

April 2024

## **Supreme Court: Right to Child Care Leave is part of women employee's rights under Article 14, 15 and 21 of the Constitution**

The Division Bench of the Supreme Court of India (“**Supreme Court**”) in the recent case of *Shalini Dharmani vs. The State of Himachal Pradesh & ors.*,<sup>1</sup> directed the State of Himachal Pradesh to review its policies on ‘child care leave’ (“**CCL**”) for working mothers to tend to the needs and requirements of their children, specifically considering the requirements for children with special needs/disabilities. The Supreme Court further stated that the provision for CCL is a constitutionally mandated right for women employees under Article 15 of the Constitution of India.

### **Brief Facts**

Mrs. Shalini Dharmani (the “**Petitioner**”), an assistant professor at the department of geography in the Government College, Nalagarh, Himachal Pradesh, is the mother of a 14 (fourteen) year old child suffering from a rare genetic disorder, *Osteogenesis Imperfecta* (brittle bone disease) who has previously undergone multiple surgeries and requires constant treatment and care to survive and lead a regular life. Owing to the constant medical care required by her child, the Petitioner had exhausted her prior sanctioned leaves and hence, requested for CCL under the provisions of the Central Civil Service (Leave) Rules, 1972 (“**CCS Rules**”).

The Petitioner was informed by the Government College that the State of Himachal Pradesh (“**Respondent**”) has not adopted the provisions relating to CCL and that her request leave cannot be granted. Subsequently, the Petitioner instituted a writ petition before the High Court of Himachal Pradesh (“**HP High Court**”) seeking for a direction against the Respondent to adopt Rule 43-C of the CCS Rules. The HP High Court *vide* order dated April 23, 2021, dismissed the writ petition stating that the petition was devoid of any merit, on the ground that the Rule 43-C of the CCS Rules had not been adopted by the Respondent. Aggrieved by the same, the Petitioner challenged the order of the HP High Court before the Supreme Court.

### **Issue**

The issue before the Supreme Court was whether the Petitioner, being a mother of a special needs child, was entitled for the grant of CCL?

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<sup>1</sup> SLP (C) No. 16864/2021

## Observations and Analysis

The Supreme Court observed as follows:

1. As per Rule 43-C of the CCS Rules, female government employees with children under the age of 18 (eighteen), can get up to 730 (seven hundred and thirty) days of CCL for looking after the needs of their children like education, sickness etc. It was also specified that the female employees will be paid their regular salary, and that the CCL is in addition to the employee's normal leave balance.
2. Further, the Supreme Court drew inference to the Department of Personnel & Training's ("DoPT") office memorandum dated March 3, 2010, wherein it is stated that the Union Government permits CCL for female employees with special needs children up to the age of 22 (twenty-two) years (instead of the previously mentioned 18 (eighteen) years).
3. In addition to the provisions of Rule 43 & Rule 43-C of the CCS Rules, the Petitioner also relied upon the provisions of the Rights of Persons with Disability Act, 2016 ("RPWD Act"). Under Section 80 of the RPWD Act, the respective State Commissioner has the power to review the rights of persons with disabilities, review factors that inhibit the exercise of rights of persons with disabilities and recommend appropriate remedial measures to the State. It was noted that, based on an affidavit filed by the State Commissioner, there were no policies with regard to the parents of children with disabilities had been framed under the RPWD Act.
4. The participation of women in the work force is not a matter of privilege, but a constitutional entitlement protected under the Articles 14, 15 and 21 read with Article 19(1)(g) of the Constitution of India. 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 CCL to women subserves the significant constitutional object of ensuring that women are not deprived of their due participation as members of the work force. The Supreme Court noted that in the case of the Petitioner, this requirement is exemplified, and the policies of the Respondent must be consistent with constitutional safeguards.
5. In view of the above, the Supreme Court directed a committee to be constituted, consisting of (a) the State Commissioner, (b) the Secretary of the Social Welfare Department, and (c) the Secretary of the Social Welfare Department, to look into the State's policies with regard to CCL, and submit the report prepared by the committee to the Supreme Court by July 31, 2024. The Supreme Court highlighted the need to reconsider the entire aspect of the grant of CCL 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. Pending further orders, the Supreme Court has directed that the application by the Petitioner be considered favourably by competent authorities.

## Conclusion

The direction of the Supreme Court in this case is a significant step towards protecting the constitutional entitlement of women to be able to participate in the workforce, providing State support for female government employees to balance responsibilities at work and those as a parent, with special stress on the need for this protection while caring for a special needs child.

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