

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.18342 of 2014 (O&M)

Date of decision: 17.02.2016

Smt. Darshan Devi

.....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam & others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Y.P. Malik, Advocate,
for the petitioner.

Mr. Pradeep Singh Poonia, Advocate,
for the respondents.

Ritu Bahri, J.

By way of present petition, the petitioner is seeking direction to the respondents to grant full wages of her husband namely late Sh. Krishan Singh, ALM, from the date he had acquired 100% disability, as per PGIMS, Rohtak, till his death by adjusting against any suitable post or creating supernumerary post under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'Disabilities Act, 1995'). Further direction is being sought to be issued to the respondents to make ex-gratia financial assistance to the petitioner from the date of death of Krishan Singh till he would have attained the age of 55 years i.e. 01.01.2015 with all consequential benefits.

Late Sh. Krishan Singh, husband of the petitioner, joined as Work

Mate in the year 1980 and his services were regularized in the year 1993.

He was promoted as ALM in the year 1999. While serving in Sub Urban, Sub Division, UHBVN, Gohana, he fell ill on 30.09.2000 and could not resume his duties due to severe problem in backbone and head. The Neurologist of PGIMS, Rohtak advised him to take bed rest. In this regard a medical certificate dated 15.05.2005 was issued by the Chief Medical Officer, Sonapat. In compliance of Office Memo dated 01.09.2005, the petitioner also got a medical disability certificate, showing 100% disability of her husband, from PGIMS, Rohtak on 10.10.2005, which was received by the office of respondent No.4 on 19.10.2005. Ultimately, he died on 08.05.2010. Husband of the petitioner was voluntarily retired w.e.f. 31.01.2006 vide order dated 10.11.2006 (Annexure P-3). Thereafter, an office memo dated 18.07.2007 (Annexure P-4) regarding pension case of the Krishan Singh, was issued. After receiving memo/letter dated 18.07.2007 (Annexure P-4), the petitioner made a claim that her husband could not be voluntarily retired from service and her case be considered at par with similarly situated employees i.e. Sh. Jai Bhagwan, ALM. Thereafter, a recommendation was made by respondent No.4 vide letter dated 18.10.2012 (Annexure P-7), for creation of a supernumerary post in view of the medical report of late Sh. Krishan Singh, as no post was available, on which, he could be retained. The Chief Engineer (OP), UHBVN, Rohtak, recommended the case of the petitioner vide memo dated 21.12.2012 (Annexure P-8). Subsequently, when no action was taken, the petitioner filed an application dated 02.04.2014 (Annexure P-11) under the Right to Information Act, 2005, but to no avail.

By way of present petition, the petitioner is seeking following relieves:-

- (i) To set aside the voluntary retirement order dated 10.11.2006

(Annexure P-3) on the ground that there was no evidence that Sh. Krishan Singh sought voluntary retirement as he was 100% disable and could not put thumb impression/sign on the retirement papers.

(ii) Husband of the petitioner fell ill on 30.09.2000 and remained disable till his death on 08.05.2010 i.e. upto 50 years of age. Therefore, petitioner is entitled to the service benefits under Section 47 of the Disabilities Act, 1995, as has been extended to other employee of the respondent-Nigam namely Mahipal son of Sh. Pala Ram, as per office memo dated 20.01.2003 (Annexure P-1).

(iii) Compassionate assistance by way of ex-gratia financial assistance from 08.05.2010 till husband of the petitioner would have attained the age of 55 years i.e. 01.01.2015 under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (Annexure P-12).

Upon notice, written statement on behalf of respondent Nos.1 to 4 has been filed, wherein it has been admitted that husband of the petitioner was declared 100% disabled by PGIMS, Rohtak. However, he had sought voluntary retirement on medical health ground. Accordingly, he was retired vide order dated 10.11.2006 (Annexure P-3) w.e.f. 31.01.2006. Thereafter, as per Rule 5.11 of Punjab Civil Service Rules, Volume III (as applicable to Haryana) was granted to the petitioner. Since the husband of petitioner had sought voluntary retirement, the benefit of Disabilities Act, 1995 cannot be extended to the petitioner. Petitioner's husband died on 08.05.2010. Hence,

cannot be extended any benefit on account of compassionate assistance under Haryana Compassionate Assistance to the Dependent of Deceased Government Employee Rules, 2006. Respondents have placed on record an application (Annexure R-1) made by husband of petitioner-Krishan Singh stating that he has become unfit for doing service after long ailment, therefore, he made request for retirement on medical ground. The said request has been thumb marked by Krishan Singh.

Reference can now be made to the recommendation dated 18.10.2012 (Annexure P-7) made by respondent No.4 for creation of supernumerary post for Sh. Krishan Singh in view of his medical report and to make payment of salary to the petitioner with effect from the date of his illness to death. A perusal of Annexure P-7 shows that after getting 100% medical disability certificate from PGIMS, Rohtak, same was received by the concerned department on 19.10.2005. After receipt of this certificate, **office memo dated 24.10.2005** was issued to the SDO, Sub Urban, Sub Division, Gohana that a request for retirement on medical ground be obtained from the official and be sent to the said office for necessary orders. On account of pressure of the office as well as SDO, Gohana, consent for voluntary retirement was taken from the expiree. Thumb impression on the consent has not been attested by any officer. After accepting the request for voluntary retirement, provisional pension was granted to the husband of the petitioner w.e.f. 01.02.2006 to 08.05.2010 and after his death, even the provisional pension has been stopped.

The above stated facts make it ample clear that pursuant to the letter dated 24.10.2005, the petitioner's husband gave his request for voluntary retirement on medical grounds. At that stage, the husband of the

Disabilities Act, 1995, the department was to create a supernumerary post and pay him salary till the date of his retirement i.e. up to the age 55 years. While recommending the case under Section 47 of the Disabilities Act, 1995, this fact has been noticed that his consent was not even attested by any officer. Hence, for all intents and purposes, voluntary retirement order qua husband of the petitioner is liable to be set aside. Further, perusal of Annexure P-7 shows that in view of the medical report, a recommendation for release of payment from 13.03.2001 to 08.05.2010 to the widow of deceased was made under Section 47 of the Disabilities Act, 1995 after creating a supernumerary post. While making the recommendations, it has been observed that one Jai Bhagwan, ALM, had retired from this office on 01.05.2000 on medical ground. But, subsequently, he was reinstated vide order dated 27.03.2008 as per Section 47 of the Disabilities Act, 1995

The respondents, in their written statement, have not denied that the recommendations dated 18.10.2012 (Annexure P-7) was made under Section 47 of the Disabilities Act. However, they have tried to justify their case on the ground that on the request made by husband of the petitioner, he was voluntarily retired from service on medical grounds. As already discussed above, the husband of the petitioner had sought voluntary retirement only on account of the pressure which was created pursuant to a letter dated 24.10.2005 written to the SDO, Guhana. At the same time, in the case of Sh. Jai Bhagwan, ALM, this Court had set aside his voluntary retirement order dated 01.05.2000. Thereafter, he was reinstated in service on 27.03.2008.

In view of the above, the petitioner is held entitled to grant of full wages of her husband late Sh. Krishan Singh, ALM, from the date when he

18.10.2012 (Annexure P-7).

Resultantly, the order dated 10.11.2006 (Annexure P-3), vide which husband of the petitioner was voluntarily retired w.e.f. 31.01.2006, is set aside and for all intents and purposes, on the date of his death i.e. 08.05.2010, he would be treated to be in service. The petitioner is further held entitled to take salary of her deceased husband from the date when he acquired 100% disability till he would have attained the age of 55 years i.e. 01.01.2015 and thereafter, she is entitled to the payment of family pension. The respondents shall calculate the benefits under the Ex-gratia Scheme (Annexure P-12) and thereafter, make payment of family pension to the petitioner in accordance with rules.

Allowed accordingly.

17.02.2016
ajp

(RITU BAHRI)
JUDGE