



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.393 of 2022
Date of Decision: 11.8.2025

Kamini Sharma
.....Petitioner

Versus

State of Himachal Pradesh and Ors.
.....Respondents

Coram

Hon’ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? Yes.

For the Petitioner: Mr. Tarun K. Sharma, Advocate.
For the respondents: Mr. Anup Rattan, Advocate General with Mr. Rajan Kahol and Mr. B.C. Verma, Additional Advocates General.

Sandeep Sharma, J. *(Oral)*

Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Tarun K. Sharma, learned counsel representing the petitioner is that petitioner herein, who otherwise stood granted Maternity Leave w.e.f. 21.8.2021, could not have been compelled by the respondents to join services on 22.10.2021 on account of her having furnished Medical Fitness Certificate for the purpose of regularization.

2. Precisely, facts of the case as emerge from the pleadings adduced on record by the respective parties are that on 5.9.2018, petitioner joined the department as JBT on contract basis. On 21.8.2021, petitioner gave birth to a baby and thereafter availed

Medical Leave w.e.f. afore date. While petitioner was on maternity leave, order dated 21.10.2021, came to be issued by the respondents, thereby regularizing services of the petitioner. Since petitioner pursuant to her regularization was to furnish her joining, she gave her joining on 22.10.2021 in continuation of her ongoing maternity leave w.e.f. 21.8.2021, which was duly accepted by the respondent department, however within a period of two months of her joining as regular employee, office order dated 13.12.2021 came to be issued by the respondents, thereby canceling Maternity Leave of the petitioner on the ground that once she had submitted Medical Fitness Certificate at the time of her joining on 22.10.2021, she cannot avail Maternity Leave thereafter, which otherwise stood granted to her w.e.f. 21.8.2021. In the afore background, petitioner has approached this Court in the instant proceedings, praying therein for following main reliefs:

- i That any appropriate writ/order or direction may kindly be issued and the Impugned office Order dated 13.12.2021 and 23-12-2021 (Annexures P4 & P-5) may kindly be quashed and set aside and respondents may kindly be directed to allow the present petitioner to complete her maternity leave with all benefits.
- ii. That any appropriate writ/order or direction may kindly be issued and the respondents may kindly be directed to allow the present petitioner to complete her maternity leave which is going to complete in February, 2022.”

3. I have heard the learned counsel for the parties and gone through the record.

4. Facts, as have been noticed herein above, are not in dispute, rather stand duly admitted by the respondents in their reply. An attempt has been made to defeat the rightful claim of the petitioner on the ground that once petitioner had submitted Medical Fitness Certificate at the time of her regularization, she cannot be permitted to avail Maternity Leave, which was granted to her while she was working on contract basis vide order dated 21.8.2021. Mr. B.C. Verma, learned Additional Advocate General, while making this Court peruse reply filed by the respondents submitted that as per Leave Rule of the government, if an incumbent assumes her duty in the midterm of her maternity leave after submission of her medical fitness certificate, she is not entitled to avail the balance leave thereafter. He further submits that since petitioner did not report for duty w.e.f. 23.10.2021, and remained absent without any leave application and without informing the competent authority i.e. BEEO or the Deputy Director (Elementary Education), Solan, period of absence has been rightly treated as extraordinary leave.

5. Though having taken note of the fact that petitioner at the time of her regularization on 22.10.2021, submitted Medical Fitness Certificate, this court does not find any infirmity or illegality in the afore submissions made by learned Additional Advocate General

because admittedly, in terms of provision of Leave Rule, if an incumbent assumes the duty in the midterm of the Medical Leave, she cannot claim the balance leave thereafter, however case at hand is peculiar one for the reason that Maternity Leave w.e.f. 21.8.2021 was granted to the petitioner while she was on contract basis, on account of her having given birth to a baby on 21.8.2021, but before Maternity Leave of 180 days could be availed by her, respondents by way of order dated 21.10.2021, regularized the services of the petitioner in terms of Regularization Policy, as a result thereof, petitioner was compelled to join on 22.10.2021.

6. Since at the time of regularization, certificate of fitness is otherwise required to be produced by the petitioner, petitioner submitted Medical Fitness Certificate duly issued by competent authority, but submission of Medical Fitness Certificate, in peculiar facts and circumstances as detailed herein above, could not have given any right to the respondents to curtail the Maternity Leave of the petitioner granted to her w.e.f. 21.8.2021, for a period of 180 days. At this stage, it would be apt to take note of communication dated 22.10.2021 (Annexure P-3), addressed by the petitioner to the Incharge Government Primary School Gater, where she was working at the relevant time, which reads as under:

“ To

The Incharge,
Government Primary School,
Gater.

Subject: Regularization order acceptance and joining accordingly.

Respected Sir,

In acceptance of with Dy. Director of Elementary Education, Solan, order No. EDN-SLN(E-1) 2/2017-7246-55 dated 21st Oct 2021 and Block Elementary Office Order No. EDN-DDN-(Elem)-18/2019-243 along with Centre Head No.- BRG-Pry 358/2021 Dated 22-10-2021, Government Primary School Gater Order No. GTR-19/2021, I hereby accept regularization of my services and joining on regular basis at Government Primary School Gater in continuity with my ongoing maternity leave w.e.f. 21st August 2021 under Centre Bhararighat Block-Dhundun District-Solan.”

7. Careful perusal of afore communication reveals that while accepting regularization and joining on regular basis at Government Primary School Gater, petitioner categorically apprised the authorities concerned that same is in continuity with her ongoing maternity leave w.e.f. 21.8.2021 under Centre Bhararighat, Block Dhundun, District Solan, Himachal Pradesh, but there is nothing on record that at the time of receipt of aforesaid communication, objection, if any, was ever raised by the authority concerned, rather same was duly accepted. Almost after two months of petitioner's joining at Government Primary School Gater, the Block Elementary Education Officer, Dhundun, vide communication dated 23.12.2021 (Annexure P-5) respectively, proceeded to accord sanction/ex-post facto sanction for leave for the

period petitioner remained absent. If the aforesaid communication is perused in its entirety, it suggests that petitioner has been permitted to avail the Maternity Leave for 60 days w.e.f. 23.8.2021 to 21.10.2021, whereas as per CCS Leave Rules, 180 days leave is permissible.

8. Moreover, this Court finds that prior to passing of afore order, no notice was ever issued to the petitioner, thereby calling upon her to render explanation qua her willful absence from the duty w.e.f. i.e. 23.10.2021 to 15.12.2021. Though for the reasons stated herein above, there was no requirement, if any, for the respondents to treat the period of absence of the petitioner as extraordinary leave, but even if it is presumed that respondents, taking note of the rules, could have proceeded to pass such order, same could not have been passed without sending notice to the petitioner, who would have rendered plausible explanation qua her absence, which otherwise has been rendered in the present petition.

9. Leaving everything aside, since petitioner prior to her regularization w.e.f. 21.10.2021, stood sanctioned maternity leave for 180 days w.e.f. 21.8.2021 to February 2022, coupled with the fact that she was compelled to join in December 2021, ground taken by the respondents with regard to submission of medical fitness certificate at the time of regularization of the petitioner may not be available to the respondents to deny benefit of Maternity Leave, which stood

sanctioned prior to her regularization, especially in peculiar facts and circumstances of the case.

10. Though vide order dated 13.1.2022, this Court had stayed the recovery, if any, in terms of order dated 23.12.2021 (Annexure P-5), but interestingly, despite afore order, respondents have proceeded to order recovery from the petitioner vide order dated 19.6.2025, which is wholly impermissible in view of the order passed by this Court.

11. Consequently, in view of the above, this Court finds merit in the present petition and as such, same is allowed. Orders dated 13.12.2021, 23.12.2021 and 19.6.2025 (Annexures P-4, P-5 and P-6) are quashed and due and admissible amount, if not already released to the petitioner, shall be released expeditiously, preferably, within four weeks, failing which respondents would be under obligation to pay interest @6% p.a. from the date amount fell due to the petitioner till its payment/recovery. In the aforesaid terms, present petition is disposed of alongwith pending applications, if any.

August 11, 2025
(manjit)

(Sandeep Sharma),
Judge