



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

241

CWP-32929-2024

Decided On: 04.04.2025

POONAM TANWAR

....PETITIONER(s)

Versus

STATE OF HARYANA AND OTHERS

....RESPONDENT(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Raghav Sharma, Advocate for the petitioner.

Mr. Parveen Mehta, DAG, Haryana.

TRIBHUVAN DAHIYAJ.(Oral)

The petition has been filed seeking a writ of *certiorari* quashing the order dated 30.10.2024, Annexure P-7, whereby the petitioner's request for Child Care Leave (CCL) has been declined being inadmissible. Further, a writ of *mandamus* has been sought directing the respondents to grant CCL for a period of ninety days.

2. Facts relevant to decide the matter are, the petitioner joined service with the Department as Guest Teacher on 12.07.2007. Her services are now governed by the Haryana Guest Teachers Service Act, 2019 (for short, 'the Act of 2019'), notified on 12.03.2019. She applied for grant of CCL for ninety days from 05.08.2024 to 02.11.2024, which has been declined vide impugned order dated 30.10.2024, on the ground that there is no provision for the same under the Act of 2019. Under Section 9 thereof the Government has been empowered to make rules for compensation, leave, transfer, termination of service, etc.; however, there is no provision of rules for CCL, nor any have been made.

3. In this factual background, learned counsel for the petitioner has contended that the Department is under obligation to make rules for CCL to



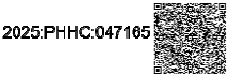
women Guest Teachers, so that they are not deprived of due participation in teaching work. In support of the contention, reliance has been placed upon an interim order dated 22.04.2024, rendered by the Supreme Court in Special Leave to Appeal (C) no.16864/2021 titled *Shalini Dharmani v. The State of Himanchal Pradesh and others*. He has also referred to Rule 46 of Haryana Civil Services (Leave) Rules, 2016 (for short, 'the Rules of 2016'), which pertain to grant of CCL to Government employees. A 'Note' appended thereto provides, "*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.*" In case facility of CCL has been provided for women *adhoc* and work charged employees, there is no reason not to have such a provision for women Guest Teachers. *Secondly*, he has referred to certain office orders dated 26.02.2019 and 11.05.2023, Annexure P-9, whereby women Guest Teachers were granted Child Adoption Leave subject to fulfillment of requirements of Rule 45 of the Rules of 2016. On similar footing the petitioner deserves to be granted the benefit of CCL under these Rules.

4. Learned State counsel, on the contrary, contends that the impugned order has been rightly passed, and in the absence of any provision in the Act of 2019 or the Rules framed thereunder, the benefit claimed cannot be granted. As and when any provision for CCL is made, the petitioner's case will be accordingly considered.

5. Submissions made by learned counsel for the parties have been considered.



6. It is apparent on record that the petitioner is working in the Department as Guest Teacher, and her service is governed under the Act of 2019. It is not in dispute that there is no provision for grant of CCL under the Act, nor have any Rules been framed for the purpose. In such a situation the petitioner's claim for grant of CCL cannot be considered. The reliance placed upon *Shalini Dharmani* case is also misplaced as the petitioner therein was working as a regular Assistant Professor in a Government College, and her fourteen years old son was suffering from a rare genetic disorder, Osteogenesis Imperfecta, who had undergone several surgeries since birth. There was a specific provision for grant of CCL under Rule 43-C of the applicable Central Civil Service (Leave) Rules, 1972, under which the Union Government resolved to permit CCL for women employees with differently abled children upto the age of twenty-two years instead of eighteen years. Her writ petition seeking a direction to the Government for adoption of Rule 43-C of the CCS (Leave) Rules, had been dismissed by the High Court. Reliance was placed upon provisions of the Rights of the Persons with Disabilities Act, 2016 too. It was in these facts the Supreme Court observed that the State as a model employer cannot be oblivious to the special concerns, and provision of CCL is required for such women to ensure that they are not deprived of due participation as members of the work force. Directions were accordingly issued to the State of Himachal Pradesh to re-consider the entire aspect of granting CCL to mothers, including making special provisions consistent with the objects and purposes of the Act of 2016, for those who were bringing up children with special needs. Besides, a direction was issued to consider the petitioner's application for grant of special leave under Rule 32 of the CCS (Leave) Rules, pending further orders. These were only interim directions



issued in a pending special leave to appeal petition, and accordingly no benefit of the same can be taken by the petitioner herein for grant of CCL, nor is she similarly placed as the petitioner in the SLP.

7. Further, the reliance placed upon the grant of child adoption leave under the Rules of 2016 to similarly placed women Guest Teachers by the Department cannot be a ground to claim the benefit since, firstly, it is not CCL and, secondly, the said Rules are not applicable to women Guest Teachers. Thirdly, in case any benefit has been given by the Department in violation of the Act of 2019, it cannot be a ground to claim similar relief as issuing any such direction will amount to perpetuating the legality. It is a settled law that right to equality can be claimed in furtherance of law, and not in derogation thereto. Fourthly, it also needs to be noted that one of the office orders, dated 26.02.2019, granting child adoption leave to a woman has been passed prior to notification of the Act, i.e., 12.03.2019. And the other one, dated 11.05.2023, did not grant the benefit, as thereby the matter was only sent to the competent authority for advice as to whether the concerned Guest Teacher was entitled to child adoption leave under the Rules of 2016.

8. In view thereof, there is no merit in the petition and it stands dismissed.

04.04.2025
Ad

(TRIBHUVAN DAHIYA)
JUDGE

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No