

WP(C) 2145/2016
BEFORE
HON'BLE MR. JUSTICE UJJAL BHUYAN

Heard Ms. JM Konwar, learned counsel for the petitioner and Mr. JMA Choudhury, learned Standing Counsel, Health & Family Welfare Department, Assam. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of recommendation of the Principal-cum-Chief Superintendent of Jorhat Medical College & Hospital (respondent No.4) dated 26.02.2016 requesting the Government to limit Child Care Leave sought for by the petitioner to a maximum of 1 month only. Further prayer made is for a direction to the respondents to sanction Child Care Leave to the petitioner for a period of 184 days as sought for.

Case of the petitioner is that she is serving as Assistant Professor of Anatomy in Jorhat Medical College & Hospital. Petitioner is married and her husband Dr. Alok Jyoti Malakar is presently pursuing DM degree in Cardiology in Guwahati Medical College & Hospital. The couple was blessed with a child on 15.11.2013. In connection with the above, petitioner was granted maternity leave for a period of 135 days. After availing maternity leave, petitioner had resumed her duty. According to the petitioner, considering the tender age of the child being just above 2 years of age, she needs to devote considerable time to look after the child which may not be possible while discharging full time duty. In such circumstances, she had submitted an application on 04.12.2015 seeking Child Care Leave for a period of 6 months before the Government in the Health & Family Welfare Department through the respondent No.4 i.e., the Principal-cum-Chief Superintendent, Jorhat Medical College and Hospital. It appears that Deputy Secretary to the Govt. of Assam in the Health & Family Welfare (B) Department, Assam had written to the respondent No.4 on 25.02.2016 seeking clarification as to whether grant of such leave to the petitioner would lead to disruption of functioning of the new medical college. To this, respondent No.4 in his impugned communication dated 26.02.2016 informed the Deputy Secretary that Jorhat Medical College is facing shortage of doctors and grant of such long leave may lead to disruption of functioning of the medical college. Therefore, suggestion was made to the Government to have a re-think on the matter and to limit the leave sought for by the petitioner to a maximum period of 1 month only.

Notice in this case was issued on 04.04.2016 with the observation that pendency of the writ petition would not be a bar for the respondents to consider prayer of the petitioner for Child Care Leave.

Though no affidavit has been filed by the respondents, Mr. Choudhury, learned Standing Counsel submits that petitioner cannot claim Child Care Leave as a matter of right. While granting Child Care Leave, the authorities are required to consider the administrative exigencies. Granting of such long leave may lead to disruption in the academic schedule of the Jorhat Medical College and Hospital. However, on a query by the Court, Mr. Choudhury, learned Standing Counsel submits that final decision by the Government is yet to be taken.

Government of Assam in the Finance Department had issued notification dated 31.07.2015 providing for Child Care Leave. A perusal of the said notification, which has been placed on record as Annexure-5 to the writ petition, would go to show that a decision was taken by the Government of Assam to grant Child Care Leave to women employees of the State Government. Following such decision, Subsidiary Rule (SR) 121(2) has been inserted in the Fundamental Rules and Subsidiary Rules providing for such Child Care Leave. It says, women employees having minor children i.e., upto 18 years of age, may be granted Child Care Leave by the authority competent to grant leave, for a maximum period of 2 years (730 days) during their entire service for taking care of upto 2 minor children whether for rearing or to look after any of their needs like examination, sickness, etc.. Therefore, the grant of such leave to a woman employee would relate to looking after the need of her minor child. SR 121(2) as extracted in the notification dated 31.07.20

15 also provides that such leave may be availed in more than one spell. Such leave may be combined with leave of any other kind if due and admissible and can also be extended for the 3rd year, but without the leave salary. Nature of Child Care Leave shall be like earned leave and shall not be debited against the leave account. However, Child Care Leave cannot be demanded as a matter of right and an employee cannot proceed on such leave without prior sanction of leave by the competent authority. SR 121(2), as notified vide notification dated 31.07.2015, enables woman employees to take care of their children till such time the child reaches majority. When the provision [SR 121 (2) (iii)] says that Child Care Leave may be availed in more than 1 spell, it would necessarily imply that such leave can be availed either in 1 spell or in more than 1 spell. How the leave is to be availed is left to the discretion of the woman employee, who certainly would be in a better position to assess as to how best to utilize the Child Care Leave for the best interest of the child.

This is a beneficial provision and, perforce, must receive liberal construction at the hands of the authorities. Article 42 of the Constitution of India, which is a directive principle of state policy, lays down that the State shall make provision for securing just and humane conditions of work and for maternity leave.

Equality of man and woman is the cornerstone of our Constitution. Endeavour should be to provide and ensure humane conditions of work for woman employees. In the Indian context, it would not be an overstatement to say that it is the women members of the family who mostly shoulder the responsibility of bringing up the children. With growing number of women employees, this aspect of the matter cannot be overlooked. It is said that children are the future of the country. Therefore, looking after their physical, emotional and academic needs during the growing stage assumes crucial significance. It is in the light of the above that the provision of SR 121 (2) of Fundamental Rules and Subsidiary Rules (FR & SR) are required to be considered. Moreover, Article 21 of the Constitution, which deals with Protection of Life and Personal Liberty, has been given an extended meaning by the Supreme Court in a catena of judgments. Essence of Article 21 is that every person has a right to live his or her life as a human being with dignity. Right to life includes the finer graces of human civilization ; Right to Life guaranteed under Article 21 embraces within its sweep not only physical existence but the quality of life and would include all those aspects of life which go to make life meaningful, complete and worth living. Right of every child to a full development has also been recognized as a facet of Article 21. It is in the backdrop of our constitutional philosophy that the provision of Child Care Leave is required to be understood and considered. Though a woman employee cannot go on Child Care Leave without obtaining the necessary sanction of the competent authority, but certainly the concept of Child Care Leave is something which is wholly in consonance with Article 42 and, therefore, is not to be doled out as a charity. Ordinarily, Child Care Leave as provided in SR 121 (2) should not be refused. To that extent, the view expressed by respondent No.4 appears to be wholly out of sync with the thinking of the State leading to insertion of SR 121(2) in the FR and SR.

Having regard to the above discussion, respondent No.1 i.e., Commissioner & Secretary to the Govt. of Assam, Health & Family Welfare (B) Department is directed to consider the prayer of the petitioner for grant of Child Care Leave for a period of 6 months without being influenced by or without taking into account the views expressed by the respondent No.4 in the impugned communication dated 26.02.2016. Let such decision be taken within a period of 30 days from the date of receipt of a certified copy of this order and the decision so taken shall be communicated to the petitioner.

Writ petition stands disposed of. No costs.