

(2022) 11 CAL CK 0092

Calcutta High Court (Appellete Side)

Case No: W.P.A. No. 10779 Of 2018, I.A. No. CAN 1 Of 2020, CAN 4 Of 2021 (Old CAN 787 Of 2020)

Prajnaparamita Bhowmik

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision: Nov. 21, 2022

Hon'ble Judges: Hiranmay Bhattacharyya, J

Bench: Single Bench

Advocate: Anjan Bhattacharya, Bratin Kr. Dey, Mahasweta Pramanik, Supriyo Chattopadhyay, Sabyasachi Mandal, Samiran Mandal, Abhinaba Dan

Final Decision: Disposed Of

Judgement

1. The writ petitioner has challenged the order of the District Inspector of Schools (S.E.) Bankura (hereinafter referred to as "D.I.") dated 21st

June, 2018 as well as the letters dated 26th December, 2017 issued by the D.I. and the subsequent letter dated 28th December, 2017 issued by the

Member Secretary, Ad-hoc Committee of the concerned school in this writ petition.

2. The writ petitioner, who was the Assistant Teacher of Pakhanna Girls' Junior High School (for short "the school") and the Teacher-in-

Charge at the relevant point of time applied for Child Care Leave (for short "CCL") for the period from 12th June, 2017 to 24th September,

2017 by a letter dated 18th April, 2017. The reason for applying CCL is to accompany her daughter, who, the petitioner claims, to be a registered table

tennis player of WBTTI and BTTI for attending the foreign coaching camp in Sweden for her better training. Thereafter the petitioner by a letter

dated 7th August, 2017 prayed for extension of the said leave for a period of six months with effect from 24th September, 2017.

3. The school authority by a letter dated 28th December, 2017 requested the petitioner to join the school immediately and to render her duties in the school as usual, failing which her salary will be stopped. A copy of the letter issued by the D.I. and addressed to the Member Secretary, Ad-hoc

Committee of the said school dated 26th December, 2017 was attached along with the said letter dated 28th December, 2017.

4. The petitioner, after returning from Sweden joined the said school and thereafter made a prayer before several authorities including the D.I. by a

letter dated 7th May, 2018 for a direction upon the school authority to release her salaries for the month of May, 2018 as well as the arrear salaries

since 1st January, 2018 along with interest thereon.

5. Pursuant to the said representation of the petitioner, D.I., upon hearing the necessary parties including the petitioner, passed an order dated 21st

June, 2018 holding that the petitioner is not entitled to get CCL for the period from 12th June, 2017 to 28th March, 2018 and such period shall be

treated as unauthorised absence and she will not be entitled to salaries for such period. It was further observed therein that the school authority was

justified in stopping the salaries of the petitioner from January 2018 till 17th October, 2018.

6. Neither the State nor the school has filed any affidavit in opposition to the writ petition.

7. Mr. Bhattacharya, learned advocate appearing for the petitioner assisted by Mr. Dey, learned advocate submits that in terms of the memo no.

5560-F(P) dated 17th July, 2015, an Assistant Teacher is entitled to the benefit of CCL for a maximum period of 730 days and the only prohibition

stipulated in such memo is that such leave may not be granted in more than three spells in a calendar year. Mr. Bhattacharya thus submits that since the

period of CCL, which the petitioner has availed in the instant case is for a period of 290 days i.e. much less than the aforesaid period allowable as per

the said memo, the school authority ought to have sanctioned CCL in favour of the petitioner for the entire period of 290 days.

8. Mr. Bhattacharya relies upon the decisions of the coordinate Bench of this Court in the case of Purnima Sarkar vs. State of West Bengal & Ors. in

W.P. No, 74 of 2018 decided on 26th July, 2018 and Bani Roy Sarkar vs. State of West Bengal & Ors. in W.P. No. 12441(W) of 2018 with W.P. No.

2806(W) of 2017 decided on 30th August, 2018 in support of his contention that the petitioner is entitled to CCL as a matter of right.

9. Mr. Chattopadhyay, learned senior counsel assisted by Mr. Mandal, learned advocate submits that the petitioner is not entitled to CCL for 290 days

in a single spell as observed by the D.I. in his order dated 21st June, 2018. Mr. Chattopadhyay further submits that the school authority is the authority

to sanction CCL in favour of the teaching and non-teaching staff and the D.I. has passed the order dated 21st June, 2018 upon a representation being

made by the petitioner for release of her arrear salary. Mr. Chattopadhyay further relies upon the memo dated 6444-F(P) dated 27th August, 2015

and submits that the maximum period of CCL that can be allowable in a spell is only 120 days.

10. Mr. Samiran Mandal, learned advocate appearing for the school submits that the petitioner was the Teacher-in-Charge at the relevant point of

time and he was well aware of the procedure for obtaining the CCL but in spite of being aware of such procedure, she did not submit any application

to the competent authority i.e. the Secretary of the school. He also reiterated the submission advanced by the State and as observed by the D.I. in the

order dated 21st June, 2018 that the petitioner is not entitled to CCL of 290 days in a single spell.

11. Heard the learned advocates for the parties. Perused the materials placed.

12. From the letter dated 18th April, 2017 praying for sanction of CCL, it appears that the petitioner forwarded the said letter to the Secretary through

proper channel. It further appears from the copy of the said letter, which has been annexed at page 46 to the said writ petition that the same was

forwarded for consideration by a member of the Ad-hoc Committee of the said school and the President of the Ad-hoc Committee of the school as

well. Thus, it does not lie in the mouth of the respondents to contend that the application dated 18th April, 2017 was not submitted before the

appropriate authority. It further appears from the order dated 21st June, 2018 that in response to the letter of the petitioner dated 7th August, 2017 that

the Secretary of the said school informed the said petitioner through a letter bearing dated 28th December, 2017 that she is not entitled to avail the

CCL as per the existing Government order. Thus, it is evident from the records that the petitioner initially applied before the Secretary of the school

for availing the said leave and thereafter before the said authority, through electronic mail, for extension of the period of such leave.

13. There is no explanation from the end of the school authority as to why such authority in spite of receipt of the letter dated 18th April, 2017 sat tight

over the said letter till 12th June, 2017 i.e. the date from which such leave was sought for.

14. Memorandum dated 17th July, 2015 provides that regular female teaching and non-teaching teacher is entitled to the benefit of CCL for a

maximum period of 2 years i.e. 730 days for taking care of upto two children upto 18 years of their age whether for rearing or to look after any of

their needs like examination, sickness etc.

15. The school authority in its letter dated 28th December, 2017 requested the petitioner to join the school immediately and to render her duties in the

said school. However, the said letter is silent as to the fate of her prayer for sanction of CCL as well as the subsequent prayer for extension of such

leave. However, from the letter of the D.I. dated 26th December, 2017 it appears that the D.I. has opined that CCL cannot be granted for attending

the child to the foreign coaching camp and the maximum period allowable as per G.O. dated 27th August, 2005 is upto 120 days in a spell. The order

of the D.I. dated 21st June, 2018 also states that the petitioner is not entitled to CCL for a period of 290 days in a single spell in terms of the memo no.

5560-F(P) dated 17th July, 2015 and memo no. 6444-F(P) dated 27th August, 2015.

16. The learned advocate appearing for the school would contend that the reasons for obtaining CCL is to be restricted only for examination and

sickness and for no other purpose.

17. Clause (ii) of the memo dated 17th July, 2015 used the expression "for rearing or to look after any of their needs like examination, sickness

etc." It is not disputed by the respondent authorities that the petitioner accompanied her daughter to attend the foreign coaching camp in Sweden or

that the daughter of the petitioner was a registered table tennis player of WBTTI and BTTI at the relevant point of time.

18. The parents are the best persons to consider as to how they shall rear up their children according to the need of the children. It is for the parent to

decide whether the child needs to attend the coaching camp for improving his/her skill in sports. The respondent authorities cannot dictate the parent

as to how he or she shall rear up his/her child/children or what are the needs of the child.

19. In the instant case, the petitioner decided to accompany her daughter to Sweden so that her daughter can attend the foreign coaching camp and

for such purpose applied for CCL. The purpose for obtaining CCL as indicated in memo dated 17th July, 2005 uses the word "etc." which means

that the said expression "for rearing or to look after any of their needs like examination, sickness" is not an exhaustive one. The said expression

cannot be given a restrictive meaning so that it is limited only for examination and sickness. Rearing up her daughter to become a better table tennis

player also falls within the expression "for rearing or to look after any of their needs" as mentioned in the memo dated 17th July, 2015.

Therefore, this Court is of the considered view that the purpose for which the period applied for CCL falls within the scope of memo dated 17th July,

2005.

20. Upon reading the memo dated 17th July, 2015 it appears to this Court that the maximum period allowable for CCL is 730 days and the restrictions

that have been provided for are in clause (iii) and clause (iv) thereof that such leave may not be granted in more than three spells in a calendar year

and also that they may not be granted for less than 15 days in a spell.

21. At this stage, it would be pertinent to refer to the decision of a coordinate Bench of this court in the case of Purnima Sarkar (supra) wherein the

coordinate Bench has laid down the conditions for sanction of such leave. The relevant portion of the said decision is extracted below:

"The memorandum that brought in the concept of CCL was by way of a Government Order dated 17th July, 2015. The said memorandum allows a

female employee to take a maximum period of two years, that is, 730 days as Child Care Leave. Clauses (i), (ii) and (iii) provide for the conditions for

taking such leave which include that the same may be taken for a maximum of two children upto the age of 18 years for the purpose of examination

or sickness of the children. It also allows the employee to be granted CCL in not more than three spells in a calendar year on the condition that each

spell shall not be less than 15 days. Clause (viii) of the Government Order states that other terms and conditions as applicable to sanctioning Earned

Leave shall be applicable in the matter of sanctioning Child Care Leave.â€

22. The decision of the coordinate Bench in the case of Bani Roy Sarkar (supra) is not applicable to the facts of this case as the issue involved therein

was whether a teacherâ€™s annual increment can be made conditional or subject to pendency of a decision with regard to the CCL.

23. Though Memo dated 17th July 2015 does not impose any restriction in the number of days for which CCL may be granted in a single spell, yet as

rightly contended by Mr. Chattopadhyay, learned Counsel that the Memo No. 6444-F(P) dated 27th August, 2015 has clarified to the effect that the

maximum period of CCL in a spell will be 60 days and in exceptional circumstances the same may be extended in a spell upto 120 days.

24. The leave sanctioning authority being the Secretary of the school did not assign any independent reason on the prayer of the petitioner for sanction

of CCL but only forwarded the communication made by the DI through the letter dated 26th December, 2017.

25. The DI in the order dated 21st June, 2018 by relying upon the Memo dated 27th August, 2015 observed that the petitioner is not entitled to CCL

for 290 days in a single spell but did not assign any reason as to why the period allowable as per the said G.O. could not have been sanctioned in

favour of the petitioner as CCL.

26. Upon a conjoint reading of the Memoranda dated 17th July, 2015 and 27th August, 2015 and for the reasons as aforesaid this Court is of the

considered view that the leave sanctioning authority acted arbitrary by not considering as to whether the petitioner is entitled to CCL for the period

allowable as per G.O. dated 27th August, 2015.

27. Petitioner applied for CCL on 18th April, 2017 for attending the child in foreign coaching camp for the period from 12th June, 2017 to 24th

September, 2017. She applied for extension of such leave by a letter dated 07th August, 2017. There is no explanation from the end of the school as to why no decision on the prayer for sanction of CCL made by the petitioner was communicated to her prior to the 12th June, 2017. For the first time, the school authority by a letter dated 28th December, 2017 requested the petitioner to join the school immediately failing which her salary will be stopped. It would be relevant to point out that such communication was made long after 120 days from 12th June, 2017. The petitioner cannot be penalised for the inaction of the school. For all the aforesaid reasons this Court holds that the instant case falls within the exceptional circumstances and the petitioner shall be entitled to CCL for 120 days.

28. For the reasons as aforesaid, this Court is of the considered view that the orders dated 21st June, 2018 and 26th December, 2017 of the D.I. and the letter dated 28th December, 2017 issued by the Secretary of the School Education are liable to be set aside and quashed and are accordingly set aside and quashed.

29. The school authority is directed to sanction CCL in favour of the petitioner for the period of 120 days as expeditiously as possible but positively within a period of two weeks from the date of communication of this judgment and order and communicate the same to the concerned authorities and the petitioner. The respondent authorities are directed to release the arrear salary of the petitioner for the aforesaid period as expeditiously as possible but positively within a period of eight weeks from the date of communication of this judgment and order. The remaining period shall be regularised as Medical Leave or Half pay leave in case there is sufficient leave in credit of her leave account.

30. The writ petition and the connected application stand disposed of.

31. There shall be, however, no order as to costs.

32. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.