

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: May 31, 2022

+ W.P.(C) 2323/2022, CM APPL. 12369/2022

RAJESH KAPOOR Petitioner
Through: Mr. Sholab Arora, Adv.

versus

OFFICE OF THE LD. PRINCIPAL DISTRICT
AND SESSIONS JUDGE Respondent
Through: Mrs. Avnish Ahlawat, SC, GNCTD
(Services) with Mr. N. K. Singh,
Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

**CM APPL. 12369/2022 (by respondent seeking condonation of
13 days delay in filing the counter affidavit)**

For the reasons stated in the application, the same is allowed and
delay of 13 days in filing the counter affidavit is condoned.

Application is disposed of.

W.P.(C) 2323/2022

1. This petition has been filed with the following prayers:-

“a) Issue a writ of certiorari, or any other appropriate writ or direction, for declaring the Impugned Circular [i.e. the Circular dated 04.08.2018 bearing number Admn-II/Cir./2018/49266- 50066 issued by the Office

of the Respondent] as unconstitutional and null & void;

b) Issue a writ of certiorari, or any other appropriate writ or direction, for setting aside the Impugned Order [i.e. the Order dated 31.01.2022 passed by the Office of the Respondent rejecting the application of the Petitioner seeking grant of Earned Leave for a period of 30 days (from 21.03.2022 to 19.04.2022)];

c) Issue a writ of mandamus, or any other appropriate writ or direction, directing the Office of the Respondent to allow the application of the Petitioner seeking grant of Earned Leave for a period of 30 days for his travel to Harare (Zimbabwe);

d) Pass any other order or direction in favour of the Petitioner in the interest of justice.”

2. The challenge in this petition is to the order dated January 31, 2022 ('Impugned Order', hereinafter) of the respondent, whereby the respondent has rejected the application of the petitioner for grant of Earned Leave ('EL', for short) for a period of 30 days, by referring to a circular dated August 04, 2018 bearing No. Admn-II/Cir./2018/49266-50066 ('Impugned Circular', hereinafter), which stipulates a court staff can be allowed to visit a foreign country only during Summer Vacations, Winter Vacations, Public Holidays and in case of any exigency.

3. At the outset, I may briefly narrate the factual background as set out in the writ petition. The petitioner herein holds the post of Senior Personal Assistant in the Court of ASJ-01, Special Judge/POCSO, North-West District, Rohini Courts, Delhi. The wife of the petitioner is in the employment of the Ministry of External

Affairs, Government of India, posted as an Attach'e in the Embassy of India, at Harare, Zimbabwe, where she is residing with their daughter, aged 17 years. On September 13, 2021, the petitioner filed an application with the office of the respondent seeking grant of EL for a period of 30 days to visit his family in Harare, Zimbabwe, to provide assistance to his daughter for her admission to an educational institution. In response thereto, on September 20, 2021, the office of the respondent sought certain documents and an affidavit from the petitioner.

4. Further, on November 18, 2021 the respondent again sought an affidavit/undertaking from the petitioner. On December 10, 2021, the office of the respondent passed an order whereby the application of the respondent was rejected by referring to the impugned circular. On December 13, 2021, the petitioner addressed a letter to the office of the respondent stating that the said order is not a speaking order, and is discriminatory, as leave was granted to another member of the Court staff for travelling abroad. He requested his application be considered again. In response thereto, the office of the respondent passed an order dated December 18, 2021 rejecting the request of the petitioner without assigning any reasons. On January 02, 2022, the petitioner challenged the impugned circular and the orders dated December 10, 2021 and December 18, 2021 before this Court by way of a Writ Petition bearing No. W.P.(C) 139/2022, which was disposed of on January 12, 2022 by stating as under:-

“It is agreed that the petitioner shall, on deciding to go to Zimbabwe, apply to the competent authority one

month before his travel to that country specifying the number of days (also month) for which he wants to avail the leave. On receipt of such request, the competent authority within two weeks keeping in view the exigencies shall decide the request and communicate the decision to the petitioner.”

5. On January 18, 2022, in pursuance of the order of this court, the petitioner applied for grant of EL for a period of 30 days, from March 21, 2022 to April 19, 2022. On January 24, 2022 the office of the respondent addressed a letter to the petitioner requiring him to provide the details of the proposed admission of his daughter and whether the latter's presence was required for the said admission, to which the petitioner replied *vide* letter dated January 25, 2022. On January 31, 2022, the office of the respondent passed the impugned order.

6. Mr. Sholab Arora, learned counsel for the petitioner has, at the outset, tried to alleviate the apprehensions of this Court on the admissibility of the present petition with regard to a possible delay in challenging the impugned circular. He has submitted that the cause of action with respect to challenging the constitutionality of a law/circular arises only when the actual effect is felt by an aggrieved person. In this regard, he has placed reliance on two judgments; first of the Supreme Court in *Kusum Ingots and Alloys Ltd. v. Union of India*, AIR 2004 SC 2321, and second of this Court in *Jayaswals NECO Ltd. v. Union of India*, WP(C) 10480/2005 and connected matters, decided on July 02, 2007. Further, by relying upon the judgments of the Apex Court in *Tukaram Kana Joshi v. MIDC*,

(2013) 1 SCC 353, and *Vidya Devi v. State of Himachal Pradesh*, (2020) 2 SCC 569, he contended that even assuming there is some delay, the same can be condoned as “the cause of substantial justice deserves to be preferred”, especially when the constitutionality of a law/circular is in question.

7. Mr. Arora submitted that the service / employment of the petitioner is regulated by the Delhi District Courts Establishment (Appointment & Conditions of Service) Rules, 2012 (‘Rules of 2012’, hereinafter). No provisions exist in the said Rules that govern leaves during service / employment. Rule 42 of the Rules of 2012 states that the conditions of service of the members of the Service for which no express provision is made in the Rules, shall be determined by the rules applicable to members of the state civil services in the state holding equivalent grade posts. He stated that the Central Civil Services (Leave) Rules, 1972 (‘CCS Leave Rules’, hereinafter) are applicable to such equivalent state civil service employees, and as such, the entitlement of the petitioner to EL is governed by the CCS Leave Rules *mutatis mutandis*. Rule 26 of the CCS Leave Rules specifically stipulates *inter alia* that “*the leave account of every Government servant...who is serving in a Department...shall be credited with earned leave, in advance, in two instalments of 15 days each on the first day of January and July of every calendar year.*”

8. Mr. Arora submitted that the impugned order and circular are in violation of Article 14 of the Constitution of India, as they unfairly discriminate between those Delhi District Court employees who wish to travel abroad and those who wish to travel within India. Merely

because an employee wishes to travel abroad and states so in his application for grant of leave, the impugned circular requires the employee to show exigency for his travel abroad. However, that is not the case if an employee wishes to travel within India. Under Article 14 of the Constitution, for a classification to be reasonable, it must be based on an *intelligible differentia* and the *differentia* must have a *reasonable nexus* with the object sought to be achieved. The object of the impugned circular as stated therein, is to prevent “disruption in the smooth functioning of the court/office work”. He contended that the mischief the impugned circular purports to rectify is actuated by absence of employee(s), regardless of where such employee travels to, be it abroad or within the country. It cannot be said that an employee who wishes to travel abroad will somehow impose extra burden on the court administration by merely travelling to another country, as all employees are entitled to an equal number of EL. Mr. Arora stated that by restricting its ambit to only those employees who wish to travel abroad, the impugned circular is highly *under-inclusive*, and hence, the same falls foul of Article 14 of the Constitution of India. In this regard, he has placed reliance upon the judgment in the case of *State of Tamil Nadu v. National South Indian River Interlinking Agriculturist Association*, 2021 SCC OnLine SC 1114. It is also his contention that there is no reasonable justification to disentitle an employee from grant of leave merely because the employee wishes to travel abroad, as it is not the case that the employee is seeking some extra benefit or privilege, in terms of resources or number of leaves, on account of his/her travel to a foreign country. Therefore, from an administrative

point of view, no additional burden is imposed on the court administration merely because the petitioner wishes to travel abroad.

9. He would further submit, by relying upon the Judgment in the case of *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, it is a settled position of law that the right to travel abroad is a fundamental right protected under Article 21 of the Constitution of India. It also encompasses within its scope, the right of a person to meet his/her family, which, in the facts of the present case, protects the right of the petitioner to visit a foreign country to meet his family. It is the submission of Mr. Arora that the interplay of the aforesaid two rights, i.e., the right to travel abroad and the right of a person to meet his family was appreciated by the Supreme Court in *Satish Chandra Verma v. Union of India*, Civil Appeal No. 3802 of 2019 decided on April 09, 2019, wherein, the Apex Court permitted an IPS Officer to travel abroad to meet his family, as he had paid leaves credited to his account, though the competent authority had rejected his application for grant of leave on the ground that a departmental proceeding was pending against him. Relevant part of the said judgment is reproduced as below:-

“The right to travel abroad is an important basic human right for it nourishes independent and self-determining creative character of the individual, not only by extending his freedoms of action, but also by extending the scope of his experience. The right also extends to private life; marriage, family and friendship are humanities which can be rarely affected through refusal of freedom to go abroad and clearly show that this freedom is a genuine human right. (See: Mrs.

Maneka Gandhi v. Union of India and Anr. MANU/SC/0133/1978 : (1978) 1 SCC 248). In the said judgment, there is a reference to the words of Justice Douglas in Kent v. Dulles MANU/USSC/0234/1958 : 357 US 116 which are as follows: Freedom to go abroad has much social value and represents the basic human right of great significance. In the instant case, the Appellant who is a member of the All India Services has paid leave to his credit and has applied to go to U.S.A. and France to visit members of his family who are residing there. On an earlier occasion this Court permitted him to travel to U.S.A. in the year 2017 and he promptly came back. We are of the opinion that pendency of departmental proceedings cannot be a ground to prevent the Appellant from travelling abroad. In view of the above, we are of the opinion that there is no reason for the Government of India to refuse permission to the Appellant to travel abroad. It is submitted by Ms. Indira Jai Singh that the Appellant intends to go to U.S.A. and France between the period 28.04.2019 and 01.06.2019. The Respondents are directed to permit the Appellant to travel during the said period.”

10. That apart, he has contended by relying upon the Judgment of the Supreme Court in ***Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India and Anr.*** (2019) 1 SCC 1, that any restriction on Article 21 will have to pass the proportionality test, which mandates the following conditions be satisfied: -

1. The action / restriction must be sanctioned by a law i.e., legislation [*Legality*];
2. The action / restriction must be in pursuance of a legitimate aim [*Legitimacy*]; and

3. The action / restriction must be the ‘least intrusive measure’ [*Narrow Tailoring*].

11. These three conditions, are conjunctive in nature, and necessarily need to be fulfilled for a restriction to be valid and constitutional. Mr. Arora has endeavoured to analyse whether the restriction imposed by the impugned circular fulfils the aforementioned three conditions. As regards legality, he stated that there is no provision either in the Rules of 2012 or the CCS Leave Rules which authorises the office of the respondent to impose any such restriction as has been done by the impugned circular. Therefore, according to him, this condition has not been fulfilled. Regarding legitimacy, he stated that the object of the impugned circular is to prevent “disruption in the smooth functioning of the court/office work. There cannot be any demur to the legitimacy of such an aim. The issue is whether the restriction imposed by the office of the respondent is the ‘least intrusive measure’.

12. Regarding narrow tailoring, he submitted that Sub-rule 2 of Rule 7 of the CCS Leave Rules stipulates that “*when the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it*”. Therefore, the refusal of leave has been made an exception, and leave can be refused when “the exigencies of public service so require” – which can possibly be in case of a scarcity of staff. However, the impugned circular makes the refusal of leave a norm by implicitly presuming that there will always be scarcity of staff, and put the burden on the employee to show

exigency in order to avail leave. It is his contention that what is stipulated in Rule 7 of the CCS Leave Rules is the 'least intrusive measure', and not what has been stipulated in the impugned circular. Therefore, the third condition is also not fulfilled. Further, he submitted that Rule 7 of the CCS Leave Rules has been interpreted by the Government of India in an Office Memorandum dated March 27, 2001 bearing number 14028/3/2000-Estt(L) issued by the Department of Personnel and Training ('DoPT, for short'). The relevant portion of the aforementioned Office Memorandum is as follows:

“A suggestion has been made to the Government that as one of the institutional mechanisms to allow Government servants to periodically free themselves from the routine stresses of service life and thus help them avoid falling prey to various stress related diseases, they may be compelled to avail of at-least 15 days earned leave during a calendar year. Though implementation of the suggestion in this manner is not feasible on account of the provisions of service rules, the basic idea underlying the suggestion is un-exceptionable. Under the extant provisions of CCS (Leave) Rules, 1972, leave cannot be claimed as a matter of right. When the exigencies of the public service so require, discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it. However, as emphasized in the instructions issued by this Department from time to time. such provisions have been made in the Rules because it is not possible to let all those who want leave at a particular time to have it at that time and there is a limit beyond which depletion of staff cannot be permitted without dislocating the working of an establishment. These instructions are not intended to be used as in effect to abridge the leave entitlements of

the staff. It is indeed desirable in the interest of the public services -that government servants take leave at suitable intervals and return to work relaxed and refreshed. It has also been laid down that the leave sanctioning authorities may encourage government servants to take leave periodically, preferably annually, and in case where all applications for leave cannot, in the interest of public service, be granted at the same time, the leave sanctioning authority should draw up phased programme for the grant of leave to the applicants by turn with due regard to the principles enunciated. Leave is, accordingly, not to be ordinarily denied to any employee, especially in the last 10 years of his career. Periodical availment of leave is in the interest of the Government as well as the Government servants.”

The aforesaid Office Memorandum, according to Mr. Arora, has been relied upon by the Supreme Court in ***Kakali Ghosh v. Chief Secretary, Andaman and Nicobar Administration***, (2014) 15 SCC 300, while granting a continuous Child Care Leave of 730 days to the appellant therein.

13. That apart, he stated that the impugned circular is in conflict with Rule 7 of the CCS Leave Rules, and under the hierarchy of laws, if a purely administrative circular/executive instruction is in conflict with certain rules / regulations, it is bad in law.

14. He would further submit that the word ‘*exigency*’ in the impugned circular has to be given a liberal interpretation, and traveling to another country for meeting one’s family and providing parental assistance to one’s daughter during her admission process must be considered as ‘*exigency*’. Given that the family of the petitioner permanently resides abroad, he will never be able to meet his family as

going abroad for a short stint of one week during the Winter Vacation or two weeks in the Summer Vacation will not be economically feasible and viable for him. Therefore, he stated that it is imperative that the petitioner either avails his EL or clubs his EL with the vacations to go abroad and meet his family.

15. Regarding the reason of 'scarcity of staff' quoted in the impugned order, it is submitted that no such reason was mentioned in the orders dated December 10, 2021 and December 18, 2021 which were challenged by the petitioner in the earlier writ petition bearing WP(C) 139/2022. According to him, it is highly improbable that there is a sudden scarcity of staff in a span of one month. The office of the respondent has used this pretext to merely create a semblance of 'public exigency' and to make the impugned order look like a speaking order, as a specific plea was taken by the petitioner in the earlier writ petition that the impugned orders therein were not speaking in nature. It is stated that no details have been given by the respondent to justify this claim, and as per the knowledge of the petitioner, various court employees are being granted leaves.

16. Regarding the third reason invoked in the impugned order, i.e., that the petitioner had availed a leave of about three years from 2017 to 2020, Mr. Arora would state that the same was an unpaid leave which was availed by the petitioner to stay with his family, as his wife during that period was posted in Canada. This is an irrelevant consideration; even in terms of the impugned circular, as the history of leaves availed before has nothing to do with the consideration of the present application for grant of leave.

17. He has further submitted that the reliance placed by the respondent during the proceedings on a circular dated August 03, 2016 of this court, which stipulates that no judicial officer shall go on a foreign visit during working days, is misplaced as the constitutionality of that circular has not been adjudicated yet, and the same has no bearing on a question of validity of the impugned circular. He stated that in any case, the circular of August 03, 2016 was passed by the administrative side of this court, and as such, is not a judicial order having precedential value.

18. That apart, he stated that one Hemlata Sharma, Senior Judicial Assistant, presently posted in the District Courts, Rohini, Delhi has recently been allowed leave for a long period, for the fifth time, and she has been allowed to travel abroad. Therefore, according to him, the impugned order deserves to be set aside as it *inter alia*, flies in the teeth of the principle of parity. He seeks the prayers as made in the writ petition.

19. A counter affidavit has been filed by the respondent, wherein it is stated that the circular dated August 04, 2018 has been passed by the learned District and Sessions judge, (HQ) in furtherance of the directions of this Court *vide* order dated August 03, 2016, by virtue of which, all staff members have been directed to move applications for grant of permission to travel abroad only during summer and winter vacations, public holidays and in case of any exigency.

20. Ms. Avnish Ahlawat, Standing Counsel, GNCTD (Service) appearing on behalf of the respondent would state that the petitioner had moved an application dated September 13, 2021 for sanction of

EL for 30 days w.e.f. January 03, 2022 to February 01, 2022 to visit Harare, Zimbabwe for the purpose of admitting his daughter to a new school. The application of the petitioner was incomplete in terms of the circular dated August 14, 2018, and was returned to the petitioner with remarks to remove the objections and furnish the requisite information. Thereafter, the petitioner moved another application dated November 09, 2021 after removing the objections, but the application was also not complete. Accordingly, the said application was also returned in original to the petitioner with remarks on November 18, 2021, as the earlier objections were not removed and the application dated September 13, 2021 was not submitted in original. Subsequently, the petitioner moved another application dated November 27, 2021 after removal of objections raised by the respondent on November 18, 2021. However the application lacked the details of the proposed visit and the reasons for it.

21. She has stated that the applications dated September 13, 2021, November 09, 2021 and November 27, 2021 were duly considered by the competent authority and in view of the circular dated August 04, 2018 and the history of his previous journeys abroad (details of which have been provided in page 3 of the counter affidavit), the respondent declined the request of the petitioner to grant him permission to visit Harare, Zimbabwe. The petitioner was informed accordingly *vide* letter dated December 10, 2021. Thereafter, the petitioner moved another application dated December 13, 2021, which was again declined by the respondent for the aforementioned reasons. The petitioner was informed of the decision on December 18, 2021.

22. Thereafter, upon the order of this court dated January 12, 2022 in WP(C) 139/2022, the petitioner preferred another application on January 18, 2022 to visit Harare, Zimbabwe from March 16, 2022, and requesting for grant of 30 days EL w.e.f. March 21, 2022 to April 19, 2022, for admitting his daughter to a new school for her 12th grade and to meet his family members, who have been residing there since December 2020. On January 24, 2022, the petitioner was asked to submit the details of the proposed admission of his daughter and also to inform whether his presence is mandatory for the admission. However, the petitioner failed to show any exigency and has only replied that he wants to assist his wife in securing admission for his daughter. Ms. Ahlawat has submitted that the wife of the petitioner is capable to complete all the required formalities for the admission of their daughter since she has been working as an attaché in the Indian Embassy in Harare, Zimbabwe and she may seek the assistance of her office also, if required.

23. She has also stated that the petitioner was required to furnish elaborate and detailed information on the following aspects, as per established procedure and rules:-

1. Itinerary and details of the proposed visit.
2. Purpose of all the foreign visits and the period for which permission has been taken.
3. Details of schools in which the daughter of the petitioner intends to take admission.

4. Whether the facility of online enrolment / admission process is available for the earmarked school.

5. Whether there are any other family members of the petitioner available to pursue the admission process of his daughter.

6. Expenses which are to be incurred on the proposed travel of the petitioner along with the relevant documents.

7. Details of the petitioner's last visit to Canada.

8. Details of income from all sources and bank transactions of the petitioner and his wife during his previous visits, and any potential income from the proposed visit, along with all relevant documents.

Ms. Ahlawat stated that none of this information was elaborated on by the petitioner and whatever information was furnished was non-specific, evasive and vague.

24. She would state that keeping in view the circular dated August 04, 2018, unsatisfactory reasons furnished by the petitioner, acute shortage of staff in the establishment of the respondent and the fact that the petitioner was already allowed more than three years leave from 2017 to 2020, the respondent had no choice but to decline the request of the petitioner.

25. It is submitted that the circular of August 04, 2018 was in the backdrop of the disruption of smooth functioning of the court/office, caused by the frequent requests of staff members to travel abroad. The right to travel abroad of the staff, including that of the petitioner, has not been infringed or affected, as it is possible to avail permission/leave to travel abroad during court vacations and also in case of any exigency.

26. As regards the argument of parity made by Mr. Arora referring to the case of Hemlata Sharma, Senior Judicial Assistant, it is stated that, her case was on a totally different footing, inasmuch as, she was granted permission to travel abroad on the ground of health issues of her son, who was hospitalised in Dublin, Ohio, United States of America.

ANALYSIS / CONCLUSION:

27. Having heard the learned counsel for the parties and perused the record, in substance, the challenge in this petition is to the circular dated August 04, 2018, and the order dated January 31, 2022 issued by the office of the respondent on the ground that the same are unconstitutional and null and void.

28. The challenge in the petition to the impugned circular / order has been made by the petitioner broadly on the following grounds:-

- i. The impugned order and circular are in violation of Article 14 and 21 of the Constitution of India.
- ii. The circular has no foundation in any of the rules.

- iii. The impugned order dated January 31, 2022 passed by the respondent rejecting the application of the petitioner for grant of EL for the period of thirty days i.e., March 21, 2022 to April 19, 2022, is by way of a non-speaking order and as such is *non-est*.
- iv. That the petitioner has been discriminated inasmuch as one officer namely Hemlata Sharma, Senior Judicial Assistant posted in District Courts, Rohini, was allowed EL for fifth time to travel abroad.
- v. The ground of scarcity of staff, given as the reason to reject the leave of the petitioner, has no basis.

29. Before I deal with the submissions advanced by the learned counsel for the parties, it is necessary to reproduce the circular dated August 04, 2018 as under:-

“It is being noticed that staff members often send applications seeking permission to visit abroad without any exigency which causes disruption in the smooth functioning of the court/office work.

Therefore, in order to ensure smooth functioning of the court/office work all the staff members are directed to move such applications for grant of permission to visit abroad only during Summer Vacations, Winter Vacations, Public Holidays and in case of any exigency only.

No such application for grant of permission to visit abroad except on the basis of aforesaid conditions shall be entertained by this office henceforth.....”

30. I may also state that this petition is a second round of litigation of the petitioner inasmuch as, the earlier petition being W.P.(C) 139/2022, was disposed of in terms of the directions as noted in paragraph 4 above.

31. Pursuant thereto, the respondent has passed an order dated January 31, 2022 wherein the following has been stated:-

“With reference to your letters dated 18.01.2022 & 25.01.2022 (advance copy), on the subject cited above, I am directed to inform you that the Ld. Principal District & Sessions Judge (HQs), Delhi, has been pleased to decline your request to visit Harare (Zimbabwe), w.e.f. 16.03.2022 (at night hours) to 19.04.2022, in view of the circular dated 04.08.2018, as the reply furnished by you in reference of this office's letter 24.01.2022, does not reflect satisfactory reasons. Furthermore, this establishment is already undergoing scarcity of staff and you have already availed leaves more than 3 years during the period 2017 to 2020, for visiting abroad.”

32. On a perusal of the impugned circular dated August 04, 2018, it is clear, the same stipulates, the staff can apply for grant of permission to travel abroad only during summer vacations, winter vacations, public holidays and in case of any exigency. The circular is not a complete bar from travelling abroad. It also contemplates that in case of exigency, an employee can seek permission to go abroad even if it is not during summer vacations, winter vacations and public holidays. Insofar as order dated January 31, 2022 is concerned, the request of the petitioner was rejected on three grounds; firstly, it does not show any satisfactory reason; secondly, there is a scarcity of staff;

thirdly, he has already availed leaves of more than three years during the period 2017 to 2020 for travelling abroad.

33. With the above preface, I proceed to decide the submissions made by learned counsel for the parties. The first plea of Mr. Arora is that the impugned order violates Article 14 and Article 21 of the Constitution of India. It was his submission that the impugned circular discriminates between those District Court employees who wish to travel abroad and those who wish to travel within India. In other words, a person travelling abroad has to show an exigency whereas a person, who is travelling within India, is not required to show any such exigency. The plea is without merit, in view of the CCS (Leave) Rules on which reliance has been placed by the counsel for the petitioner himself, more specifically, Rule 7, which stipulates in no uncertain terms that leave cannot be claimed as a matter of right. The Rule, in fact contemplates when the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it. In other words, even a leave sought to travel within India can be denied/ revoked in the event of an exigency. Hence, there is no violation of Article 14 of Constitution of India, as alleged by the counsel.

34. Insofar as the plea of Mr. Arora by relying upon the Judgment in the case of *Maneka Gandhi (supra)*, that the impugned circular violates Article 21 of the Constitution of India is concerned, the same is without merit. A reading of the impugned circular would show that a staff member can, in fact, travel abroad during summer vacations, winter vacations, public holidays and in case of any exigency. In other

words, it is not a case where foreign travel *per se* has been prohibited / banned or in view of the circular, one is unable to travel abroad. In fact, the judgment in the case of *Maneka Gandhi (supra)* has no applicability in the case in hand, as in that case the issue was the impounding of the passport of the petitioner, resulting in violation of her right to travel under Article 21 of the Constitution of India.

35. The plea of learned counsel for the petitioner that there is no *intelligible differentia* and *reasonable nexus* between the impugned circular and the object sought to be achieved is also without merit. It is a conceded case that the petitioner is an employee of a District Court. The Courts, supported by the staff appointed, discharge an important public function of rendering justice to the people. It is to ensure that this important public function of rendering justice to litigants is unhindered, that the impugned circular is issued which contemplates that an employee working in a District Court can apply for permission to travel abroad only during summer vacations, winter vacations, public holidays and in case of any exigency. Further, objective behind the circular is, as travelling abroad, is always for a larger duration, (in this case the petitioner sought leave for thirty days) such visits must be undertaken during the summer, winter and public holidays. The exceptions to summer, winter and public holidays is, if there is an exigency (subject to the satisfaction of the competent authority), the employee can travel abroad. In any case, the underlying rule is that an employee cannot seek permission to go abroad by availing leaves, as a matter of right. Clearly, there is an objective sought to be achieved by the impugned circular. Hence, this plea is rejected.

36. That apart, it is the stand of the respondent that the impugned circular dated August 04, 2018 was passed in furtherance of the directions issued by this Court *vide* order dated August 03, 2016 which states the following:-

“Dated 03/08/2016

From

The Registrar General

Delhi High Court

New Delhi.

- 1. The District & Sessions Judge (HQs), Tis Hazari Courts, Delhi*
- 2. The District & Sessions Judge, South, Saket Courts, Delhi*
- 3. The District & Sessions Judge, North-West, Rohini Courts, Delhi*
- 4. The District & Sessions Judge, South-East, Saket Courts, Delhi*
- 5. The District & Sessions Judge, South-West, Dwarka Courts, Delhi*
- 6. The District & Sessions Judge, East, Karkardooma Courts, Delhi*
- 7. The District & Sessions Judge, Shahdara, Karkardooma Courts, Delhi*
- 8. The District & Sessions Judge, New Delhi District, PHC, Delhi*
- 9. The District & Sessions Judge, North, Rohini Courts, Delhi*
- 10. The District & Sessions Judge, West, Tis Hazari Courts, Delhi*
- 11. The District & Sessions Judge, North-East, Karkardooma Courts, Delhi*
- 12. The Principal Judge (HQs), Family Courts, Dwarka, Delhi*
- 13. The Chairperson, Delhi Judicial Academy, Dwarka, Delhi.*

Sub: Directions regarding foreign visit

Sir/Madam,

I am directed to say that it has been observed that the judicial officers are requesting for grant of permission for making foreign visits by availing leave during Court working days. Hon'ble the Chief Justice has taken a serious view of the matter and has been pleased to order that in future there shall not be any foreign visit during working days.

I am, therefore, to request you to kindly bring the above directions of Hon'ble the Chief Justice to the notice of all the judicial officers under your respective control, for strict compliance.

Yours faithfully

*(Dinesh Kr.Manchanda)
Assistant Registrar (Gaz.)
For Registrar General”*

37. The above directions are issued to District Judges of all District Courts in Delhi. In other words, the said circular has applicability to all the employees of all District Courts in Delhi. The plea of the learned counsel for the petitioner that there is no foundation in any of the rules, (the Rules of 2012 and CCS (Leave) Rules), which permits the respondent to impose any restriction on its employees to travel abroad is also misplaced. The CCS (Leave) Rules, more specifically, Rule 7 thereof, reads as under:-

“7. Right to leave (1) Leave cannot be claimed as of right. (2) When the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and

applied for except at the written request of the Government servant.”

The aforesaid Rule clearly stipulates that leave cannot be claimed as a matter of right. In exigency of public service, leaves of any kind can be refused by the authority competent to grant it. The provision empowers the competent authority to stipulate the conditions where an employee can be denied leave.

38. Insofar as the reliance placed by the learned counsel for the petitioner on the judgment in the case of **Satish Chandra Verma** (*supra*) is concerned, the said judgment has no applicability, as in that case, the petitioner was denied permission to make a foreign visit on the ground that he is involved in a criminal case and departmental inquiries were pending against him. In that fact situation, the Central Administrative Tribunal denied interim relief, which order was confirmed by the High Court stating that impugned action cannot be faulted as the permission to travel abroad was denied owing to lack of vigilance clearance. The Supreme Court held as under:-

“.....The right to travel abroad is an important basic human right for it nourishes independent and self-determining creative character of the individual, not only by extending his freedoms of action, but also by extending the scope of his experience. The right also extends to private life; marriage, family and friendship are humanities which can be rarely affected through refusal of freedom to go abroad and clearly show that this freedom is a genuine human right. (See: Mrs. Maneka Gandhi v. Union of India and Another (1978) 1 SCC 248). In the said judgment, there is a reference to

the words of Justice Douglas in Kent v. Dulles 357 US 116 which are as follows:

“Freedom to go abroad has much social value and represents the basic human right of great significance.”

In the instant case, the appellant who is a member of the All India Services has paid leave to his credit and has applied to go to U.S.A. and France to visit members of his family who are residing there. On an earlier occasion this Court permitted him to travel to U.S.A. in the year 2017 and he promptly came back.

We are of the opinion that pendency of departmental proceedings cannot be a ground to prevent the appellant from travelling abroad....”

39. From the above, it is clear that the petitioner therein was denied the right to travel abroad only on the ground of pendency of departmental proceedings which is not the case here. Hence, the said judgment is distinguishable.

40. Insofar as the reliance placed by the counsel for the petitioner on the judgment of ***Government of Andhra Pradesh and Ors. v. P. Laxmi Devi,(2008) 4 SCC 720*** to contend that if a pure administrative circular/executive instruction is in conflict with certain rules and regulations, former would be bad in law. There is no dispute on the proposition of law laid down in the said judgment, but Mr. Arora has not pointed out any statutory rule which has been violated by the impugned circular of August 04, 2018. A reference has been made by learned counsel for the petitioner on the judgment of the Supreme Court in ***Kakali Ghosh (supra)***. Suffice to state that the said judgment

was with regard to a female employee seeking child care leave for a period of two years. It was in that factual situation that the Supreme Court held that a woman employee can seek uninterrupted 730 days child care leave in one stretch. In paragraphs 12 and 13 the Apex Court held as under:-

“12. On perusal of circulars and Rule 43-C, it is apparent that a woman government employee having minor children below 18 years can avail CCL for a maximum period of 730 days i.e. during the entire service period for taking care of up to two children. The care of children is not for rearing the smaller child but also to look after any of their needs like examination, sickness, etc. Sub-rule (3) of Rule 43-C allows a woman government employee to combine CCL with leave of any other kind. Under sub-rule (4) of Rule 43-C leave of the kind due and admissible to a woman government employee including commuted leave not exceeding 60 days; leave not due up to a maximum of one year, can be applied for and granted in continuation with CCL granted under sub-rule (1). From a plain reading of sub-rules (3) and (4) of Rule 43-C it is clear that CCL even beyond 730 days can be granted by combining other leave if due. The finding of the High Court is based neither on Rule 43-C nor on guidelines issued by the Central Government. The Tribunal was correct in directing the respondents to act strictly in accordance with the guidelines issued by the Government of India and Rule 43-C.

13. In the present case, the appellant claimed for 730 days of CCL at a stretch to ensure success of her son in the forthcoming secondary/senior examinations (10th/11th standard). It is not in dispute that the son was a minor below 18 years of age when she applied for CCL. This is apparent from the fact that the competent

authority allowed 45 days of CCL in favour of the appellant. However, no reason has been shown by the competent authority for disallowing rest of the period of leave.”

The instant case is not that of child care leave.

41. I must state that the impugned circular does not restrict an employee having an exigency, seeking permission to travel abroad when it is not summer vacations, winter vacations or public holidays. The request of the petitioner for sanction of thirty days EL between March 21, 2022 to April 19, 2022 was denied vide the impugned order, as the request of the petitioner did not reflect satisfactory reasons inasmuch as he has sought the leave on the ground of helping his wife in admitting their daughter to a new school and meeting his family members. Furthermore, the establishment/court was undergoing a scarcity of staff and the petitioner had already availed leaves for more than three years during the period 2017-2020 for travelling abroad.

42. Moreover, the petitioner is working as a Senior Personal Assistant posted in the Court of Sh. Bhupinder Singh, Ld. ASJ-01, Special Judge / POCSO, North-West District, Rohini Courts, Delhi, which is an important position, and was thus, rightly denied the permission.

43. Learned counsel for the petitioner has also pleaded discrimination inasmuch as one employee namely Hemlata Sharma has been granted permission to visit abroad, five times. Suffice to state, it is the case of the respondent that she was permitted to go abroad on the ground of the health condition of her son who was hospitalised.

Clearly there was an exigency for the administration to allow the officer to go abroad. The parity sought is clearly misplaced.

44. I do not see any merit in the petition. The same is dismissed.

No costs.

V. KAMESWAR RAO, J

MAY 31, 2022/jg

