

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani
----- Chairman

Hon'ble Mr. D.K.Kotia
-----Vice Chairman (A)

CLAIM PETITION NO. 08/DB/2018

Smt. Sangeeta Kala, W/o Sri Pradeep Kumar Kala, R/o I-67, Nehru Colony,
Dharampur, Dehradun. .

.....Petitioner

VS.

1. State of Uttarakhand through Secretary, School Education, Secretariat, Dehradun..
2. Director, School Education, Nanoorkhera, Tapovan, Dheradun.
3. District Education Officer, Tehri Garhwal.
4. Deputy Education Officer, Jaunpur (Thathyun), Tehri Garhwal.

.....Respondents.

Present: Sri M.C.Pant &
Sri L.K.Maithani, Counsel
for the petitioner.

Sri U.C.Dhaundiyal, A.P.O.
for the Respondents.

JUDGMENT

DATED: MARCH 05, 2018

Justice U.C.Dhyani (Oral)

By means of present claim petition, petitioner seeks
following reliefs:-

- “(i) To issue an order or direction declaring the action of the respondent No.4 for not granting of Child Care Leave to the petitioner for the entire period as per the Examination Scheduled and restricting the same for only 15 days, which is arbitrary and unreasonable and violative to the direction of the Govt. as well as dictum of the Hon’ble apex Court and to correct the same, after calling the entire records from the respondents along with its effect and operation also.*
- (ii) To issue an order or direction, directing to the respondents to grant the Child Care Leave to the petitioner as per her request for entire period and as per the Examination Schedule of her daughter had it been the impugned order was never in existence.*
- (iii) Any other relief which the Court deems fit and proper in the circumstances of the case.*
- (iv) Cost of the petition be awarded to the petitioner.”*

2. Brief facts giving rise to present claim petition are that, the petitioner is presently serving with Uttarakhand State Education Department and is posted as regularly appointed Assistant Teacher, Upper Primary School, Tikri, Jaunpur, Tehri Garhwal. Ms. Pragya Kala, younger daughter of the petitioner, is studying in Class X and has appeared for her ICSC Board Examination, which has already commenced on 26.02.2018. Petitioner submitted an application on 18.01.2018 to her employer and requested for Child Care Leave w.e.f. 01.02.2018 to 28.03.2018, for 56 days. The Headmaster of the school, recommended the application of the petitioner on the same date and forwarded the same to the office of District Education Officer, Tehri. The District Education Officer, Tehri Garhwal, **vide Annexure- A 4, directed Deputy Education Officer to grant Child Care Leave to the petitioner according to the Board Examination Schedule.** Nevertheless, Dy.

Education Officer, vide Annexure-A1, sanctioned the Child Care Leave only for the period 21.02.2018 to 07.03.2018 (15 days). Aggrieved against the same, present claim petition has been filed by the petitioner.

3. It is the submission of the Ld. Counsel for the petitioner that, similarly situated Women Officials, have been granted Child Care Leave for the duration they desired (Annexure: A5).

4. It may be noted here that, vide Annexure: A 1, Child Care Leave has been granted to the petitioner, for the purpose of daughter's examination. Whereas, the examination started on 26.02.2018 and will last up to 28.03.2018, the Child Care Leave has been sanctioned only from 21.02.2018 to 07.03.2018 (15 days). The Child Care Leave can be availed of for a maximum of 730 days during entire service period. The petitioner has earlier availed of only 57 days' Child Care Leave so far. Annexure: A 2 has been filed to show that, Indian Certificate of Secondary Education Examination, year 2018 (ICSE) commenced on 26.02.2018 and will last up to 28.03.2018.

5. The Child Care Leave is a special kind of leave. Government of India has encapsulated the Rule in this respect as follows:

“(1) A woman Government servant having minor children below the age of eighteen years and who has no earned leave at her credit, may be granted child care leave by an authority competent to grant leave, for a maximum period of two years, i.e., 730 days during the entire service for taking care of up to two children, whether for rearing or to look after any of their needs like examination, sickness, etc.

(2) During the period of child care leave, she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

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

(4) Notwithstanding the requirement of production of medical certificate contained in sub-rule (1) of Rule 30 or sub-rule (1) of Rule 31, leave of the kind due and admissible (including commuted leave not exceeding 60 days and leave not due) up to a maximum of one year, if applied for, be granted in continuation with child care leave granted under sub-rule (1).

(5) Child care leave may be availed of in more than one spell.

(6) Child care leave shall not be debited against the leave account".

5. Certain objections were raised by some departments in this State regarding admissibility of Child Care Leave. Repelling such objections, Government of Uttarakhand, through Chief Secretary, issued a circular on 27.02.2015, directing the departments to ensure that Child Care Leave should be given as per Rules (Copy annexed as Annexure: A 6 to the petition).

6. Hon'ble High Court of Uttarakhand at Nainital, vide judgment and order dated 15.12.2016 in W.P. (SB) No. 54/2015 has, on the basis of various decisions of Hon'ble Apex Court, gave certain mandatory directions regarding grant of Child Care Leave while disposing of the writ petition. These directions are as follows:

"21. a).....

b).....

c)....

d)....

e) The State Government is also directed to grant Child Care Leave(CCL) of 730 days' to all the female employees, whether appointed on regular basis, contractual basis, ad hoc/ tenure or temporary basis having minor children with a rider that the child should not be more than 18 years of age or older. The female employees shall be entitled to paid leave equal to the pay drawn immediately before proceeding on leave. CCL can be combined with leave of the kind due and admissible”.

7. Hon'ble Supreme Court in **Civil Appeal No. 4506 of 2014** (arising out of SLP (C) NO. 33244 of 2012) **Kakli Ghosh vs. Chief Secretary, Andaman & Nicobar Administration and others**, vide judgment dated 15.04.2014, observed in Para 14 that, the appellant claimed for 730 days of CCL at a stretch to ensure success of her son in the forthcoming secondary Examination. In **Kakli Ghosh's decision** (*supra*), it was not in dispute that son was minor below 18 years of age when mother applied for Child Care Leave. The competent authority allowed only 45 days of Child Care Leave to the appellant. However, no reason was assigned by the said authority for disallowing CCL for rest of the period, as has been done in the instant case.
8. In para 17 , Hon'ble Apex Court also observed that the respondents have not shown any reason to refuse 730 days' continuous leave. At the same breath, in Para 15 of the judgment, Hon'ble Apex Court observed that, leave can be refused or revoked by the competent authority in case of exigency of public service required.
9. In the instant case, no reason has been assigned by the Dy. Education Officer, as to why petitioner is being denied the leave for the entire examination period (56 days) of her child,

especially when the District Education Officer has directed the Dy. Education Officer to sanction the same. The Dy. Education Officer, without assigning any reason reduced the leave of 56 days' to 15 days, contrary to the directions of his superior, which, according to us, is not reasonable and calls for interference of this Tribunal.

8. The claim petition is, accordingly allowed at the admission stage. Petitioner is granted Child Care Leave from 21.02.2018 to 28.03.2018, as prayed. No order as to costs.
9. Since the leave sanctioned to the petitioner, was going to expire on 07.03.2018 and 06.03.2018 has been declared local holiday in Dehradun, therefore, we were duty bound to decide present claim petition at the admission stage. Inasmuch as no useful purpose would have been served by granting an interim order and keeping the claim petition pending for decision in future.
10. Let a copy of this order be placed in the personal file of the petitioner as per rules.
11. Let a copy of this order be also given to the petitioner, who is present in person, today itself on payment of usual charges.

(D.K.KOTIA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 05, 2018
DEHRADUN

VM