

High Court Of Karnataka

WRIT PETITION NO.22979 OF 2021 (S-RES)

Judgment Date:

03-03-2022

Mrs. Prachi Sen

..Petitioner

Ministry Of Defence And Ors.

..Respondent

Bench:

{ HON'BLE MR. JUSTICE R DEVDAS }

Citation:

LQ ;

R.DEVDAS J., (ORAL):

1. The petitioner who is working as a Senior Executive Engineer at the fourth respondent-Semi Conductor Technology and Applied Research Centre, (for short 'STARC'), is before this Court aggrieved of the communication dated 07.08.2021 at Annexure 'CC', communication dated 27.11.2021 at Annexure 'GG' and is seeking directions to the fourth respondent to consider her representations dated 06.07.2021 and 12.07.2021 for sanction of Child Care Leave with retrospective effect and to regularize the petitioner's salary and to release the salary withheld from 24.05.2021. A prayer is also made seeking directions to the respondents to reimburse the medical bills furnished by the petitioner.

2. The petitioner delivered a baby girl on 19.08.2020. She has been on maternity leave from 19.08.2020 to 14.02.2021. The petitioner thereafter availed personal leave from 15.02.2021 to 26.04.2021. However, it is the contention of the petitioner that during the second wave of COVID-19 and the lockdown announced by the Government of Karnataka, the petitioner was given the benefit along with other employees, to work from home during the lockdown period. The respondent-Organisation also does not deny the fact that the petitioner's attendance was regularized upto 23.05.2021. However, when the petitioner did not join duty after the sanctioned leave was exhausted, the impugned communication dated 07.08.2021 was issued to the petitioner stating that she was staying away from duty without sanction of leave and the overstay without sanction of leave would be treated as unauthorized absence. The petitioner was informed that she would not be entitled for leave salary for the unauthorized period of absence. The petitioner was also informed that disciplinary action could be initiated against her for willful absence from duty after expiry of leave period sanctioned by the Management.

3. The petitioner responded to the said communication while pointing out to the benefits that were required to be provided to a woman under maternity, in terms of the Maternity Benefit Act, 1961, and the two Official Memoranda dated 29.09.2008 and 06.05.2021 issued by the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel and Training), Government of India, which provides for grant of child care leave to



women employees having minor children below the age of 18 years. The petitioner had also approached the Central Administrative Tribunal at Bengaluru seeking similar relief. The fourth respondent thereafter sent one more communication dated 27.11.2021 noticing the fact that the application filed by the petitioner was dismissed as withdrawn, by order dated 16.11.2021. The petitioner was once again called upon to join duties immediately and regularize the absence from 24.05.2021. Nevertheless, the petitioner has filed the instant writ petition with the prayers as noticed hereinabove.

4. Learned Counsel for the petitioner submits that the provisions of the Maternity Benefit Act, 1961 (hereinafter referred to as the 'Act 1961' for short) is applicable to the petitioner who is an employee of the fourth respondent-Organisation which is a fully funded organization controlled by the Government of India. It is also contended that the fourth respondent does not dispute the fact that the leave benefits which are available to the employees of the Defence Research Development Organisation (DRDO for short) is also made applicable to the employees of the fourth respondent-Organisation. The learned Counsel would draw the attention of this Court to Section 5(5) of the Act 1961, to contend that that the petitioner should be allowed to carry on her work from home after availing the maternity benefit for the period as provided under the Act. The learned Counsel would further contend that notifications have been issued by the Central Government, directing all the Public Sector Undertakings, which include the respondent- Organisation, to ensure that as far as possible, provisions should be made to lactating mothers to work from home, in view of the prevalence of COVID- 19 pandemic.

5. It is submitted that in terms of the directions issued by the Government of India, it is the duty of the respondent-Organisation to provide for Child Care Leave and to permit the petitioner to work from home, until it is declared by the Central Government/State Government that there is no need for its employees to work from home. The learned Counsel has sought to place reliance on a decision of the Central Administrative Tribunal, Principal Bench at New Delhi, in the case of Saphla Rani Vs. Chairman-cum- Managing Director, RITES Limited.

6. Per contra, learned Counsel for the respondents would submit that the benefit of the Act 1961, as applicable to the respondent-Organisation has been granted to the petitioner. However, it is submitted that the third respondent is a Society registered under the Societies Registration Act and it is an autonomous body. The third respondent-Society has its own Rules and Regulations and HR policy in the matter of grant of maternity leave and other service benefits. It is also admitted by the respondents in the statement of objections that in the matter of leave and leave concessions, it has adopted the policy of the DRDO and is made applicable to its employees.

7. However, in respect of Child Care Leave, in a meeting of the 14th STARC Employees Meet held on 31.03.2018, the fourth respondent has considered the request made by its employees, especially in respect of female employees who sought additional benefits in the form of various policies like child care leave, flexible timings etc; considering the fact that work from home may not be possible at few instances, parenting issues inherited due to lack of such policies should be taken seriously. It was decided that providing crèche and Day Care facilities as per Maternity Benefit Act, 2017, was an option. However, it was specifically decided that creation of crèche and Day Care facility was not advisable within the premises due to sensitive and risk involved processes, usage of chemicals and toxic gases. Nevertheless, it was also decided that if some of the employees are interested, then the matter can be taken up with The Centre For Artificial Intelligence And Robotics for availing Crèche facilities.

8. During the course of the argument, when this Court probed the third respondent as to whether crèche facilities were made available, information is given by the Deputy Manager-P & A on behalf of respondent-Organisation that consequent to the resolution passed on 31.03.2018, no requests were made by the employees seeking establishment of crèche facility within the premises. Nevertheless it is stated that arrangement can be made at the adjacent ITI Complex which already has facilities such as crèche, Quarters, Hospital, Ambulance etc. The respondent-Organisation is already availing the other facilities such as Quarters, Hospital, Ambulance etc. from the ITI. Therefore, it is stated in the said communication that facility would be made for the petitioner's child to make use of the crèche facility which is available in the ITI premises. It is further stated that if the women employees of the respondent-Organisation are still seeking the establishment of a crèche in its premises, then appropriate financial sanction will have to be obtained from the competent authority for construction of the facility and as and when the finances are provided for, the facility will be provided.

9. Learned Counsel for the respondents has submitted that any rate, the respondent-Organisation cannot be equated to the Government of India and the facilities available to the Central Government employees, be it in the nature of providing maternity leave, Child Care Leave and other facilities cannot be automatically adopted to the respondent-Organisation. Learned Counsel would submit that material has been placed along with the statement of objections at Annexure 'R7' issued by the Department of Personnel & Training (DOPT), Government of India, answering the query as to whether women employees of Public Sector undertakings/bodies etc., are entitled to Child Care Leave, that the orders issued by the DOPT are not automatically applicable to the employees of Central Public Sector Undertakings/Autonomous Bodies, Banks etc. It has been made clear by the DOPT that it is for the PSUs/Autonomous Bodies to decide the applicability of the rules/instructions issued for the Central Government employees to their employees in consultation with their Administrative Ministries. Consequent to the instructions and communications made by the DOPT, a resolution has been passed by the Board of Governors of the third respondent-Society on 22.09.2021 regarding implementation of Child Care Leave in the units of the third respondent. It was resolved that the third respondent will not implement Child Care Leave for its employees at its Units and foundries which are involved in production and implementation, since such facilities would affect the production schedules and delivery timelines.

10. Heard the learned Counsel for the petitioner, learned Counsel for the respondents and perused the petition papers.

11. The contentions of the petitioner in respect of grant of child Care Leave, proceeds on the footing that all the employees of STARC, just like the employees of the Government of India are eligible for the said facility. Though reference is made to Section 5(5) of the Act, 1961, it is evident from the said provision that maternity benefits such as work from home after availing the maternity benefit could be given only in case where the nature of work assigned to the women is such that it is possible for her to work from home. In this regard, a specific decision is taken by the fourth respondent-Organisation in its meeting held along with its employees on 31.03.2018, at Annexure 'R9', paragraph-26 that the premises of the fourth respondent-Organisation is sensitive and involved with risk due to usage of chemicals and toxic gases. The employees working with the fourth respondent-Organisation are involved in research work which is both sensitive as well as complicated.

Sensitive, in the nature of the work done, in the sense that the research is for the benefit of the Government of India which uses the facility in the defence fields and the research work will not be divulged to the public. This itself would prove that the nature of work assigned to the petitioner cannot be carried on from home. The respondents are also on record, in their statement of objections, that even during the period of lockdown, the top officials from the cadre of Deputy managers have been functioning from the premises itself.

12. Insofar as the Child Care Leave, as rightly pointed out by the learned Counsel for the respondents, consequent to the Advisory given by the DOPT regarding applicability of the Child Care Leave facility available to the employees of the Central/Public Sector Undertakings/autonomous bodies that decisions may be taken by the PSUs/autonomous bodies in consultation with their Administrative Ministries, the Board of Governors of the third respondent-Society has specifically resolved on 22.09.2021 that they would not implement the Child Care Leave facility in the Organisation as it would affect the production schedules and delivery timelines.

13. It is therefore clear that the petitioner has not been able to point out to any specific provision of law or rules that would mandate the fourth respondent Organisation to grant child care leave facility as is available to the Central Government employees, to the employees of STARC.

14. Nevertheless, during the course of the proceedings, this Court has noticed that by the impugned communications issued by the fourth respondent-Organisation to the petitioner, it has warned the petitioner about unauthorized absence and the consequence of willful disobedience. The petitioner has also been informed that she will be liable for recovery and remittance, in accordance with law. However, having regard to the peculiar facts and circumstances of this case where the petitioner has been on leave commencing from 19.08.2020 having exhausted the leave sanctioned in her account, this Court cannot lose sight of the fact that during the period of delivery and post delivery, there were two serious waves of COVID-19 pandemic, firstly, which commenced during the month of March 2020 and for prolonged period lockdown was announced by the State Government. The second wave of COVID-19 pandemic again commenced from April 2021. This Court would take judicial notice of

the fact that there was a third wave in the month commenced from November-December 2021. Therefore, if the petitioner was unable to join duties, the fourth respondent-Organisation is required to have sympathetic view towards the petitioner. During the course of the argument, the learned Counsel for the petitioner has pleaded that the petitioner is ready and willing to join the duty, provided child care facility is provided to the new born.

15. The learned Counsel for the third respondent has made a statement along with a communication issued by the Deputy Manager on behalf of the respondent that crèche facility will be made available for the petitioner's child in the adjacent ITI premises.

16. Although it was pointed out by the learned Counsel for the fourth respondent that another woman of the organization who also took the benefit of Maternity leave almost similar to the petitioner, however, has joined duty from 02.04.2021, but this Court is of the considered opinion that in such cases, parity cannot be drawn. The difficulties of the mother may be different in each case and therefore, everything would depend on the facts and circumstances of each case.

17. For the foregoing reasons, this Court is of the considered opinion that although the prayer made by the petitioner regarding grant of child care leave cannot be granted, however, liberty is reserved to the petitioner to make fresh representations regarding the unauthorized absence and seek regularization of the same. As and when such representations are given by the petitioner, after she joins duty, the fourth respondent-Organisation shall consider such representations sympathetically and pass orders in the light of the observations made hereinabove.

18. This writ petition is accordingly disposed of. No order as to costs.

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