

12.08.2024.
PB
Sl. No.1.
Ct. No.14.

**In The High Court At Calcutta
Constitution Writ Jurisdiction
Appellate Side**

WPA 20165 of 2024

Md. Abu Raihan
Vs
State of West Bengal & Ors.

Mr. Samim Ahammed,
Ms. Gulsanwara Pervin.
.....for the petitioner.

Mr. Ratul Biswas,
Mr. Kaushik Chowdhury.
.....for the WBBPE.

Mr. B. P. Vaisya,
Mr. Sagnik Chatterjee.
.....for the State.

The petitioner is a teacher in a primary school. He has two minor children. His wife passed away a couple of months back. His children are presently school going and there is none to take care of them apart from the petitioner. For taking care of his children and for their physical, educational and emotional development, he intends to avail the benefit of the Child Care Leave.

According to the Memorandum No.1100-F(P) dated 25th February, 2016, the Government of West

Bengal introduced the Paternity-cum-Child Care Leave for thirty days in respect of the male employees. The petitioner contends that thirty days will not be enough for him to take care of his children.

He refers to the Memorandum No.5560-F(P) dated 17th July, 2015 where the benefit of Child Care Leave has been extended to the regular female employees for a maximum period of two years i.e. 730 days.

It has been submitted that as, right now, the petitioner is a widower and a single parent, the benefit of seven hundred thirty days Child Care Leave ought to be extended to him.

It has been submitted that the aforesaid two memoranda are discriminatory. When the Constitution speak of equality, the State Government should rise to the occasion and should encourage equality in all respects. The idea of the women taking care of the children requires a change. Both the parents should be responsible for taking care and for development of their children.

Reference has been made to the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2015 in connection with guardian.

Reference has also been made to the order passed by a Co-ordinate Bench of this Court on 13th

November, 2018 in W.P. 9776 of 2018 (Smt. Shikha Sarkar Vs. The State of West Bengal & Ors.) in respect of a matter relating to paternal child care leave.

The petitioner also refers to the notification of the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) dated 11th December, 2018 being G.S.R. 1209 (E) wherein Child Care Benefit has been extended to the male employees also for a maximum period of seven hundred thirty days during the entire service for taking care of two eldest surviving children.

Prayer has been made for granting the Child Care Leave to the petitioner in the same line as that of memorandum dated 17th July, 2015 as applicable to female State Government employees.

Learned advocate representing the State respondents submits that the benefit which has been granted to female employees is not available for a male employee. The representation of the petitioner is pending consideration and the same will be considered in accordance with law.

I have heard the submissions made on behalf of both the parties.

It appears that time has come when the Government should treat its employees equally without any discrimination between the male and the

female employees. The responsibility of maintaining a family should be shared equally both by the mother and the father.

Natural guardian of a Hindu minor under the Hindu Minority and Guardianship Act, 1956 in the case of a boy or an unmarried girl is the father and after him the mother.

In the case at hand, the young children have lost their mother untimely and they would require the presence and the assistance of their father during their developing age and in their adolescence.

The Government should take a decision to extend similar benefit to the male employees as has been done in the case of the females.

Since granting of such benefit would be a policy decision of the State Government, accordingly, the Principal Secretary, Government of West Bengal (Finance) is directed to take a decision in the matter keeping in mind the issue of equality and with a view to erase gender discrimination and decide the representation filed by the petitioner.

A decision shall be taken in the matter at the earliest, but, positively within a period of ninety days from the date of communication of this order. A reasoned order shall be passed and communicated to the petitioner immediately thereafter.

Learned advocate representing the petitioner is directed to forward a copy of the representation dated 22nd July, 2024 along with the memoranda relied upon to the aforesaid respondents at the time of communicating the order of the Court.

Writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties as early as possible.

(Amrita Sinha, J.)