr. Vibhor Kush, Mr. Akhil Kumar Golaand Mr. Shubhankar Choudhary, Advocates along with Mr. Michael Williams, in person.

versus

DEEPIKA ANAND & ANR

..... Respondents

Through: Mr. I.S. Alagh, Senior Advocate with Mr. Avneesh Garg, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

NAJMI WAZIRI, J.(ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

C.M.APPL. 15253/2023 (by R-1 for recalling of order dt. 10.03.2023)

1. This application seeks recall of the order dated 10.03.2023 which recorded settlement of the *lis* by consent of the parties. Prior to recording of the settlement, the case was adjourned at the request

of the respondent on 08.02.2023, 10.02.2023, 16.02.2023 and 02.03.2023 to facilitate her to ponder over the school offer and/or to work out a computation of the amount that she would be comfortable with. R-1 quoted an amount which formed the basis of the consent order passed on 10.03.2023. Thereafter, the school has filed its undertaking to abide by the settlement as recorded in the said order. A copy of the same has been supplied to the respondent in the course of the hearing. Let the said undertaking be brought on record.

2. However, R-1- the applicant, has not filed her undertaking. She says that she was unaware of the communication from the DOE to the school directing the latter to withdraw the dismissal order. Therefore, the consent order be recalled.
3. The learned counsel for the appellant/School submits that the aforesaid order of the Government is of no value since for the appellant-a minority institution, no prior approval of the DOE is required for dismissal of its teacher/employee.
4. The learned Senior Advocate for the R-1 submits that the said contention is contrary to their submissions recorded in para 7 of

the order dated 17.02.2022 passed by the learned Single Judge of this court in W.P.(C) 2843/2022, which reads as under:-

“...7. Qua suspension of subsistence allowance it is submitted by learned counsel for respondent she has not been attending the school for the last five years and thus had abandoned her job. He submits the chargesheet complies with the provisions of Rules 118 and 120 and the suspension is also in order and they would produce the record. Let counter affidavit be filed with complete documents within four weeks from today with an advance copy to learned counsel for the petitioner. Rejoinder, if any, be filed within two weeks thereafter....”

5. Be that as it may, the settlement was arrived at between the parties after due deliberation by them. There is no element of coercion alleged anywhere in the application. Therefore, there is no cause for recalling the order dated 10.03.2023.
6. The application is dismissed.

LPA 437/2018, CM APPLs. 32022/2018 & 2132/2020

7. In the first instance, R-1 took a pre-maternity leave from 1st to 5th February, 2017 and then she took an extension of the said leave from 06.02.2017 to 06.08.2017. After a mere gap of three days she immediately proceeded on child care leave from 10.08.2017 to 16.05.2018. In effect, the teacher did not come to school from 01.02.2017 to 16.05.2018. The total continuous duration for which

she remained away from school was 467 days. For the 3 intervening days from 07.08.2017 to 09.08.2017 also, she remained absent. In effect, the total number of days for which she did not render any service to the school were 470 days. The impugned order directs that she be paid her remuneration, as her leave of absence from school was justified.

8. The learned counsel for respondent no.1 now seeks to respond to a Computation chart handed-over to him by the appellant, in court today.
9. The records establish that there has been clear denial of natural justice insofar as no time was granted to the school to file a counter affidavit to the writ petition. The learned counsel for the appellant/School refers to Office Memorandum of the DoPT dated 18.11.2008, which reads *inter alia* as under:

No.13018/2/2008-Estt.(L)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel and Training)

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18th ANNEXURE - R1
New Delhi, dated the November, 2008.

OFFICE MEMORANDUM

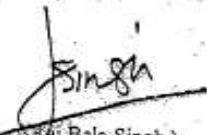
Subject : Child Care Leave in respect of Central Government employees as a result of Sixth Central Pay Commission - clarification regarding -

The order regarding introduction of Child Care leave (CCL) in respect of Central Government employees were issued vide this Department's O.M. of even number dated 11th September, 2008. Subsequently, clarification in this regard were also issued vide O.M. dated 29th September, 2008.

2. Consequent upon the implementation of orders relating to Child Care Leave, references has been received from various sections regarding the procedure for grant of this leave etc. In this connection, it is mentioned that the intention of the Pay Commission in recommending Child Care Leave for women employees was to facilitate women employees to take care of their children at the time of need. However, this does not mean that CCL should disrupt the functioning of Central Government offices. The nature of this leave was envisaged to be the same as that of earned leave. Accordingly, while maintaining the spirit of Pay Commission's recommendations intact and also harmonizing the smooth functioning of the offices, the following clarifications are issued in consultation with the Department of Expenditure (Implementation Cell) with regard to Child Care Leave for Central Government employees:-

- i) CCL cannot be demanded as a matter of right. Under no circumstances can any employee proceed on CCL without prior proper approval of the leave by the leave sanctioning authority.
- ii) The leave is to be treated like the Earned Leave and sanctioned as such.
- iii) Consequently, Saturdays, Sundays, Gazetted holidays etc. falling during the period of leave would also count for CCL, as in the case of Earned Leave.
- iv) CCL can be availed only if the employee concerned has no Earned Leave at her credit.

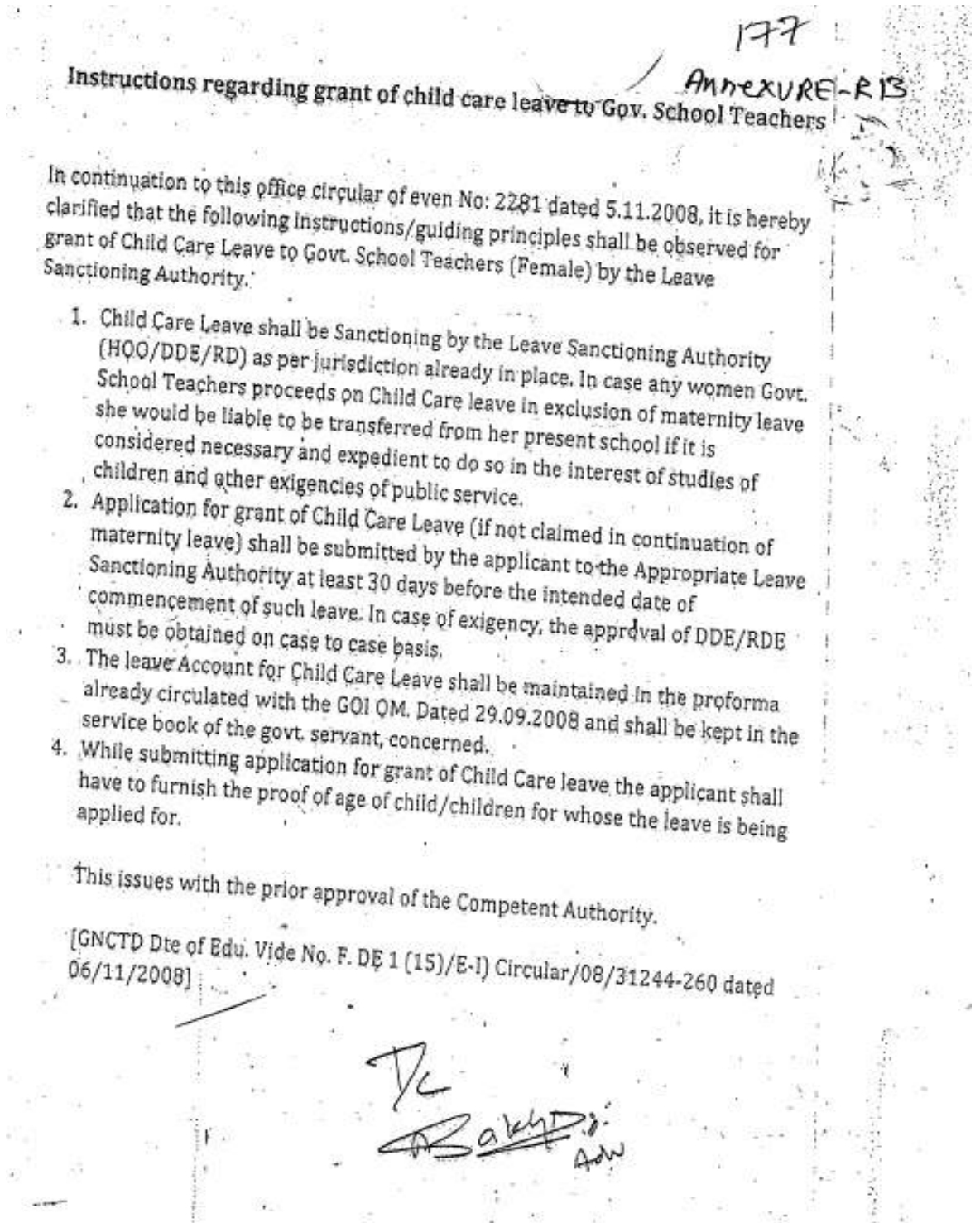
3. Hindi version will follow.


(Bala Singh)
Under Secretary to the Govt. of India

To
All Ministries/Departments of the Govt. of India, etc. (as per standard mailing list)

10. Also the instructions issued by the GNCTD on 06.11.2008

(Annexure R-13, PDF-188) reads *inter alia* as under:



11. The aforesaid instructions were applicable under section 10(1) of the Delhi School Education Act, 1973 to all recognized private schools in the NCT. The Office Memorandum of the DoPT dated 18.11.2008 specifically stipulates that: “CCL cannot be demanded as a matter of right and under no circumstances can any employee proceed on CCL without prior proper approval of the leave, by the leave sanctioning authority.”
12. As noted hereinabove, after the pre-maternity leave, maternity leave was taken which ended on 06.08.2017. The respondent/teacher then proceeded on 280 days child care leave without an application having been made 30 days prior to her availing it. Her proceeding on CCL without permission of the school, indeed even without applying for such leave, is in contravention of the aforesaid instructions/O.M. issued by the Government regarding grant of CCL. Yet, the teacher/R-1 proceeded on leave possibly on the assumption that simply because she had just completed her maternity leave, she would need the CCL and the same would be deemed to have been granted.

However, that leaves the school to suddenly fend for itself after her maternity leave expired. Her absence was for about 470 days, of which, for 280 days she proceeded on CCL.

13.The rationale behind making an application atleast 30 days prior to proceeding on CCL is that the school could make due alternate arrangements regarding the absence of such teacher from school. A sudden, uninformed and unsanctioned absence and for a continuously long period leaves the school in an uncertain position as to whether it should employ/engage the services of a teacher for a temporary phase or on a permanent basis. The non-intimation to the school or not making an application to the effect that the teacher would be proceeding on child care leave for about 280 days would surely disrupt the functioning of the school.

14.Furthermore, insofar as the teacher did not apply to the school for grant of child care leave,her absence from the school was irregular and the school was right in taking the view that it has taken.

15.In the circumstances, the impugned order cannot be sustained and is accordingly set aside.

16. In view of the above, the appeal, along with pending applications, if any, stands disposed-off.

NAJMI WAZIRI, J

SUDHIR KUMAR JAIN, J

APRIL 26, 2023/v/n/am

