

SUPREME COURT OF INDIA

Kakali Ghosh

Vs.

Chief Secretary, Andaman & Nicobar Administration

C.A.No.4506 of 2014

(Sudhansu Jyoti Mukhopadhaya and V.Gopala Gowda JJ.)

15.04.2014

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. Leave granted.
2. This appeal has been directed against the judgment dated 18th September, 2012 passed by the High Court of Calcutta, Circuit Bench at Port Blair. By the impugned judgment, the Division Bench of the Calcutta High Court allowed the writ petition and set aside the judgment and order dated 30th April, 2012 passed by the Central Administrative Tribunal Calcutta, Circuit Bench at Port Blair (hereinafter referred to as, the Tribunal).
3. The only question which requires to be determined in this appeal is whether a woman employee of the Central Government can ask for uninterrupted 730 days of Child Care Leave (hereinafter referred to as, - the CCL) under Rule 43-C of the Central Civil Services (Leave) Rules, 1972 (hereinafter referred to as, the Rules).
4. The appellant initially applied for CCL for six months commencing from 5th July, 2011 by her letter dated 16th May, 2011 to take care of her son who was in 10th standard. In her application, she intimated that she is the only person to look after her minor son and her mother is a heart patient and has not recovered from the shock due

to the sudden demise of her father; her father-in-law is almost bed ridden and in such circumstances, she was not in a position to perform her duties effectively. While her application was pending, she was transferred to Campbell Bay in Nicobar District (Andaman and Nicobar) where she joined on 06th July, 2011. By her subsequent letter dated 14th February, 2012 she requested the competent authority to allow her to avail CCL for two years commencing from 21st May, 2012. However, the authorities allowed only 45 days of CCL by their Office Order No. 254 dated 16th March, 2012.

5. Aggrieved appellant then moved before the Tribunal in O.A. No.47/A&N/2012 which allowed the application by order dated 30th April, 2012 with following observation:-

12. Thus O.A. is allowed. Respondents are accordingly directed to act strictly in accordance with DOPT O.M. dated 11.9.2008 as amended/clarified on 29.9.2008 and 18.11.2008, granting her CCL for the due period. No costs.

6. The order passed by the Tribunal was challenged by respondents before the Calcutta High Court which by impugned judgment and order dated 18th September, 2012 while observing that leave cannot be claimed as a right, held as follows:

It is evident from the provisions of sub r.(3) of r.43-C of the rules that CCL can be granted only according to the conditions mentioned in the sub-rule, and that one of the conditions is that CCL shall not be granted for more than three spells in a calendar year. It means that CCL is not to be granted for a continuous period, but only in spells.

From the provisions of sub r.(3) of r.43-C of the rules it is also evident that a spell of CCL can be for as less as 16 days. This means that in a given case a person, though eligible to take CCL for a maximum period of 730 days, can be granted CCL in three spells in a calendar year for as less as 48 days.

The High Court further observed:

Whether an eligible person should be granted CCL at all, and, if so, for what period, are questions to be decided by the competent authority; for the person is to work in the interest of public service, and ignoring public service exigencies

that must prevail over private exigencies no leave can be granted.

7. Learned counsel for the appellant submitted that there is no bar to grant uninterrupted 730 days of CCL under Rule 43-C. The High Court was not justified in holding that CCL can be granted in three spells in a calendar year as less as 48 days at a time. It was also contended that the respondents failed to record ground to deny uninterrupted CCL to appellant for the rest of the period.

8. Per contra, according to respondents, Rule 43-C does not permit uninterrupted CCL for 730 days as held by the High Court.

9. Before we proceed to discuss the merits or otherwise of the above contentions, it will be necessary for us to refer the relevant Rule and the guidelines issued by the Government of India from time to time.

10. The Government of India from its Department of Personnel and Training vide O.M. No. 13018/2/2008-Estt. (L) dated 11th September, 2008 intimated that CCL can be granted for maximum period of 730 days during the entire service period to a woman government employee for taking care of up to two children, relevant portion of which reads as follows: (1) Child Care Leave for 730 days.

Women employees having minor children 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 their 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. Child Care Leave shall not be admissible if the child is eighteen years of age or older. During the period of such leave, the women employees shall be paid leave salary equal to the pay drawn immediately before proceeding on leave. It may be availed of in more than one spell. Child Care Leave shall not be debited against the leave account. Child Care Leave may also be allowed for the third year as leave not due (without production of medical certificate). It may be combined with leave of the kind due and admissible.

11. It was followed by Circular issued by Government of India from its Personnel and Training Department vide O.M. No. 13018/2/2008- Estt. (L), dated 29th September, 2008 by which it was clarified that CCL would be also admissible to a woman government employee to look after third child below 18 years of age, which is as follows:

(2) Clarifications:-

The question as to whether child care leave would be admissible for the third child below the age of 18 years and the procedure for grant of child care leave have been under consideration in this Department, and it has now been decided as follows:-

- i) Child Care Leave shall be admissible for two eldest surviving children only.
- ii) The leave account for child care leave shall be maintained in the pro forma enclosed, and it shall be kept along with the Service Book of the Government Servant concerned.

12. Rule 43-C was subsequently inserted by Government of India, Department of Personnel and Training, Notification No. F.No. 11012/1/2009- Estt. (L) dated 1st December, 2009, published in G.S.R. No. 170 in the Gazette of India dated 5th December, 2009 giving effect from 1st September, 2008 as quoted below:-

43-C. Child Care Leave

- 1) A women 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.

13. 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.

14. In the present case, the appellant claimed for 730 days of CCL at a stretch to ensure success of her son in the forthcoming secondary/senior examinations (10th/11th standard). It is not in dispute that son was minor below 18 years of age when she applied for CCL. This is apparent from the fact that the competent authority allowed 45 days of CCL in favour of the appellant. However, no reason has been shown by the competent authority for disallowing rest of the period of leave.

15. Leave cannot be claimed as of right as per Rule 7, which reads as follows:

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.

However, under Sub-Rule (2) of Rule 7 leave can be refused or revoked by the competent authority in the case of exigencies of public service.

16. In fact, Government of India from its Ministry of Home Affairs and Department of Personnel and Training all the time encourage the government employees to take leave regularly, preferably annually by its Circular issued by the Government of India M.H.A.O.M. No. 6/51/60-Ests. (A), dated 25th January, 1961, reiterated vide Government of India letter dated 22/27th March, 2001. As per those circulars where all applications for leave cannot, in the interest of public service, be granted at the same time, the leave sanctioning authority may draw up phased programme for the grant of leave to the applicants by turn with due regard to the principles enunciated under the aforesaid circulars.

17. In the present case the respondents have not shown any reason to refuse 730 days continuous leave. The grounds taken by them and as held by High Court cannot be accepted for the reasons mentioned above.

18. For the reasons aforesaid, we set aside the impugned judgment dated 18th September, 2012 passed by the Division Bench of Calcutta High Court, Circuit Bench at Port Blair and affirm the judgment and order dated 30th April, 2012 passed by the Tribunal with a direction to the respondents to comply with the directions issued by the Tribunal within three months from the date of receipt/production of this judgment.

19. The appeal is allowed with aforesaid directions. No costs.