

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**



O.A. No. 060/164/2021
(Order reserved on 05.03.2021)

Chandigarh, this the 10th day of March, 2021

HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)

Jasbir Kaur w/o late Sh. Gurkirpal Singh, aged 45 years, working as Junior Assistant in the office of Regional Employment Exchange, Union Territory, Chandigarh 160017.

.....Applicant

By Advocate: Mr. K.B. Sharma

Versus

1. The Advisor to the Administrator, Union Territory Chandigarh, U.T. Secretariat, Sector 9, Chandigarh-160019.
2. The Secretary Employment, Union Territory, Chandigarh Sector 17, Chandigarh-160017.
3. The Regional Employment Officer, Regional Employment Exchange, U.T. Chandigarh Sector 17, Chandigarh-160017.

.....Respondents

By Advocate: Mr. Arvind Moudgil

O R D E R

AJANTA DAYALAN, Member (A):

1. The present OA has been filed by the applicant Jasbir Kaur seeking quashing of orders at Annexures A-7 and A-9, both dated 08.02.2021, rejecting Child Care Leave applied by her. The applicant has also sought directions to the respondents to grant her Child Care Leave "for the period claimed by the applicant" in her applications dated 25.01.2021 (Annexure A-2)



and 05.02.2021 (Annexure A-6). She has also sought consequential benefits and cost of application.

2. The applicant is presently working as Junior Assistant in the office of Regional Employment Exchange, Union Territory, Chandigarh. She was initially engaged as Clerk-cum-Typist in 2002 against Scheduled Caste and Physically Handicapped quota. She is physically handicapped since her childhood due to Polio.

3. The applicant has a daughter Prabhleen Kaur who is studying in XIth standard in Carmel Convent School, Sector 9 Chandigarh. The applicant has stated she is the only member to take care of her daughter as her husband expired in 2004.

4. Further, the applicant has stated that as the examination of her daughter was scheduled from 08.02.2021 to 26.02.2021, she applied for Child Care Leave for these dates vide her application dated 25.01.2021 (Annexure A-2). Date sheet of the examination is enclosed as Annexure A-3. The leave was sanctioned vide order dated 02.02.2021 (Annexure A-4).

5. The applicant has further submitted that later, on 04.02.2021, she came to know that the examination was postponed to 24.02.2021 to 12.03.2021. As her daughter was under stress and sick and was taking treatment from GMSH Sector 16, the applicant submitted leave application dated 05.02.2021 (Annexure A-6) and requested for extension of her leave till the final examination of her daughter. The respondents vide order dated 08.02.2021 (Annexure A-7) informed her that her request cannot be acceded to and she was directed to join the office immediately.



6. The applicant further submitted an application dated 08.02.2021 informing that as her earlier Child Care Leave already sanctioned vide letter dated 02.02.2021 is valid till 26.02.2021, she will submit her joining report after expiry of this Child Care Leave (Annexure A-8). The respondents vide email dated 08.02.2021 (Annexure A-9) cancelled the Child Care Leave already granted without any reason and justification. Further, the applicant states that the order passed by the respondents is non-speaking and deserves to be set aside.

7. The applicant has also pleaded that her daughter was sick and was suffering from stress and she needed care. Being single parent, the applicant has to take care of her. Also, the leave already sanctioned should not have been withdrawn without recording any reason.

8. The applicant has also alleged harassment stating that the action of the respondents is a counter-blast to her having filed OAs claiming her seniority as well as promotion as Senior Assistant etc. She alleges that the respondents have been harassing her for the last two years and have failed to consider the purpose of the Child Care Leave Rules.

9. The applicant has also relied upon the judgement of the Apex Court in the case of **Orissa versus Dr. (Miss) Binapani Dei & Ors**, 1967 AIR 1269, 1967 SCR (2) 625. Also, she states that similar view has been taken in the case of **Krishan Lal versus State of J&K** reported as 1994 (27) ATC 594. The applicant has further relied upon the following judgements:-



- (i) Amandeep Kaur vs. UOI and Ors., 2015(18) SCT 572
- (ii) Moti Lal vs. State Bank of India, 1995(1) BC 27
- (iii) Santona Thakuria (Dr.) vs. State of Assam and Ors., GauLT 610
- (iv) Sunita Haridas Dhait vs. B.R. Ambedkar Shikshan Sanstha, 2005(2) BCR 761
- (v) Bhupendra Singh vs. Commissioner, Devi Patan Mandal, Gonda & Ors., 2011(89) ALR 574
- (vi) Smt. Tanuja Tolia vs. State of Uttarakhand and others, 2020(3) LLN 532
- (vii) Dr. Kanchan Bala vs. State of Haryana and others, 2018(2) SCT 393
- (viii) Doli Gogoi vs. State of Assam and others, 2017(3) GauLR 247
- (ix) Mrs. Lipika Das (Naskar) vs. State of West Bengal & Ors., 2018 LIC 4343

10. The applicant has also referred to the provisions of Child Care Leave Rules. Also, she has claimed that rejection of leave is violative of Article 21 of Constitution of India.

11. In view of all above, the applicant has sought relief claimed by her in the OA.

12. The respondents have contested the claim of the applicant. They have admitted that the applicant is 40% physically handicapped and she is a widow and has one daughter.

13. The respondents have further submitted that as per instructions dated 22.12.2011 (Annexure R-1) issued by Government of Punjab and adopted by Chandigarh Administration, the leave is subject to production of documentary proof in support of leave application. The instructions are also clear that the authority competent to grant leave may also refuse to sanction leave or to cancel the already sanctioned leave. In the present case, the applicant applied for extension of leave vide her application dated 05.02.2021. In



this application, documentary proof of her daughter's postponement of examination was attached. However, there was no documentary proof of the daughter being stressed. Also, it is stated that Annexure A-5, (which is the prescription slip of her daughter from GMSH Sector 16 Chandigarh) is although dated 31.01.2021, but was not attached with her application dated 05.02.2021. Her Child Care Leave could not be automatically extended. Hence, the same had to be considered on merits based on documentary proof submitted by her. The same was already under consideration based on merits as per the new date sheet attached by her.

14. The respondents have further submitted that Clause (8) of instructions dated 22.12.2011 of Child Care Leave also provides that this leave is subject to provisions of Rule 8.15 of PCS Rules, 2016 Part 1 and cannot be claimed as a matter of right. A copy of these Rules is attached at Annexure R-3. The department has also denied information as to whether she is the sole care taker of her daughter or not.

15. The department has admitted the fact of submission of application dated 05.02.2021 (Annexure R-2). But, there was no proof regarding daughter's sickness or stress and ongoing treatment. Besides, the applicant now had no cause for Child Care Leave based on examination from 08.02.2021 due to postponement of exams which are now scheduled from 24.02.2021 to 12.03.2021. Medical certificate attached with OA now in defence of her claims was never attached with her application dated 05.02.2021. Moreover, the medical document



is subject to interpretation by competent medical authority. However, the applicant seems to have considered the extension of Child Care Leave as a matter of right. The respondents have categorically stated that the applicant's earlier sanctioned Child Care Leave was cancelled on 08.02.2021 as it was not required now due to postponement of examination for which she attached documentary proof.

16. The respondents have also stated that the applicant seems to be in a directive mode in view of the language used by her in her leave application and seems to be taking grant of leave as a matter of right.

17. The respondents have also stated that as per Child Care Leave instructions dated 22.12.2011 (Annexure R-1), the competent authority can reject this leave in public interest and can also "cancel already sanctioned leave".

18. It is also stated that Punjab Civil Service Rules 2016 clearly provide that "leave cannot be claimed as a matter of right. When the exigencies of the public services so require, discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it" (Annexure R-3).

19. The respondents have also vehemently denied that rejection of leave is in any way related to filing of the OAs by the applicant. They have stated that this is a strategic move adopted by her to seek undue sympathy.

20. Further, the respondents have stated that as per office record, from the year 2017 only, the applicant applied for



Child Care Leave for a total of 10 times and she was never refused such leave counting upto 205 days as per details given in Annexure R-5. Even the current leave of 19 days was sanctioned, but was cancelled due to documentary proof provided by the applicant relating to postponement of examination.

21. In view of all above, the respondents have vehemently contested the claim of the applicant. They have stated that the applicant has no ground to file the present OA and there is no legal ground for granting relief claimed by her. The OA, therefore, deserves to be dismissed in the interest of justice.

22. I have heard counsel of the opposing parties and have also gone through the pleadings of the case. I have also given my thoughtful consideration to the entire matter.

23. The facts of the care are largely undisputed and the matter is limited to sanction of Child Care Leave applied by the applicant. In this connection, the two applications submitted by the applicant are quite relevant and need to be reproduced. Her first leave application dated 25.01.2021 (Annexure A-2) reads as follows:-

“.....

With due respect kindly allow me 19 days Child Care Leave w.e.f. 08.02.2021 to 26.02.2021 due to the exam of my daughter. (Copy of date sheet attached).

.....”

This leave was sanctioned vide order dated 02.02.2021 (Annexure A-4). In this leave application, the dates of



examination were from 15.02.2021 to 26.02.2021 for XIth standard.

24. The second leave application submitted by the applicant is dated 05.02.2021 (date is incorrectly mentioned by the applicant as 05.01.2021). This reads as follows:-

“.....”

It is stated that my daughter is not well due to stress and her exam have been postponed from 24.02.2021 to 12.03.2021. So, it is requested that my child care leave shall be extend till exam. (Copy of date sheet attached).

.....”

The revised date sheet was enclosed alongwith this leave application. The dates of examination now were from 24.02.2021 to 12.03.2021. However, no documentary proof of illness was enclosed with this leave application.

25. It is thus observed that the second application is quite casual and in fact not even a proper leave application. No dates of leave to be sanctioned have been mentioned at all in the leave application itself. This is quite unusual to say the least and shows callous attitude of the applicant. The only mention is that the “child care leave shall be extend till exam”. Even, the language used is highly inappropriate and objectionable. There is no request; rather there is a direction as is clear from the words used “shall be extend”.

26. It is, therefore, apparent from above that the second application for grant of extension of Child Care Leave was not a proper application in any manner and did not even mention the period of leave sought.



27. It is also clear and the matter does not need to be debated that the authority which is competent to sanction the leave, can also refuse the same and can also withdraw the sanction already given. This is more so in the instant case as the cause of initial grant of leave - that is the examination of her daughter from 15.02.2021 to 24.02.2021 - was itself postponed. Thus, withdrawal of leave sanctioned cannot be questioned with and is the discretion of the sanctioning authority.

28. Besides, I also note that while the applicant is now giving proof of sickness and stress of her daughter, the same proof was never given to the authority while applying for leave. This makes me believe that perhaps the applicant was considering Child Care Leave as a matter of right and that is why, she failed to fulfil even the basic pre-requisite required while applying for leave.

29. Regarding bias and harassment alleged by the applicant in the hands of the respondents, I note that the respondents have denied such allegations. They have categorically stated that the rejection of leave has nothing to do with her filing of OAs. Also, I note that the applicant has not impleaded any one by name as party. Moreover, no proof has been given by her of the harassment being alleged by her.

30. Besides, I note from Annexure R-5 that from the year 2017 onwards itself, the applicant has applied for and has been granted Child Care Leave on ten different occasions. In other words, in last four years itself, the applicant has taken Child Care Leave on ten occasions for exams. Total number of



days for which Child Care Leave has been availed are over 200 days (Annexure R-5). On all these occasions, documentary proof for grounds of Child Care Leave was attached. On one occasion, from 26.02.2019 to 01.03.2019 when she took Child Care Leave for four days in continuation of her earlier leave due to daughter being not well, she attached documentary proof. Thus, she was well aware of requirement of the rules. As such, she cannot now claim harassment just because the leave applied for – if her application can at all be called a leave application – was not sanctioned.

31. Further, I observe that there is no question of natural justice as the ground for which originally leave from 08.02.2021 was applied, was no longer existing as exam stood postponed. Also, there is no question of speaking order in view of the specific facts of this case.

32. In view of all above, I note that the cases relied upon by the applicant, do not help her in the instant case and that they are clearly distinguishable in view of the clear and specific facts of this case as discussed in detail in the preceding paragraphs.

33. In view of all above, I am of clear opinion that the applicant has no cause of action. Leave cannot be taken as a matter of right. The applicant seems to have this conception as is clear from her actions and behavior as given in the preceding paragraphs. There is no legal ground whatsoever to come in the way of orders passed by the competent authority.



34. The OA is, therefore, dismissed as being devoid of merits.
35. There shall be no order as to costs.

(Ajanta Dayalan)
Member (A)

Place: Chandigarh
Dated: March 10th, 2021
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