



KERALA STATE ELECTRICITY BOARD LIMITED

(Incorporated under the Companies Act, 1956)

Reg. Office: Vydyuthi Bhavanam, Pattom, Thiruvananthapuram – 695 004, Kerala

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Abstract

Establishment – Reinstatement of service benefits during Leave Without Allowance – Request in respect of Smt. Maya. S (Employee Code: 1054516), Assistant Engineer, System Operation Circle, Kalamassery –Orders issued.

CORPORATE OFFICE (ADMINISTRATION)

B.O (DB) No.464/2022 (Estt.I/3794/2020). Dated, Thiruvananthapuram, 30.05.2022.

Read:-

1. Note No.EB3/Cashier/General/3628-16/2020 dated 15.06.2020 of the Chief Engineer (HRM) along with the representation of Smt. Maya.S, Assistant Engineer, System Operation Circle, Kalamassery.
2. Letter No.Estt.1/3794/2020 dated 21.08.2020 of the Secretary (Administration) to the Deputy Chief Engineer, System Operation Circle, Kalamassery.
3. Letter No.EB2/Gen/Apl/Kly/20-21/1183 dated 18.03.2021 of the Deputy Chief Engineer, System Operation Circle, Kalamassery along with the submission of Smt. Maya.S, Assistant Engineer, System Operation Circle, Kalamassery.
4. Letter Nos.Estt.1/3794/2020 dated 30.07.2021 and 28.12.2021 of the Secretary (Administration).
5. Government Letter No.PWR-A2/148/2021-POWER dated 13.01.2022.
6. Note No.CIA/Pay Fixation/A4/631/2-2022 dated 01.04.2022 of the Accounts Officer (Pay Fixation).
7. Note No.Estt.1/3794/2020 dated 05.05.2022 of the Secretary (Administration)(Agenda No.10/5/22)
8. Note No.Estt.1/3794/2020 dated 07.05.2022 of the Chairman & Managing Director.
9. Proceedings of the 64th Director Board meeting held on 12.05.2022 (Agenda Item No.22/5/22).

ORDER

Smt. Maya. S. (Emp. Code 1054516), Assistant Engineer, System Operation Circle, Kalamassery had availed Leave Without Allowance on her need to treat her son for early autism disorder on various spells as follows.

22/9/2004 to 14/10/2004 - 23 days

1/7/2005 to 31/8/2005 - 62 days

28/5/2006 to 28/7/2010 - 1520 days

These spells have been certified competently by medical specialists as to be availed solely in the purpose of the said treatment which had to be administered at a competent clinic at Chennai, namely, 'SANKALP', The Learning Centre. Smt. Maya. S. has repeatedly represented before the Kerala State Electricity Board for reinstating her deferred service benefits such as increments, seniority and leave earned during the period of Leave Without Allowance (4 years, 3 months and 24 days) citing various judgments and precedence.

The KSEBL had in initial examination of the case rejected it on the ground that there is no enabling provision in the Kerala Service Rules to allow the request.

In a subsequent representation she has cited the judgment of Hon'ble High Court of Kerala in WPC 22007/2021 pertaining to an employee of LIC (still in force) which has set out various principles to be adopted while considering similarly situated cases. Citing the convention on the Rights of the Child adopted by General Assembly of United Nations as resolution 44/25 dated 20/11/1989, the Hon'ble High Court observed;

"Article 5 States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present convention.

Article 23(4) – States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries".

Judgment informs also on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations General Assembly on 18/12/1979, the Hon'ble Court has opined that no discrimination is possible on account of compelling circumstances for taking care of children with the following observations;

"Mother's role in taking care of the child has been considered as an honour, she enjoyed such status because of her position in respect of the child. If on any reason she could not attend her workplace due to her duties towards child (compelling circumstances), the employer has to protect her person-hood as "mother".

"No action is possible against a woman employee for her absence from duty on account of compelling circumstances for taking care of her child".

Motherhood is not an excuse in employment but motherhood is a right which demands protection in given circumstances".

"A woman employee is not expected to surrender her self respect fearing action against her for not being able to attend duty for compelling family responsibility".

"A woman employee has no other option in those circumstances".

Autism persons need a very special medical condition support as prescribed as follows.

"Mother is the "Voice" of the autistic child,

as autism impacts communication, language and social skills mothers say themselves as the child's voice."

"The mother in such a situation has to give all her care to the child in precedence to any other affairs".

It is to be further noted that the Central Government incorporated a rule in the Central Civil Services (Leave) Rules, 1972 by inserting Rule 43C to grant leave to a woman Government servant as 'child care leave' for a maximum period of two years for taking care of upto two children. It shows that the State is indeed sensitive about the issue of child care. This is yet to be adopted by other Governments / Public Sector Undertakings.

The Hon'ble Court had in the said case accepted the claim for back wages but permitted reckoning the broken period of service for all service benefits than the wages payable during Leave Without Allowance as Leave Without Allowance is inherently without pay for the period under leave.

Vide Government Order No. സ.ഉ. (സാധാ) നം. 1770/2019/പൊ.വി.വ dated 18/5/2019, the State Government had in similar case in the Higher Secondary Education Department, following High Court orders allowed the increment as permitted in Note 2 of KSR Part 1, Rule 102 and Rule 33 of KSR that the Government shall have power to direct that Leave Without Allowance shall be counted for increment in any case they are satisfied that the Leave Without Allowance has been taken for any cause beyond the officer's control.

The central question here is that the applicant had classified her leave as "Leave Without Allowance for personal purpose" when she applied for the leave and the same was granted as applied for. However, the documents submitted post facto undoubtedly prove that the period was wholly absorbed in the treatment or care of the autistic child

and her claim under Rule 33 KSR Part 1 is justified and supported by the ample medical documentation she has produced to support her claim. The child could not have formed a near normal life without her absencing from work. The same cannot be overturned by the facts laid before the leave granting authority at the point of sanction and the employer has every right to reclassify a sanctioned category of leave upon production of just cause and reasoning to which the case belongs and appraisal of new facts.

Therefore in the light of the evidences placed before the competent authority, the instant applicant's case is permitted to be classified as Leave Without Allowance granted on medical reasons pertaining to her child and in the light of the principles set out in the judgement cited and the precedent in the Education Department. A good case is therefore built for path allowing her claims to the ability of the employer to afford from the above precedents.

In consideration of the entire material placed and the opinions of various senior officers who examined the case in detail and the Government's clarification in the matter, the Chairman and Managing Director has been pleased to review the case as a very special one requiring moulding an appropriately compassionate remedy which is well within the province of directions of the Board of Directors of KSEBL. The same was recommended and committed to the Board of Directors stating the precedent and recommendation to consider part of Leave Without Allowance for medical reasons of her child eligible for all service benefits other than the pay due during the period of Leave Without Allowance including increments, counting of seniority and accrual of Earned Leave.

The Board has been pleased to accept the moulding of the remedy for the applicant where rule position is silent by viewing the manifest reason for the Leave Without Allowance from 22/9/2004 to 14/10/2004, 1/7/2005 to 31/8/2005 and from 28/5/2006 to 28/7/2010 as one solely arising from the medical condition of the autistic child of the applicant requiring her dedicated care by permitting her two years of the leave period availed as eligible for all service benefits other than eligible pay during the period of leave.

Accordingly the matter was placed before the Board of Directors as per Note read as 8th above. Having considered the matter in detailed the Board of Directors in it's meeting held on 12.05.2022.

RESOLVED TO accord sanction 33% of monetary service benefits other than eligible pay limited to total duration of 2 years as recommended by the Chairman & Managing Director to Smt.Maya.S, Assistant Engineer, System Operation Circle, Kalamassery which were deferred during her LWA period availed for the treatment of her Autistic son, by invoking Rule 33 B (2) Part 1 KSR by considering as a special case.

RESOLVED further to consider in similar manner the cases of the present employees on one-to-one basis at Director Board level based on certificate by a Medical Board/proven by sufficient medical records for children suffering severe disability. Each case to be examined by Board separately.

Orders are issued accordingly.

By Order of the Director Board,
Sd/-
LEKHA. G,
COMPANY SECRETARY IN-CHARGE.

To

1. The Chief Engineer (HRM).
2. Smt. Maya. S (Employee Code: 1054516), Assistant Engineer, System Operation Circle, Kalamassery.

Copy to:-

1. The Financial Adviser.
2. The Chief Internal Auditor.
3. The Company Secretary in-charge.
4. The Deputy Chief Engineer, System Operation Circle, Kalamassery.
5. The TA to Chairman & Managing Director/Director (REES, SOURA, Sports & Welfare/Director (Planning & Safety, SCM)/ Director (Generation-(Electrical) /Director (Generation Civil)/ Director (Trans.& System Operation)/Director (Distn. & IT).
6. The PA to Director (Finance)/Senior CA to Secretary (Administration).
7. Stock file.

Forwarded / By Order


Senior Superintendent