

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00447/2017

Jabalpur, this Friday, the 23rd day of March, 2018

HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Smt. P.V.S. Laxmi, age 47 years, W/o Dr. P.P. Murti, Occupation
PRT, Kendriya Vidyalaya, Bilaspur Chhattisgarh, Pin : 495004.

-Applicant

(By Advocate – Shri N.S. Ruprah)

V e r s u s

1. Union of India through Kendriya Vidyalaya Sangathan, Sahid
Jeet Singh Marg, Institutional Area, New Delhi – 110016, through
its Commissioner.

2. Dy. Commissioner, Kendriya Vidyalaya Sangathan, Regional
Office, Deendayal Upadhyay Nagar, Raipur – 495004.

3. Principal, Kendriya Vidyalaya, Bilaspur (Chhattisgarh) –
495004.

4. Shri J.R. Dash, Principal Kendriya Vidyalaya, Bilaspur
(Chhattisgarh) 495004.

5. Union of India through the Secretary, Ministry of Personnel
Public Grievances and Pension, North Block, New Delhi –
110001.

-Respondents

(By Advocate – Shri M.K. Verma)

ORDER

Through this Original Application, the applicant has
challenged the order dated 20.12.2016 (Annexure A-1) passed by

the respondent No.2, whereby the respondent No.2 has refused to regularise the leave period of the applicant.

2. The applicant has sought for the following reliefs:

“8. Reliefs Sought:-

- (i) to quash the impugned order Annexure A-1 dt. 20.12.16 in so far as it does not regularize period of the applicant's absence and
- (ii) to direct the respondents to regularize the applicant's absence from 06.09.16 to 07.11.16 and from 09.11.16 to 19.12.16;
- (iii) this hon'ble Tribunal be further pleased to pass such other orders as it may deem fit under the circumstances of the case.”

3. The case of the applicant is that she was appointed as Primary Teacher vide order dated 20.04.2009 (Annexure A-2). The applicant has a daughter namely P. Shruti, who is suffering from some gynecological and other health problems and is preparing for competitive examinations at Kota, Rajasthan. Vide circular dated 18.11.2008 (Annexure A-6), the Government of India, Ministry of Personnel, Public Grievances and Pension, issued policy for grant of Child Care Leave (in short ‘CCL’) to facilitate women employees to take care of their children at the time of need. Further clarification was issued on 12.01.2016 (Annexure A-7), wherein a more sympathetic approach was suggested and it was said that “In cases where a female Government servant applies for

Child Care Leave for at least five working days, she should normally not be refused leave citing exigencies of work unless there are grave and extraordinarily compelling circumstances that warrant refusal.”

4. The applicant submitted an application dated 27.06.2016 (Annexure A-8) and requested for extension of her CCL from 15 days to 3 months from 02.06.2016 onwards and cancel the sanctioned leave from 27.06.2016 to 11.07.2016. However, she was granted leave of 15 days only. Thereafter, the applicant submitted another application on 11.08.2016 (Annexure A-9) and requested for Child Care Leave from 22.08.2016 to 18.11.2016 to take care of her daughter. However, the respondent No.4, vide letter dated 16.08.2016 (Annexure A-10) granted leave for 15 days from 22.08.2016 to 05.09.2016. The applicant submitted another application on 20.08.2016 (Annexure A-11) to the respondent No.2 reiterated the reasons for grant of CCL for a period of 89 days. However, vide Annexure A-12 dated 31.08.2016, the applicant was given a letter by respondent No.5, wherein she was informed that CCL cannot be claimed as a matter of right. In response to the said information, the applicant again requested the

respondent department vide email dated 08.09.2016 (Annexure A-13) to sanction the CCL for a period of 89 days.

5. The respondent No.2 issued a Show Cause Notice dated 04/05.10.2016 (Annexure A-14) to the applicant, wherein she was asked to explain the reasons for her unauthorised absence from 06.09.2016 onwards. The applicant presented herself on duty on 08.11.2016 and thereafter submitted application dated 09.11.2016 for grant of CCL from 09.11.2016 to 20.12.2016. However, the respondent No.5 sent a letter dated 19.11.2016 (Annexure A-15), whereby the applicant was directed to resume her charge immediately, failing which, action will be taken against the applicant under Rule 81 (D) of the KVS Rules. The applicant against sent an application on 21.11.2016 (Annexure A-16), for considering her application dated 09.11.2016 by granting CCL from 09.11.2016 to 20.12.2016.

6. The further case of the applicant is that when she submitted the joining to respondent No.4 on 20.12.2016 (Annexure A-17), she was not allowed to join and it was noted by the respondent No.4 that the applicant can meet the respondent No.2 for further direction. Thereafter, on the same date on 20.12.2016, the applicant visited the office of respondent No.2 and requested for

joining. The respondent No.2, vide letter dated 20.12.2016 (Annexure A-1), allowed the applicant to join the duty with the condition that she would not proceed on leave in future, without prior sanction. It was further mentioned in the letter that the leave period of the applicant shall not be treated as regularized.

7. The respondents have filed their reply. It has been submitted by the respondents that the CCL is not a matter of right. It has to be sanctioned by the competent authority just like any other regular leave. The applicant remained absent from duty from 06.09.2016 to 07.11.2016 and 09.11.2016 to 09.12.2016. Since, she had absented herself from duty, the leave period is not regularized. It has been further submitted that as per Government of India order, women employees having minor children may be granted CCL w.e.f. 01.09.2008 by an authority competent to grant leave, for a maximum period of two years (i.e. 730 days) during their entire service for taking care of upto two children rearing or to look after any of their needs like examination, sickness etc. During the period of such leave, the women employees shall be paid leave salary equal to the pay drawn immediately before proceeding on leave and it shall not be debited against the leave account. CCL may be availed of in more than one spell. It has also

been submitted that no employee can proceed on CCL without prior approval of the leave by the leave sanctioning authority. The leave is to be treated as Earned Leave and sanctioned as such.

8. The applicant applied for 89 days CCL from 22.08.2016 to 18.11.2016. Considering the exigencies of work, 15 days CCL was granted to her from 22.08.2016 to 05.09.2016. However, leave from 06.09.2016 was not sanctioned. The applicant absented herself from duty from 06.09.2016 and despite the letter dated 04/05.10.2016 sent to the applicant, she reported for duty on 08.11.2016. Thereafter, she again requested for grant of CCL from 09.11.2016 to 20.12.2016. But, due to exigencies of work, the applicant was sanctioned 6 days' CCL from 09.11.2016 to 14.11.2016. Again she absented herself from duty and reported for duty on 20.12.2016. Since the applicant has absented herself from duty without sanctioned leave, as required under the rules, therefore, the period of her absence was not regularized.

9. Heard the learned counsel for the parties and perused the documents annexed with the pleadings.

10. The learned counsel for the applicant has placed reliance upon the judgment of Hon'ble Apex Court in the case of **Kakali Ghosh vs. Chief Secretary, Andaman and Nicobar Administration and Others**, (2014) 15 Supreme Court Cases 300.

11. In the case of **Kakali Ghosh** (supra), the Hon'ble Apex Court has discussed the OM dated 11.09.2008, issued by the DoP&T regarding the CCL, which can be granted for a maximum period of 730 days during the entire service period. In para 11 of the judgment, Rule 43-C of the Central Civil Services (Leave) Rules, 1972 has been reproduced, which is as under:

“43-C. Child Care Leave. – (1) A woman government servant having minor children below the age of eighteen years and who has no earned leave at her credit, may be granted child care leave by an authority competent to grant leave, for a maximum period of two years i.e. 730 days during the entire service for taking care of up to two children whether for rearing or to look after any of their needs like examination, sickness, etc.

(2) During the period of child care leave, she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

(3) Child care leave may be combined with leave of any other kind.

(4) Notwithstanding the requirement of production of medical certificate contained in sub-rule (1) of Rule 30 or sub-rule (1) of Rule 31, leave of the kind due and admissible (including commuted leave not exceeding 60 days and leave not due) up to a maximum of one year, if applied for, be granted in continuation with child care leave granted under sub-rule (1).

(5) Child care leave may be availed of in more than one spell.

(6) Child care leave shall not be debited against the leave account.”

12. In para 12 of the judgment, the Hon'ble Apex Court, while dealing with the objectives of CCL prescribed in Rule 43-C of the Central Civil Services (Leave) Rules, 1972, has observed as under:

“12. On perusal of circulars and Rule 43-C, it is apparent that a woman government employee having minor children below 18 years can avail CCL for maximum period of 730 days i.e. during the entire service period for taking care of upto two children. The care of children is not for rearing the smaller child but also to look after any of their needs like examination, sickness etc. Sub Rule (3) of Rule 43-C allows woman government employee to combine CCL with leave of any other kind. Under Sub Rule (4) of Rule 43- C leave of the kind due and admissible to woman government employee including commuted leave not exceeding 60 days; leave not due up to a maximum of one year, can be applied for and granted in continuation with CCL granted under Sub Rule (1). From plain reading of Sub Rules (3) and (4) of Rule 43-C it is clear that CCL even beyond 730 days can be granted by combining other leave if due. The finding of the High Court is based neither on Rule 43-C nor on guidelines issued by the Central Government. The Tribunal was correct in directing the respondents to act strictly in accordance with the guidelines issued by the Government of India and Rule 43-C.”

13. In the instant case, the applicant submitted an application dated 27.06.2016 (Annexure A-8) and requested for extension of CCL from 15 days to 3 months from 02.06.2016 onwards by cancelling the leave sanctioned from 27.06.2016 to 11.07.2016. However, she was granted leave of 15 days only. She submitted another application on 11.08.2016 (Annexure A-9) for grant of CCL from 22.08.2016 to 18.11.2016 and this time also, the applicant was granted leave for 15 days from 22.08.2016 to

05.09.2016. The applicant submitted another application on 09.11.2016 and requested for grant of CCL from 09.11.2016 to 20.12.2016. However, the leave from 09.11.2016 to 14.11.2016 was sanctioned, i.e. only for six days.

14. It is pertinent to mention that the respondent No.2 had allowed the applicant to join on 20.12.2016, but the period of absence from 06.09.2016 to 07.11.2016 and 15.11.2016 to 19.12.2016 has not been regularised. It is true that leave cannot be claimed as of right as per Rule 7 of CCS (Leave) Rules, 1972, which reads as under:

“7. Right to leave. – (1) Leave cannot be claimed as of right.

(2) When the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the government servant.”

15. But, in the present case, the applicant, while submitting the application for CCL, has categorically assigned the reasons of taking care of her ailing daughter and to support her in study and has further made application for extension of CCL. The impugned order dated 20.12.2016, passed by the respondent No.2 is conditional and it does not show the compliance of settled principles of law, as observed by the Hon’ble Apex Court in

Kakali Ghosh (supra). Moreover, no other specific reasons for not regularising the leave period, have been assigned, as prescribed in the objectives of the CCL and the circular issued by the DoP&T.

16. Resultantly, Annexure A-1 is quashed and set aside. The respondents are directed to consider the issue of regularising the absence period of the applicant from 06.09.2016 to 07.11.2016 and from 09.11.2016 to 19.12.2016 by sanctioning the Child Care Leave for the said period, in view of the observations made in this order, within a period of 60 days from the date of receipt of a certified copy of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member

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