

ITEM NO.23

COURT NO.1

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No.16864/2021

(Arising out of impugned final judgment and order dated 23-04-2021 in CWP No.3861/2020 passed by the High Court of Himachal Pradesh at Shimla)

SHALINI DHARMANI

Petitioner(s)

VERSUS

THE STATE OF HIMACHAL PRADESH & ORS.

Respondent(s)

(With IA No.137533/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 22-04-2024 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Petitioner(s)

Ms. Pragati Neekhra, AOR

For Respondent(s)

Mr. D.K. Thakur, Adv.
Ms. Tavleen Singh, Adv.
Mr. Bimlesh Kumar Singh, Adv.

Mr. Mohan Lal Sharma, AOR
Mrs. Sikha Sharma, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 The petitioner is an Assistant Professor at the Department of Geography in Government College, Nalagarh. Her son, who is fourteen years old, suffers from a rare genetic disorder, Osteogenesis Imperfecta and has undergone several surgeries since birth. He requires continuous treatment and surgical intervention to survive and lead a normal life. Due to the treatment of her son, the petitioner has exhausted all her sanctioned leave.
- 2 Rule 43-C of the Central Civil Service (Leave) Rules¹ 1972, provides for the grant of Child Care Leave and is reproduced below:

“43-C Child Care Leave.- (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 upto 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) upto 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.

1 “CCS (Leave) Rules”

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

- 3 By an Office Memorandum dated 3 March 2010, the Union Government resolved to permit Child Care Leave for women employees with differently abled children up to the age of twenty-two years (instead and in place of eighteen years) subject to the conditions stipulated by the government in this regard from time to time.
- 4 The petitioner was informed by the Principal of the Government College on 16 November 2018 that since the State of Himachal Pradesh has not adopted provisions for Child Care Leave, such leave cannot be sanctioned to her. After making a representation on 26 December 2018, the petitioner instituted a writ petition before the High Court of Himachal Pradesh under Article 226 of the Constitution seeking a direction for the adoption of Rule 43-C of the CCS (Leave) Rules. The writ petition was dismissed by the High Court by the impugned order dated 23 April 2021 on the ground that Rule 43-C has been deleted by the State of Himachal Pradesh.
- 5 During the course of the hearing, it is not in dispute that the provision for Child Care Leave has been deleted by the State of Himachal Pradesh. Consequently, the extension of age from eighteen to twenty-two years for a mother of a differently abled child by the Union Government in the matter of the grant of Child Care Leave also does not apply. We are of the considered view that the petition raises a serious matter of concern. The petitioner has relied on the provisions of the Rights of Persons with Disabilities Act 2016².
- 6 On 15 September 2022, notice was issued to the Commissioner under the RPWD Act, who was requested to place on the record the policies/directions, if any, issued with regard to the grant of leave to parents of children covered by the statute. The Commissioner has since indicated on affidavit that no

2 “RPWD Act”

such policies or directions have been formulated.

- 7 The participation of women in the work force is not a matter of privilege, but a constitutional entitlement protected by Articles 14, 15 and 21 of the Constitution; besides Article 19(1)(g). The State as a model employer cannot be oblivious to the special concerns which arise in the case of women who are part of the work force. The provision of Child Care Leave to women subserves the significant constitutional object of ensuring that women are not deprived of their due participation as members of the work force. Otherwise, in the absence of a provision for the grant of Child Care Leave, a mother may well be constrained to leave the work force. This consideration applies *a fortiori* in the case of a mother who has a child with special needs. Such a case is exemplified in the case of the petitioner herself. We are conscious of the fact that the petition does trench on certain aspects of policy. Equally, the policies of the State have to be consistent and must be synchronise with constitutional protections and safeguards.
- 8 In this view of the matter, we are of the view that the State of Himachal Pradesh must be directed to reconsider the entire aspect of the grant of Child Care Leave to mothers, including making special provisions consistent with the objects and purpose of the RPWD Act to mothers who are bringing up children with special needs.
- 9 We accordingly direct that a committee chaired by the Chief Secretary of the State of Himachal Pradesh be constituted to look into all aspects of the matter. The Committee shall consist of the:
 - (i) State Commissioner appointed under the RPWD Act;
 - (ii) Secretary in the Women and Child Development Department; and
 - (iii) Secretary in the Social Welfare Department.

- 10 We also request that the committee so constituted shall engage with (i) Secretary in the Department of Women and Child Development and (ii) Secretary in the Social Welfare Department (Department of Empowerment of Persons with Disabilities) of the Union Government.
- 11 The report of the Committee shall be placed before the competent authority so that a considered policy decision is taken expeditiously. The report of the Committee shall be prepared by 31 July 2024 and submitted to this Court as well.
- 12 We also grant liberty to implead the Union of India as a party to these proceedings. We request Ms Aishwarya Bhati, Additional Solicitor General to assist the Court in the matter.
- 13 In the meantime, pending further orders, the application by the petitioner for the grant of special leave under Rule 32 of the CCS (Leave) Rules shall be favorably considered by the competent authorities.
- 14 List these proceedings on 5 August 2024.

(CHETAN KUMAR)
A.R. - cum - P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar