

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.290/00198/2018

This the 13th day of December, 2018

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

Smt. Vaishali W/o Shri Ravi Prakash, age about 30 years at present Librarian, Kendriya Vidyalaya Sangathan, Suratgarh, Resident of B-02, Jagat Vaishnavi Apartment, Ashiyana Nagar, Phase-01, Patna (Bihar).

...Applicant

(By Advocate: Mr. Vishal Sharma)

Versus

1. Kendriya Vidyalaya Sangathan through the Commissioner, 18 Saheed Jeet Singh Marg, New Delhi.
2. Deputy Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur
3. Principal, Kendriya Vidyalaya Sangathan, STPS, Suratgarh (Rajasthan).

...Respondents

(By Advocate: Shri Avinash Acharya).

ORDER (ORAL)

The applicant filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

“(i) To pass order or direction the respondents may kindly be directed to grant Child Care Leave for one year (i.e. 365 days) from 13.04.2018 and she may be paid leave salary equal of pay drawn immediately before proceeding on leave.

(ii) To pass order or memorandum dated 03.07.2018 and letter dated 21.04.2018, 21.05.2018, 14.06.2018 and 04.07.2018 may kindly be quashed and set aside.”

2. It is the plea of the applicant that she was appointed on the post of Librarian on 02.04.2012 and posted at Kendriya Vidyalaya Sangathan School, Firojpur. Thereafter she was transferred to KV STPS, Suratgarh where she joined the duty 10.09.2015. The marriage of the applicant was solemnized on 17.01.2017 and out of wedlock a son was born on 22.11.2017. Accordingly, the applicant applied and was granted maternity leave by the respondents from 16.10.2017 to 13.04.2018. On 09.04.2018, the respondent No.3 informed the applicant to join back her duties as her maternity leave is expiring on 13.04.2018. In reply to the said letter, the applicant send an application on the same day i.e. 09.04.2018 to respondent No.3 stating therein that as his newly born son is only 4.5 months and who is totally dependent on her feeding and further there is no female member in his family due to which she is unable to join the duties and accordingly, she requested for Child Care Leave for a period of one year from 14.04.2018. It is the plea of the applicant that her mother-in-law and her parents had already been expired and, therefore, her presence is essentially required at her home for looking after the newly born child. Further, it has been averred that her son is under the treatment of doctor right from the birth and the child is struggling with cough, cold, fever and therefore, his son needs extra attentions for his proper growth and development. Therefore, she time and again requested the respondents that in order to look after the condition of her child, she may be granted Child Care Leave.

But the said prayer of the applicant has been rejected by the respondents vide Annexure-A/2 dated 21.04.2018. Thereafter, the respondents also issued a memorandum dated 03.07.2018 to the applicant and directed her to join her duties latest by 16.07.2018 at KV STPS Suratgarh failing which appropriate disciplinary action will be initiated against her as per KVS Rules as deemed fit. Under these circumstances, the applicant approached this Tribunal for the reliefs quoted above.

3. The respondents, on the other hand, vide their reply dated 05.10.2018 have stated that the applicant was sanctioned maternity leave from 16.10.2017 to 13.04.2018 for a period of 180 days by respondent No.3 and therefore a letter dated 09.04.2018 was issued to the applicant to join the duties immediately after 13.04.2018 on completion of her maternity leave. It has been further averred that the applicant did not hand over the charge of library before proceeding on leave due to which the library has not been able to function properly and therefore due to larger interest of the students, the respondent No.3 has rejected the prayer of the applicant for grant of Child Care Leave (CCL) for one year. It has been further averred that the Child Care Leave cannot be demanded as a matter of right. Under no circumstances, an employee can proceed on CCL without prior sanction of leave by the sanctioning authority. It is the claim of the respondents that the applicant did not join the duties on 14.04.2018, therefore, the respondents have rightly sent several reminders to the applicant. Since the applicant remained absent from her duty w.e.f. 14.04.2018, the respondent No.3 time and again directed her to join the

duty in the Vidhyalaya immediately. It has been further averred that as per the OM of Government of India dated 18.11.2018, it has been specially mentioned that the recommendation of the Child Care Leave for women employees was to facilitate them to take care of their children at the time of need and it does not mean that Child Care Leave should disrupt the functioning of Central Government Offices. Therefore, it has been submitted that the action of answering respondent in issuing order dated 03.07.2018 (Annexure-A/1) is perfectly legal valid and in consonance of service law.

4. Heard learned counsels for both sides and perused the pleadings available on record.

5. During the course of arguments, both the counsels have argued their case as per the pleadings made in the OA as well as reply to the OA. In support of his contention, the learned counsel for the applicant further relied on the judgment of the Hon'ble Apex Court in Civil Appeal No.4506 of 2014 (Arising out of SLP (C) No.33244 of 2012) in the case of Kakali Ghosh vs. Chief Secretary, Andaman & Nicobar Administration and Ors. dated 15th April, 2014.

6. Learned counsel for the respondents contended that during the pendency of the present Original Application, the applicant has been transferred vide order dated 10.08.2018 from KV STPS Suratgarh to KV R.K. Puram Sector-2, New Delhi, at her own request. Further, in pursuance of the said transfer order, the applicant submitted an application dated 20.08.2018 before the Principal, KV STPS, Suratgarh requesting

therein to allow her to join at KV STPS Suratgarh and after completion of all formalities, relieving order may be issued in her favour in order to enable him to join at KV R.K. Puram, Sector-2, New Delhi. Accordingly, on 30.08.2018, the respondents relieved the applicant from KV STPS Suratgarh to report at KV RK Puram Sector-2. Learned counsel for the respondents further submitted that in pursuance of the transfer order dated 10.08.2018, the applicant has now joined at KV, RK Puram, Sector-2, New Delhi.

7. Considered the rival contentions of both the parties.

8. It is noted that the applicant was granted maternity leave from 16.10.2017 to 13.04.2018 for a period of 180 days and she was required to join duty on 14.04.2018. But due to her family condition and especially due to the health condition of her child and non-availability of any female member in the family to look after the child, she requested the respondents to grant her Child Care Leave of one year from 14.04.2018. It is true that Child Care Leave cannot be claimed as a matter of right and the employee can proceed on the same after getting the prior approval by the sanctioning authority and further wilful absence from duty renders a Government servant liable to disciplinary action. But it is not the case of the respondents that the applicant is not entitled to Child Care Leave and the leave has not been applied for the purpose for which the provision of Child Care Leave has been made or the applicant is illegally claiming the leave without any provision of law. The applicant is very much in need of the Child Care Leave at this stage and the respondents should have taken into account the

circumstances of the case, while denying sanction of leave to the applicant. If there exists any exigency, the respondents should have sanctioned the leave in different spells. In the instant case, there is no female member available in the applicant's family as her parents and mother-in-law has already expired and after perusing of the report/certificate of the doctor, it reveals that the condition of the child frequently deteriorates, and since the child is totally dependent on mother's feeding, therefore, presence of the applicant is genuinely required at her home. Therefore, the applicant has rightly applied for Child Care Leave to the respondents. But the respondents instead of considering her case looking to her family and the child condition, rejected her application for grant of Child Care Leave in a technical manner. In these circumstances, the action of the respondents cannot be said to be justified or proper.

9. Since the respondents have not considered the case of the applicant in proper perspective and her leave is denied in a technical manner, which, in my view, frustrates the purpose for which the provision has been made. The respondents should have considered granting the Child Care Leave to the applicant looking to the fact that there is no female member available in her family except the applicant to look after her newly born baby and further looking to health condition of the child as per the report of the doctor. Therefore, the impugned orders at Annexure-A/1 & A/2 are required to be quashed and are accordingly, quashed and set aside. The respondents are directed to consider grant of Child Care Leave to the applicant from 14.04.2018 (i.e. after completion of maternity leave i.e.

13.04.2018) for a period of one year (365 days). It is made clear that since the applicant has joined her duties at KV STPS, Suratgarh and thereafter at KV R.K. Puram, Sector 2, New Delhi, therefore, the period for which the applicant joined duty shall not be counted while granting the Child Care Leave. This exercise shall be completed within a period of one month from the date of receipt of a copy of this order.

10. Accordingly, the OA is allowed as stated above with no order as to costs.

(HINA P. SHAH)
MEMBER (J)

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