



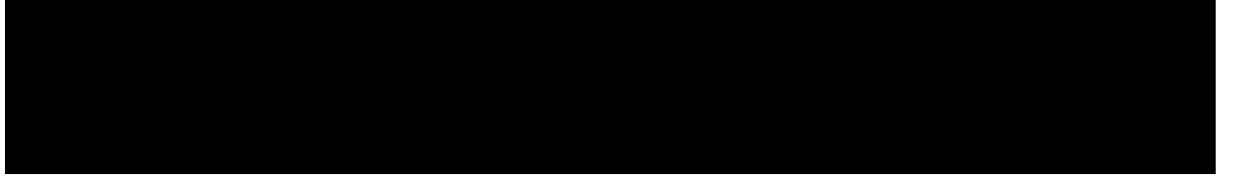
**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

**Original Application No.060/00766/2020**

Pronounced on:10.05.2024  
Reserved on: 30.04.2024

**CORAM: HON'BLE MR. SURESH KUMAR BATRA, MEMBER (J)**

Nidhi Sinha W/o Sh. Yash Pal Singh, aged 20 years, Emp. Code



**....Applicant**

(By Advocate: Mr. K.B. Sharma)

**Versus**

1. Post Graduate Institute of Medical Education & Research (PGIMER), Sector 14, Chandigarh-160024 through its Director
2. The Medical Superintendent, Post Graduate Institute of Medical Education & Research (PGIMER), Sector 14, Chandigarh-16002

**... Respondents**

(By Advocate: Mr. Sanjay Goyal, Sr. CGSC)

**ORDER**

**Per: SURESH KUMAR BATRA MEMBER (J):-**

1. The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act 1985 seeking the following relief:-

- 1) Quash the order dated 8.1.2020 (Annexure A-1) vide which the request of the applicant for grant of Child Care Leave for 12 months from 27.12.2019 to 27.12.2020 has been rejected by the respondents and she has been directed to resume her duty



failing which absence period will be treated as willful absent and dies non under rule 25 (1) of CCS (Leave) Rules, 1972 etc.

2) That the impugned order dated 7.3.2020 (Annexure A-7) be quashed and set aside.

3) Issue direction to the respondents to grant the applicant benefit of Child Care Leave for 12 months from 27.12.2019 to 27.12.2020 in consonance with the basic policy decision flowing from Constitutional provisions.

2. The facts of the case, in brief, are that the applicant is working as Nursing Officer, in the respondent PGIMER, Chandigarh. The applicant delivered twins on 2.7.2019 and one of them is having low birth weight. The applicant proceeded on maternity leave, which expired on 26.12.2019. The applicant submitted representation dated 16.12.2019 (Annexure A-4) submitting therein that her maternity leave was to expire on 26.12.2019 and extra care is required for babies and she has not regained fully to perform her duties and as such she needs some more time to be able to become fit mentally as well as physically to enable her to perform her duties with full zeal and vigour She is living in a nuclear family and it is for her and husband, who are to look after new born babies, therefore, she may be granted Child Care Leave for a period of 12 months w.e.f. 27.12.2019 to 26.12.2020, which was rejected vide order dated 08.01.2020 (Annexure A-1). The applicant submitted another representation dated 24.01.2020 (Annexure A-5). The applicant filed O.A. No. 125/2020 challenging the order dated 08.01.2020 which was disposed of by this Tribunal vide order dated 07.02.2020 with the direction to re-consider the request of the applicant



for grant of CCL and decide the same in accordance with law by passing a reasoned and speaking order. In compliance thereof, the respondents passed an order dated 07.03.2020 rejecting the claim of the applicant. The respondents issued a charge sheet dated 29.07.2020 (Annexure A-8) under Rule 14 of the CCS (CCA) Rules, 1965 for major penalty with the allegation that she has been absent from duties w.e.f. 27.12.2019.

3. The applicant contended that the impugned order dated 07.03.2020 is invalid inasmuch as the same has been passed without giving any reason and as such being non-speaking is liable to be quashed and set aside. The impugned order is also alleged to be contradictory in nature. It is also contended that the action of the respondents in rejecting the CCL to the applicant dehors the very purpose of the Maternity Benefit Act. Reliance has been placed upon judgment of the Hon'ble Supreme Court in the case of **Shalini Dharmani Vs. The State of Himachal Pradesh & Ors.** (SLP(C) No. 16864/2021 decided on 22.04.2024), of the Jurisdictional High Court in the case of **Dr. Kanchan Bala Vs. State of Haryana and Others** (CWP No. 21506/2017 decided on 10.10.2017) and decision of C.A.T. Principal Bench in the case of **Smt. Saphla Rani Vs. Chairman-cum-Managing Director** (O.A. No. 1841/2017 decided on 10.10.2018) and of this Bench of the C.A.T. in the case of **Anu Sharma Vs. PGI & others** (O.A. No. 671/2014 decided on 31.07.2015).

4. The respondents have filed written statement contesting the O.A. It has been stated that the CCL cannot be demanded as a matter of right. Under no circumstances can any employee proceed on CCL without prior proper approval of the leave by the leave sanctioning



authority. Reference in the context has been made to Leave Rules (relevant extract thereof is Annexure R-1). It has been further submitted that the leave was denied due to shortage of staff as pointed out by Acting Chief Nursing Officer and duly explained in the speaking order with relevant data regarding sanctioned strength of the nurses vis-a-vis, the number of nurses already on leave and effective strength of 1613 only available for attending to patient care service in the institute against the required number i.e. sanctioned strength of 2585 nurses. Hence, the speaking order is neither arbitrary nor illegal.

5. The applicant has filed rejoinder refuting the averment of the respondents and submitted that there is no shortage of staff in the respondent department. The respondents have granted CCL to many people working in the respondent department and further, they have also sanctioned Study leave to number of nursing officers for two years, whereas, in the present case where the minor children of the applicant are in dire need of care of her mother, the CCL has been denied by the respondents in an arbitrary manner.

6. I have gone through the pleadings and considered the rival contentions of learned counsel for both sides.

7. For the claim of CCL, the applicant has to approach this Tribunal twice. In earlier round of litigation (O.A. No. 125/2019), the respondents were directed to re-consider the request of the applicant, vide order dated 08.01.2020. It was thereafter that the applicant rejected the claim of the applicant for CCL vide order dated 07.03.2020 on the ground of shortage of staff. The plea of the applicant is that the action of the respondents is illegal, arbitrary and harsh. The



respondents, however, tried to defend their stand taken in the impugned order stating that the CCL cannot be claimed as a matter of right and that the decision to reject the CCL was taken due to shortage of staff in the Institute.

8. A similar plea of shortage of staff taken by the respondent to deny CCL was thrashed by the Hon'ble High Court of Punjab and Haryana in the case of **Dr. Kanchan Bala** (supra) and while allowing the Writ Petition, the respondents were directed to employ a Medical Specialist on contract basis so that public may not suffer.

9. In the case of **Anu Sharma** (supra), when the applicant's child care leave was denied and she did not join duty, the PGI department terminated her services. In that case, this Tribunal held the action of the respondents in not granting CCL to a mother, whose son was suffering from a serious illness, and terminating her services, as unduly harsh. The Tribunal also observed that the staff shortage can always be addressed through short term appointment. The operative portion of the decision is apt to be extracted hereunder:-

*"9. Even if the inquiry proceedings have been conducted as per prescribed procedure and the penalty was imposed upon the applicant after due process, we are constrained to observe that the PGIMER authorities appear to have taken an unduly harsh view in the matter. The applicant son was apparently suffering from a serious illness and the applicant had applied for the CCL due to this. CCL of 2 years has been allowed to women employees as a welfare measure keeping in view recommendations of 6th CPC and sympathetic view should be taken where a women employee applies for such leave. Staff shortage can always be addressed through short term*



*appointments and the Institute such as PGIMER has the autonomy/authority to make such arrangements. Hence memo of charges date 21.09.2011 is quashed. The respondents are directed to reinstate the applicant service and treat the period for which she was not on duty as leave of the kind due/leave without pay as may be appropriate. Action in this regard may be completed within 45 days from the date of a certified copy of this order being served upon the respondents."*

10. In the case of **Smt. Saphla Rani** (supra) also, the applicant after availing the period of maternity leave, after giving birth to a premature baby through IVF mode, applied for CCL which was rejected by the respondents. In that case, the Principal Bench of the Tribunal allowed the O.A. while observing that "the concept of child care leave is a testimony to the recognition and need felt for ensuring welfare of working women by giving them benefit of leave to ensure child birth". It was also noted therein that the concept of grant of child care leave was introduced to ensure the welfare of the child which led to introduction of child care leave which can be availed of at any time by mother whenever she feels that child needs her care.

11. While the issue of Child Care Leave is being considered in the instant case, the following observations of the Hon'ble Supreme Court made in the case of **Shalini Dharmani** (supra) are worth noticing and are reproduced hereunder:-

*"7. The participation of women in the work force is not a matter of privilege, but a constitutional entitlement protected by Articles 14, 15 and 21 of the Constitution; besides Article 19(1)(g). The State as a model employer cannot be oblivious to the special concerns which arise in the case of women who are part of the work force. The provision of Child Care Leave to women sub-*



*serves the significant constitutional object of ensuring that women are not deprived of their due participation as members of the work force. Otherwise, in the absence of a provision for the grant of Child Care Leave, a mother may well be constrained to leave the work force. This consideration applies a fortiori in the case of a mother who has a child with special needs. Such a case is exemplified in the case of the petitioner herself. We are conscious of the fact that the petition does trench on certain aspects of policy. Equally, the policies of the State have to be consistent and must be synchronise with constitutional protections and safeguards.”*

12. In the present case, it is undisputed fact that the applicant delivered twins on 02.07.2019 and after exhausting her maternity leave, she applied for CCL from 27.12.2019 to 27.12.2020, which has been rejected on the ground of staff shortage. It is seen from the discharge summary (Annexure A-9) that one of baby born underweight and was facing respiratory issues. Becoming a mother in all societies has been considered as the most crucial role for women and it is the high time that a women employee needs leave so that she can give ample time and motherly care to the new born baby. In the present case when the applicant was blessed with twin babies, it can be well understood that the maternity leave granted to the mother would not suffice and further leave is genuinely required. The request for child care leave in such cases should be considered with empathy. The need of introduction of CCL to the women employees have also arisen due to realization of the fact that the women employees could get time for rearing or to look after the needs of their children like examination, sickness etc. The CCL applied for by a women employee at the time when she has given birth to twins needs to be considered with a





sympathetic view. The problem of inadequate working staff, if any, is being faced by the respondent department due to leave of the applicant can be addressed by making recruitment as a stop-gap arrangement. Such kind of pleas taken by the authorities for rejecting the CCL to women employees has been negated a number of times by the Courts. The CCL or any kind of leave, of course, cannot be claimed as a matter of right and can be rejected or postponed due to administrative exigencies. But, at the same time, it is also obligatory on the part of the authorities that the request of CCL by a women employee be examined considering her circumstances. In the present case when the applicant was blessed with twins and discharge summary (Annexure A-9) is an ample proof of the fact that at the time of birth one of the baby had respiratory distress and was underweight, in such cases, the rejection of request of the applicant for CCL only demonstrates the inhumane approach of the respondents towards its female worker. Moreover, the period for which the CCL was applied for i.e. 27.12.2019 to 27.12.2020 was the time when the spread of pandemic Covid-19 was at peak and her joining the PGI that time might raise risk of catching virus by the babies. Though, it becomes the prime duty of the health workers to serve the society at such time but not at the cost of ignoring their new born babies. The authorities cannot be expected to be too harsh to compel the applicant who is mother of five-month old two babies, to join duty in such circumstances. The PGI as a model employer cannot be expected to be oblivious to the special concerns which arise in the case of women who are part of the work force.



13. In view of the judicial pronouncements on the issue, as noticed herein before, the impugned orders dated 08.01.2020 and 07.03.2020 are held to be illegal and the same are, therefore, quashed and set aside. The respondents are directed to grant the CCL applied for by the applicant. The Original Application stands allowed. No costs.



**(SURESH KUMAR BATRA)**  
**MEMBER (J)**

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