

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13442-2021

Date of decision: 24.03.2022

KANTA MALIK GILL

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Shivam Malik, Advocate
for the petitioner.

Mr. Raj Karan Singh Brar, Addl. A. G., Haryana.

JAISHREE THAKUR, J. (Oral)

The instant petition has been filed under Articles 226/227 of the Constitution of India for directing the respondents to grant and sanction Child Care Leave to the petitioner in terms of Rule 46 of the Haryana Civil Services (Leave) Rules, 2016 to take care of her minor daughter, who is aged 16 years studying in the 10+2 class and is to undergo her Board examinations.

Learned counsel for the petitioner herein would contend that the petitioner had applied for Child Care Leave well in time, however, for one reason or the other, the respondents did not take any action thereon. In fact, she had been applying for such leave for different spells but with no favour. It is submitted that the petitioner, in anticipation that her minor daughter would require her help for the preparation of the Board examinations had approached this Court in July, 2021 itself seeking Child Care Leave to be granted so that she could assist her minor daughter in the

pre-boards and eventually in her final Board examinations, but still she was not allowed Child Care Leave as envisaged under Rule 46 of the Haryana Civil Services (Leave) Rules, 2016, which would permit a women Government employee to take a maximum period of 730 days Child Care Leave during the entire service career for taking care of her two eldest surviving children below the age of 18 years. It is argued that this matter has already been gone into by a Coordinate Bench in the case of **Dr. Kanchan Bala versus State of Haryana and Others** passed in **CWP No.21506 of 2017 dated 10.10.2017** reported as **2018(5) SLR 755**, wherein, in similar circumstances, the petitioner therein was allowed Child Care Leave.

Learned State counsel would submit that even though the petitioner herein had applied well in advance for Child Care Leave but on account of shortage of staff with the respondent-Department, who has the onerous duty of furnishing reports of FSL as the petitioner is working as Assistant Director (Documents), Forensic Science Laboratory, Madhuban, Karnal she could not be permitted to proceed on Child Care Leave as claimed. It is also submitted that as per the communication received dated 22.03.2022, the petitioner has now been granted Child Care Leave from 25.04.2022 till 27.05.2022 along with permission to prefix holidays falling on 23.04.2022 and 24.04.2022 and suffix holidays falling on 28.05.2022 and 29.05.2022, subject to her completing all the cases that she is currently working upon.

I have heard learned counsel for the parties and have perused the pleadings of the case and find that the denial of Child Care Leave to the petitioner herein is wholly unjustified. It is an admitted fact that the present writ petition had been filed as far back as in July, 2021 praying for a direction to the respondents to grant Child Care Leave to her in terms of Rule 46 of the

Haryana Civil Services (Leave) Rules, 2016 on the ground that her minor daughter, who is to undergo 10+2 Board examinations would require her help. Rule 46 of the Haryana Civil Services (Leave) Rules, 2016 postulates that a women Government employee shall be entitled to Child Care Leave for a maximum period of 730 days during her entire service career for taking care of her two eldest surviving children below the age of 18 years. Even though Child Care Leave cannot be demanded as a matter of right and a person cannot proceed on Child Care Leave without prior sanction and further Sub-Rule 11 stipulates that Child Care Leave would not be granted if it disrupts the functioning of offices/institutions/schools etc., yet this Court would be bound by the judgment already rendered in Dr. Kanchan Bala's case (supra), which has even been upheld in LPA No.2115 of 2017.

Consequently, the present writ petition is disposed of taking into account that the minor daughter of the petitioner is studying in 10+2 examination which is a crucial year for her academics, with a direction that the petitioner would be permitted to proceed on Child Care Leave immediately considering the fact that the practical examinations of her daughter are ongoing till the last date of examination of her daughter. However, she will join immediately after the last examination of her minor daughter has been conducted.

24.03.2022
Chetan Thakur

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : Yes No

Whether Reportable : Yes No