

(2018) 03 DEL CK 0448

In the Delhi High Court

Case No : Civil Writ Petition No. 618 Of 2018, Civil Miscellaneous No. 4582,
4583 Of 2018

Deepika Anand

APPELLANT

Vs

Directorate Of Education, Delhi & Ors

RESPONDENT

Date of Decision : 15-03-2018

Acts Referred:

Citation : (2018) 03 DEL CK 0448

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Avneesh Garg, Pramit, Shadan Farasat, Shashi Pratap Singh, Anil Kumar, Ashwani R.Dahiya, Puneet Saini

Final Decision : Disposed Of

Judgement

Sunil Gaur, J

1. Impugned order of 28th November, 2017 (Annexure P-10) declines petitioner's application for grant of child care leave for a period of 280 days (i.e. from 10th August, 2017 to 16th May, 2018). This is second round of litigation. In the first round, respondent-school was directed vide order of 31st October, 2017 to decide petitioner's representation. In the application of 7th August, 2017 (Annexure P-5), petitioner had intimated respondent-school well in time that her maternity leave is going to expire on 10th August, 2017 and she needs child care leave from 10th August, 2017 to 16th May, 2018 to enable her to rear up her newly born child who is feeble and is dependent upon petitioner for the feed. Vide this application, it was also brought to the notice of respondent-school that petitioner's in-laws are suffering from various ailments and there is no one to take care of petitioner's child and so it is not possible for petitioner to immediately join after the maternity leave.

2. Aforesaid application has been declined vide impugned order (Annexure P-10) by asserting that child care leave cannot be demanded as a matter of right and

under no circumstances, an employee can proceed on child care leave without prior approval of the leave sanctioning authority i.e. management of the school. The reason put forth in the impugned order to deny child care leave to petitioner is that it would disrupt the functioning of the school and would be adverse to the interest of students as the school has to make alternate arrangements due to absence of regular teacher. Learned counsel for respondent-school had sought time to file the counter which is declined for the reason that in the first round of litigation, respondent-school was given ample opportunity to state whatever it had to. So, there is no point now in giving opportunity to respondent-school to file a counter as it has been disclosed that what more is required to be said in the counter by the respondent-school. Once this Court had given its mind after hearing both the sides, counsel for respondent-school had made a feeble attempt to seek an adjournment as under the guise of referring to some circulars etc. If counsel for respondent-school had genuinely needed time to address arguments, then he ought to have made such a request when hearing of this petition had commenced and not when the hearing in this petition has concluded after hearing both the sides at length.

3. After having extensively heard counsel for parties, on perusal of impugned order and the material on record, I find that though child care leave cannot be claimed as matter of right and has to be with approval of the authority concerned but the reason put forth for treating the child care leave sought, as extra ordinary leave is without any justification. Petitioner had proceeded on maternity leave in February, 2017 and by that time, it was known to respondent-school that she will not be able to join for quite some time. In such a situation, respondent-school ought to have made alternate arrangements so far as studies of the students is concerned. It is difficult to understand as to how grant of child care leave to petitioner would disrupt the functioning of respondent-school. In any case, this Court is of the considered opinion that denial of child care leave to petitioner is wholly unjustified and it gives no occasion to the respondent-school to treat the child care leave as extra ordinary leave. Accordingly, impugned order (Annexure P-10) is hereby quashed with direction to respondent-school to grant child care leave to petitioner for the period in question i.e. from 10th August, 2017 up to 16th May, 2018 and not to treat the said leave as extra ordinary leave.

4. With aforesaid directions, this petition and the applications are disposed of .

Dasti.