

[O.A.NO.060/01013/2019]

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH

O.A.No.060/01013/2019 Order pronounced: 09.12.2019
(Order reserved on : 29.11.2019)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).**

Jagjeet Kaur

W/o Sh. Harjot Singh,

Aged 41 years,

Presently working as Assistant professor (History)

on Contract basis at Post Graduate Government College,

Sector-11, Chandigarh-160011.

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Applicant

Versus

1. Finance Secretary-cum-

Education Secretary,

U.T. Secretariat,

Sector-9,

Chandigarh-160009.

2. Director,

Higher Education,

Additional Deluxe Building,

Sector-9,

U.T.Chandigarh-160009.

Respondents

**PRESENT: MR. D.R. SHARMA, ADV, FOR THE APPLICANT.
MR. ARVIND MOUDGIL, ADV, FOR THE
RESPONDENTS.**



O R D E R (ORAL)
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

The applicant has filed this Original Application (O.A) under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of the order dated 4.9.2019 (Annexure A-1), vide which her claim for grant of Child Care Leave (CCL) has been rejected.

2. The facts are not largely in dispute. The applicant was appointed as lecturer (History) now re-designated as Assistant professor, on contract basis for the session 2007-2008, 2008-2009 on part time basis, which continued till 18.8.2010 when w.e.f. 19.8.2010, she was appointed on contract basis. She has been working on contract basis as such, as per experience certificate, Annexure A-2 (Colly). Her daughter has been diagnosed with "May Hegelian Anomaly with Precursor B cell acute lymphoblastic leukaemia (Annexure A-3 (Colly) and is undergoing treatment at Medanta Medicity hospital, Gurgaon since April, 2019 and treatment is to take place for 24 months. She has finished her two months chemotherapy and now 22 months chemotherapy is remaining.

3. The applicant submitted application dated 19.8.2019 (Annexure A-4) for grant of CCL for treatment of her daughter upto April, 2021 which has been declined on 4.9.2019, without giving any reasons. It is submitted that CCL is governed by rule 8.128-B of Punjab Civil Services Rules, 2016, Vol. I (Part-I), where it is clearly mentioned that a women government employee having minor children below the age of 18 years may be granted CCL for a maximum period of one year (365 days) during her entire service for taking care of two eldest surviving children, whether for rearing or to look after any of their needs such as examination, sickness and the like, on production of



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documentary proof. Since the rules apply to the U.T. Chandigarh and as such applicant claims that she is entitled to indicated leave for 24 months, as per letter dated 13.8.2019, issued by concerned Hospital. Hence, the O.A.

4. Respondents have filed a reply. They submit that CCL was made applicable vide letter dated 13.3.2012 (Annexure R-1), which adopted Punjab Government letter dated 22.12.2011, but with a rider that the CCL will not be granted to persons who are appointed on daily wages / work charge and contract basis. Thus, applicant's claim has rightly been rejected.

5. Heard learned counsel for the parties and examined the material on file.

6. The learned counsel for the applicant argued that the case of the applicant merits acceptance as issue stands settled in favour of persons like applicant by Hon'ble Allahabad High Court in Civil Misc. Writ Petition No.24627 of 2017 titled **DR. RACHNA CHAURASIYA VS. STATE OF U.P. & OTHERS**, decided on 29.5.2017, in which State was directed to grant maternity leave and also CCL to all the female employees irrespective of nature of employment i.e. permanent, temporary, adhoc or contractual. This is resisted by the other side on the ground that once there is a policy decision of Administration itself, as per which applicant is not entitled to CCL, the quoted decision would not help the applicant, at all.

7. I have considered the arguments on both sides minutely.

8. It is not in dispute that the issue as raised in this case stands clinched in the case of Dr. Rachna Chaurasiya (supra), the relevant part of which is reproduced as under :-



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"Finding that child was not comfortable with the maid during the period when the petitioner and her husband went out for work, she applied for Child Care Leave for a period of three months before the Principal, respondent no. 3, Medical College vide application dated 18.05.2017. The said application was rejected vide order dated 20.05.2017 on the ground that the petitioner, being a contractual employee, is not entitled for grant of Child Care Leave.

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From a perusal of the aforesaid Government Orders, it is clear that the State Government has adopted same policy as is enforced by the Central Government for grant of Maternity Leave as well as Child Care Leave to its employees.

Maternity benefit is a social insurance and the Maternity Leave is given for maternal and child health and family support. On a perusal of different provisions of the Act, 1961 as well as the policy of the Central Government to grant Child Care Leave and the Government Orders issued by the State of U.P. adopting the same for its female employees, we do not find anything contained therein which may entitle only to women employees appointed on regular basis to the benefit of Maternity Leave or Child Care Leave and not those, who are engaged on casual basis or on muster roll on daily wage basis.

The aforesaid view taken by us find full support from the dictum of Hon'ble Apex Court in the case of Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) & Anr., (2000) 3 SCC 224. It may be relevant to produce paragraph 27 from the said report.

"The provisions of the Act which have been set out above would indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other Articles, specially Article 42. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Act that she would be entitled to Maternity Leave for certain periods prior to and after delivery. We have scanned the different provisions of the Act, but we do not find anything contained in the Act which entitles only regular women employees to the benefit of Maternity Leave and not to those who are engaged on casual basis or on muster roll on daily wage basis."

We are of the considered opinion that the benefit under the Act as well as the Rules of the Government Orders providing for grant of Maternity benefits and Child Care leave are applicable to all female employees, irrespective of their nature of employment whether permanent, temporary or contractual.

In view of the aforesaid facts and discussions, order dated 20.05.2017 passed by respondent no. 3 denying Child Care Leave for a period of three months to the petitioner is arbitrary and violative of Articles 14 and 16 of the Constitution, cannot be sustained and is hereby quashed.

Accordingly, the writ petition stands allowed with the following directions.

1. Respondents are directed to grant Maternity Leave to the petitioner with full pay as applied within 8 weeks from today.
2. The respondent-State is also directed to grant Maternity Leave to all family employees with full pay for 180 days, irrespective of nature of employment, i.e., permanent, temporary/ad hoc or contractual basis.



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3. State-respondent is also directed to grant Child Care Leave of 730 days to all female employees, who are appointed on regular basis, contractual basis, ad hoc or temporary basis having minor children with the rider that the child should not be more than 18 years of age or older”.

9. A perusal of the aforesaid decision clearly indicates that the issue raised herein by applicant is covered by the view taken by the Hon’ble High Court observing that the Government Orders providing for grant of Maternity benefits and Child Care leave are applicable to all female employees, irrespective of their nature of employment whether permanent, temporary or contractual.

10. In the wake of aforesaid discussion, this O.A. is allowed. Impugned order, Annexure A-1, dated 4.9.2019 is quashed and set aside. The respondents are directed to consider and extend the applicant benefit of CCL forthwith, considering that treatment of her child is going on in Hospital. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

Place: Chandigarh
Dated: 09.12.2019

HC*

