

WP(C) 220/2017

BEFORE

HON'BLE MR JUSTICE UJJAL BHUYAN

Heard Mr B D Das, learned Senior Counsel, assisted by Mr H K Sarma, learned counsel for the petitioner and Mr B Talukdar, learned Standing Counsel, Secondary Education Department, Government of Assam.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks a direction to the respondents to grant her Child Care Leave for a period of 1 (one) year.

3. Case of the petitioner is that following a due selection process, she was selected for appointment as Assistant Teacher (Science) in the Dekargaon High School, Tezpur, on contract basis vide appointment order dated 16.08.2010. As per the said appointment order, petitioner was initially appointed on contract basis for a period upto 31.03.2011, at a fixed monthly pay of Rs. 8,000/-. It is stated that after expiry of the said period, contractual appointment of the petitioner was extended and her fixed salary was also enhanced to Rs. 15,500/- per month from the year 2012 onwards. Petitioner states that she is still serving as Assistant Teacher (Science) in the Dekargaon High School on contract basis at a fixed pay of Rs. 15,500/- per month.

4. Petitioner's husband is a permanent resident of Tezpur, but on account of his service he is now presently posted at Jorhat as Inspector of Legal Metrology Department, Government of Assam. A daughter was born to the petitioner on 18.01.2012, but she has developed seizure disorder problem, for which she is under regular treatment in the International Hospital at Guwahati. The Medical Board of Jorhat Medical College and Hospital (JMCH) has certified about the illness of petitioner's child.

5. According to the petitioner, her daughter needs her company and attention, particularly, at this point of time, for which she intends to stay with her. In this connection, petitioner submitted leave application on 29.08.2016 before the Inspector of Schools, Sonitpur District Circle, Tezpur and she thereafter took leave from the Dekargaon High School, from 01.10.2016 onwards by submitting an application before the respondent No. 5, i.e., Headmistress of the school. However, till date, Child Care Leave has not been granted to the petitioner.

6. Aggrieved, present writ petition has been filed, seeking the relief as indicated above.

7. Director of Secondary Education, Assam, in his affidavit has stated that petitioner is working as a contractual teacher in the Dekargaon High School, Tezpur. Referring to Clauses-7 and 8 of the contract agreement on the basis of which petitioner is rendering her contractual service, it is stated that a contractual teacher would be entitled to leave on pro-rata basis of 2 % days per month. In case of sickness, a maximum of 6 (six) days of leave is provided, though excess of 6 (six) days' leave may be granted as extraordinary leave without any remuneration. Since petitioner is serving as contractual teacher, she is not entitled to Child Care Leave. In any case, as per the Government notification dated 31.07.2015 providing for Child Care Leave to Government employees, such leave cannot be demanded as a matter of right.

8. Mr Das, learned Senior Counsel for the petitioner argued that Child Care Leave is a beneficial provision and therefore, the respondents cannot deny such benefit to the petitioner. He also submitted that the High Court of Uttarakhand in the case of Dr Deepa Sharma -Vs- State of Uttarakhand (Writ Petition No. 54 of 2015), decided on 15.12.2016, had issued detailed guidelines to the State to grant Child Care Leave to all women employees, whether appointed on regular basis or on contract basis as per the scheme framed by the Government. He, therefore submits that necessary direction may be issued to grant Child Care Leave to the petitioner, w.e.f. 01.10.2016, so that petitioner is not deprived of her salary for the said period.

9. On the other hand, Mr Talukdar, learned Standing Counsel submits that Child Care Leave is granted to women employees of the Government of Assam on the basis of notification dated 31.07.2015. Referring to Clause-9 of the said notification, he submits that Child Care Leave is granted to regular employees of the G

overnment. Since petitioner is in contractual employment and is not a regular employee, she will not be entitled to Child Care Leave.

10. Submissions made by learned counsel for the parties have been considered

11. Since the claim of the petitioner to Child Care Leave is on the basis of the notification dated 31.07.2015 issued by the Finance Department, Government of Assam, it would be apposite to advert to the same in some detail.

12. 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-12 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 that 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 31.07.2015 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 children attains 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.

13. Entitlement of a woman State Government employee to Child Care Leave was gone into by this Court in WP(C) No. 2145 of 2016 (Dr Santona Thakuria -Vs- State of Assam), which was decided on 24.06.2016. Referring to the provisions contained in the Government notification dated 31.07.2015, it was held that the provisions providing for Child Care Leave is a beneficial provision and perforce, must receive liberal construction at the hands of the authorities. Reference was made to Article 42 and 21 of the Constitution of India. The Court held that the concept of Child Care Leave is something which is wholly in consonance with Article 42 of the Constitution of India as well as the expanded meaning of Right to Life as guaranteed by Article 21 of the Constitution of India. It was held as follows:-

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 can not 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 meani

ng 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.

14. Having held as above, it must also be noted that petitioner in this case is not a regular Government employee. She is a contractual employee in the roll of the Government. With respect to the learned Judges of the High Court of Uttarakhand a somewhat pragmatic approach may have to be taken with regard to the claim of Child Care Leave by a contractual employee. As in this case, the initial contractual appointment was for a period which was less than 1 (one) year. Though subsequently, such contractual employment has been extended from time to time, if the initial contractual appointment was for less than 1 (one) year, certainly more than that period cannot be granted on account of Child Care Leave. While the benefit of Child Care Leave may not be denied to contractual employees, being a beneficial provision, having regard to the duration of such contractual engagement, the benefit may have to be extended on pro-rata basis, though in this case, the contractual engagement has continued since 16.08.2010. To what extent, the leave should be granted is a matter for the authority to decide, as they would be in a better position to balance the competing interests.

15. That being the position, Director of Secondary Education, Assam, is directed to consider the prayer of the petitioner for Child Care Leave, within a period of 30 (thirty) days from the date of receipt of a certified copy of this order.

16. Before parting with the record, Court would like to observe that petitioner is in Government employment, albeit on contractual basis. Being on the roll of Government employment, petitioner has to maintain discipline at all times despite personal hardship and inconvenience. The act of the petitioner in unilaterally going on leave from 01.10.2016 by simply informing the Headmistress of the School cannot be appreciated. However, considering the stress and trauma faced by the petitioner, that may not be held against the petitioner and her prayer may be considered on its own merit.

17. Writ petition is disposed of.