

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 12th OF MARCH, 2024

WRIT PETITION No. 28083 of 2023

BETWEEN:-

**SMT. PRATIGYA TIWARI W/O MR. RAJESH TIWARI, AGED ABOUT 50
YEARS, OCCUPATION: GOVT. TEACHER R/O MAHASHAKTI NAGAR
UJJAIN (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI BHAVESH TIWARI, ADVOCATE.)

AND

**THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL REGISTRAR
DIRECTORATE OF PUBLIC INSTRUCTIONS GAUTAM NAGAR BHOPAL
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI DEVDEEP SINGH, GOVERNMENT ADVOCATE.)

*This petition coming on for orders this day, the court passed the
following:*

ORDER

The issue involved in this petition is whether a woman Government employee can be permitted to travel abroad on Child Care Leave (hereinafter referred to as “CCL”) to take care of her minor child or not.

The facts of the case in short are as under:

02. The petitioner is working as a Middle School Teacher in the School Education Department. She applied for a grant of CCL for the period of 2 years to take care of her second son, for the leave of 2 years starting from 08.06.2023. In the said application she did not disclose that she wanted to travel to England for the education of her son. Vide

office order dated 14.06.2023, she was granted two years' CCL from 08.06.2023. Thereafter petitioner submitted another application to the Joint Director, Public Education Department seeking permission to travel abroad during CCL which came to be rejected vide order dated 10.08.2023 that there are no earned leaves available and there is no provision in the Rules for grant of permission for 2 years to travel abroad. Hence this writ petition before this Court.

03. Learned counsel for the petitioner submits that every woman Government employee is entitled to a maximum of 730 days of CCL under Section 38(c) of the M.P. Civil Services (Leave) Rules, 1977 (hereinafter referred to as "Rules, 1977") for her two elder surviving children below the age of 18 years, therefore, if she is required to travel abroad during this period, there should not have been any restriction by the Government. Learned counsel further submits that the Government of India has not imposed any such restriction on a woman employee on CCL to proceed on foreign travel. The Government of India, Ministry of Personnel, Public Grievances and Pensions Department vide office memorandum dated 03.04.2018 has decided that an employee on CCL may proceed to foreign travel provided clearance from appropriate competent authority is taken in advance.

04. It is further submitted that the husband of the petitioner was also a Government employee but he resigned and settled in England. Since the son of the petitioner is below 18 years of age, therefore, under the laws of England, he is required to stay with both parents up to the age of 18 years. At present, the son of the petitioner Darshan is 18 years old. The petitioner is planning for admission of her son to a school in Derby, England. After the admission and settlement of his son, she will come back and join the duties within the time limit of CCL. It is further submitted that out of 2 years 1 year has already expired due to these

correspondences and permission, now only one year of CCL is availed for CCL for her.

05. The respondents have filed the reply by submitting that while applying for CCL, the petitioner did not disclose that she was seeking leave to travel abroad and after the leave was sanctioned she applied for traveling abroad for which there is no such specific provision under Leave Rules, therefore, no such permission could be granted her.

I have heard learned counsel for the parties.

06. It is correct that there is no such specific provision in the Leave Rules or any other enactment under which a Government may apply to travel abroad during the leave period. Even in the M.P. Civil Services (Leave) Rules, 1977, and The M.P. Civil Services (General Conditions of Services) Rules, 1961, there is no such restriction for Government employees traveling abroad. However, Rule 22 of Rules, 1977 says that a Government servant while on leave if recalled to duty before the expiry of that leave, shall be entitled to travel allowances and leave salary until he joins, if he is out of the country during leave and recalled, the time spent on the voyage to India will be treated to be in duty for purpose of calculating leave and to receive the leave salary, etc. Therefore, in leave rules, there is no such specific restriction for not to travel abroad for Government employees during the leave. Rule 22 of Rules, 1977 is reproduced below:

22. Recall to duty before the expiry of leave.— A Government servant while leave if recalled to duty before expiry of the leave, he shall be entitled :-

(a) If the leave from which he is recalled is in India, to be treated as on duty from the date on which he starts for the station to which he is ordered, and to draw : —

(i) travelling allowance under rules made in this behalf for the journey ; and

(ii) leave salary, until he joins his post, at the same rate at which he would have drawn it but for recall to duty.

(b) If the leave from which he is recalled is out of India, to count the time spent on the voyage to India as duty for purposes of

calculating leave, and to receive—
leave salary, during the voyage to India and for the period from the date of landing in India to the date of joining his post, at the same rate at which he would have drawn it but for recall to duty ;

- (ii) a free passage to India ;
- (iii) refund of his passage from India if he has not completed half the period of his leave by the date of leaving for India on recall, or three months, whichever is shorter ;
- (iv) traveling allowance, under the rules for the time being in force, for travel from the place of landing in India to the place of duty.

The only condition is that if the leave is recalled before expiry, he shall be entitled to certain benefits under Section 22(b) of Rules, 1977.

07. The Government has made provision for the grant of Child Care Leave of 730 days to a woman Government employee so that she may take care of her child up to the age of 18 years. Sub-Rule (6) of Rule 38(c) says that child care leave can be combined with leave of any other kind and Sub-Rule (7) says that the leave account shall be maintained separately and the entry shall be made in the service book of the concerned woman government employee. Rule 38(c) of Rules, 1977 with commentary is reproduced below:

38-C. Child Care Leave.-(1) Subject to the provisions of this rule, a woman Government servant may be granted child care leave by the competent authority for a maximum period of 730 days during her entire service for taking care of her two eldest surviving children.

(2) The leave cannot be claimed as a matter of right.

(3) For the purposes of sub-rule (1), "Child" means,-

(a) a child below the age of eighteen years (including legally adopted child); or

(b) a child below the age of twenty two years with a minimum disability of forty percent as specified in Notification No. 16-18/97-N 1.1, dated the 1st June, 2001, Government of India. Ministry of Social Justice and Empowerment.

(4) Grant of child care leave to a woman government servant under sub-rule (1) shall be subject to the following conditions, namely:-

(a) it shall not be granted for more than three spells in a calendar year. The leave availed even for a day, shall be counted as one spell. If the period of leave sanctioned continues into the next calendar year also then the spell shall be counted adjacent the year in which the leave was applied or in which major part of the leave

applied falls. Calendar year means the period commencing from 1st January to 31st December of the year.

(b) it shall ordinarily not be sanctioned during the probation period. However, in special circumstances if the leave is sanctioned during the probation period then the probation period shall be extended by the period equivalent to the period for which the leave has been granted.

(5) During the period of child care leave, the woman government servant shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

(6) Child care leave may be combined with leave of any other kind.

(7) The leave account shall be maintained separately and entry shall be made in the service book of the concerned women government servant.]

COMMENTARY

Note: Leave Rules amended by M.P. State Notification dated 22-8-2015 and Rule 38(C) incorporated therein, this rule made applicable to the female Government employee. Vide Finance department circular dated 17-11-2015 it has clarified that the benefit of this circular would not be applicable to the teachers cadre.

08. However, in the commentary, on the above Rule, it is mentioned that vide Finance Department Circular dated 17.11.2015, it has been clarified that the benefit of that circular would not apply to the teachers cadre. The Circular dated 17.11.2015 is reproduced below:

मध्यप्रदेश शासन

वित्त विभाग

वल्लभ भवन-मंत्रालय-भोपाल

क्रमांक: एफ 6-1/2015/नियम/चार भोपाल, दिनांक 17 नवम्बर, 2015
प्रति,

शासन के समस्त विभाग,
अध्यक्ष, राजस्व मंडल, ग्वालियर,
समस्त संभागीय आयुक्त,
समस्त विभागाध्यक्ष,
समस्त जिलाध्यक्ष,
मध्यप्रदेश ।

विषय- संतान पालन अवकाश स्पष्टीकरण के संबंध में ।

संदर्भ- वित्त विभाग के परिपत्र क्रमांक एफ 6-1/2015/नियम/चार, दिनांक 22-8- 2015, एवं परिपत्र क्रमांक एफ 6-1/2015/नियम/चार, दिनांक 30-9-2015.

म.प्र. सिविल सेवा (अवकाश) नियम, 1977 के नियम-38 (सी) द्वारा राज्य सरकार की महिला शासकीय सेवकों को संतान पालन अवकाश

की पात्रता निर्धारित की गई है। संतान पालन अवकाश के आवेदन स्वीकृति आदि बिन्दुओं पर विभिन्न माध्यमों से समक्ष में आई जिज्ञासाओं को निम्नानुसार स्पष्ट किया जाता है :-

(अ) संतान पालन अवकाश के आवेदन के समय किसी प्रकार के प्रमाण-पत्र की पृथक से आवश्यकता नहीं होगी, आवेदन में उल्लेखित कारण पर्याप्त माना जावेगा ।

(ब) उपर्युक्त अवकाश हेतु आवेदन प्रस्तुत करने हेतु निर्धारित समय सीमा अर्जित अवकाश की भांति अर्थात् तीन सप्ताह पूर्व ही होगी ।

(स) किसी एक अवसर हेतु कोई अधिकतम सीमा निर्धारित नहीं है ।

मध्यप्रदेश के राज्यपाल के नाम से
तथा आदेशानुसार

(उपेन्द्र शर्मा)

अवर सचिव

मध्य प्रदेश शासन, वित्त विभाग

08. As per this circular, for submitting an application for CCL, no such certificate would be required, only an application would be sufficient, the application is required to be submitted three weeks ago and there shall be no maximum limit for one spell, therefore, as explanation this circular would not apply to the Teachers Cadre hence, for Teachers the CCL cannot be granted for maximum 730 days in one spell. Hence, the respondents are required to examine whether in view of the aforesaid circular the CCL has rightly been given to the petitioner for complete 2 years at one spell.

09. When the petitioner filed an application for CCL, she did not disclose that she was taking leave to travel abroad with her minor son. After obtaining 730 days' leave in one term, she applied for grant of permission for the leave to travel abroad during this leave period.

10. In view of the above, the Joint Director of Education is directed to consider both applications together i.e. one for the grant of CCL and another for permission to travel abroad. The application shall be

considered within a period of 30 days from the date of production of certified copy of this order.

11. With the aforesaid, this Writ Petition is **disposed of**.
Certified copy, as per Rules.

(VIVEK RUSIA)
JUDGE

Divyansh