

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP-22537-2017

Date of decision : 19.12.2017

Saroj Chaudhary

... Petitioner

Versus

DAV Public Senior Secondary School and others

....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Mukesh Yadav, Advocate,
for the petitioner.

Amol Rattan Singh, J.

By this petition, the petitioner seeks quashing of the order, Annexure P-9, dated 25.04.2017, passed by the learned Additional District Judge, Narnaul, being the designated Court in respect of service disputes of employees in aided/unaided private schools/educational institutions in the State of Haryana.

2. The petitioners' claim before that Court was that she should be allowed to join duty after having availed medical leave from 09.11.2006 to 19.11.2007 and that, further, she should not be discharged and in fact should be compensated by the respondents for the harassment caused to her.

As per the petitioner, she was appointed as a Physical Training Instructor in the respondent DAV Senior Secondary School, Mohindergarh, in July 1997, with her diligently doing her work, but having to take medical leave because of her poor health.

It has been contended in the petition that the petitioner had made an application on 09.11.2006 for leave without salary for one year, due to her

illness, which was sent to the Secretary of the schools' management at Delhi, a copy of which is annexed as Annexure P-2 with the petition.

In response thereto she received a letter from the Principal of her school, that before leave could be granted to her she should pay 3 months' salary as security, after which her application would be considered.

It is further contended that a medical certificate (Annexure P-4) was furnished by the petitioner, dated 15.11.2007, issued by one Dr. Ashok Arora, BAMS, to the effect that she was under his treatment for "HTC", from 16.12.2006 to 15.11.2007, during which period she had been advised complete rest.

3. It has next been contended in the petition that on 01.12.2006, in a meeting of the School Management Committee, one Pawan Kumar, a teacher in English, was granted medical leave without pay with effect from 02.07.2006 and that he had not reported for duty thereafter. The condition imposed on the grant of leave to the said teacher, without pay, was that he would submit a certificate from the attending doctor for the approximate period of leave / treatment.

Hence the petitioners' case is that a medical certificate from the Chief Medical Officer is being arbitrarily asked for from her (instead of simply from the attending doctor).

4. The school having thereafter initiated disciplinary proceedings against her vide a letter dated 09.06.2008 (copy Annexure P-6) and further the Committee having served a notice upon her, she replied to the said notice dated 31.01.2012, on 15.03.2012, vide her reply, Annexure P-7.

5. A perusal thereof shows that it has been stated by her that she was under treatment at the Civil Hospital at Mohindergarh, which also issued

a fitness certificate on 16.11.2007 and that therefore, there was no need or statutory requirement for her to submit a certificate issued by the Chief Medical Officer.

6. Learned counsel for the petitioner in fact submits that initially leave was sanctioned to the petitioner but thereafter she was not allowed to join duty, with the following order passed by the Principal of the respondent School: -

“Received the applications, but cannot be allowed to join the duties till the school MLC takes any decision in regard to you. Previous application subsequently to fulfill the terms of CMO's certificate for your illness as per previous LMC Meeting Decision dated 01.12.2006. It will be placed in the next meeting.

Sd/-
Principal,
DAV Public School,
(Affiliated to CBSE No.5302531).
Mohindergarh-123029 (Haryana).”

7. Thus the action of the respondent school was challenged by the petitioner before the notified Court, i.e. the Additional District Judge, Narnaul.

8. Upon notice issued by the learned Additional District Judge, in the petition filed by the petitioner, the respondent school and its management stated that the petitioner had joined service as a PTI on ad hoc basis on 02.07.1997, with her services regularized on 01.08.1998. However, it was denied that she had performed her duties diligently, as she had not reported for duty since 31.10.2006, without giving any reason. It had also been stated that she never informed the school of her illness. It was further stated that her attitude towards colleagues was not cooperative and that she had taken leave for one year without giving any substantial reason. When she came back to join duty, she was asked to submit a medical certificate issued from a Chief

Medical Officer, but she did not do so despite repeated requests, and even in the enquiry initiated against her, she never appeared before the enquiry committee.

It is also seen from the impugned order of the learned Additional District Judge, that the petitioner had also filed a Civil Suit on the same facts, which had been dismissed vide a judgment and decree dated 30.01.2004, with the appeal also dismissed by the Court on 07.03.2017.

9. Thereafter, the petition before the notified Court (notified vide a Government of Haryana notification dated 08.10.2005) was filed, in which it was found, as recorded in the impugned order, that the petitioner had applied for medical leave, upon which she was asked to submit a medical certificate from the Chief Medical Officer (within one month), but she actually gave a certificate issued by a Senior Medical Officer, which was not accepted by the respondent school and management, on the ground that the medical leave of employees was to be sanctioned by the head office, i.e. the DAV Public Committee, New Delhi, with the local committee not empowered to do so and in case of long medical leave it is required that it should be issued by the Chief Medical Officer of the General Hospital.

The order of the learned Additional District Judge further goes on to state that the petitioner not having been appeared before the enquiry committee, there was nothing much to state in her favour.

Consequently, her petition was dismissed.

10. Before this Court, along with the petition, as already noticed, a medical certificate dated 15.11.2017 has been annexed as Annexure P-4, which is to the following effect, as per the typed copy:-

“Mr./Ms. Saroj ChaudharyW/o Sh. S.S. Chaudhary is/was under my treatment for HtC and from 16.12.2006 to 15.11.2007 He/She/was

advised complete rest for this period.

xxx

xxx

sd/-
Saroj Chaudhary

sd/-
Dr. Ashok Arora
B.A.M.S.
Reg. No.18873”

Learned counsel for the petitioner however pointed to a photocopy of the complete certificate annexed along with, in which it is seen that the following has been stated:-

“Mr./Ms. Saroj Chaudhary W/o Sh. S.S. Chaudhary is/was under my treatment for HtC and from 16.12.2006 to 15.11.2007 He/She/was advised complete rest for this period.

She is advised to (illegible) Physician for further investigation and treatment.

sd/-

Saroj Chaudhary

sd/-
Dr. Ashok Arora
B.A.M.S.
Reg. No.18873”

11. The matter having been adjourned twice after it was listed for hearing, on request of the learned counsel for the petitioner, with no further adjournment agreed to by this Court, thereafter, on 05.12.2017, learned counsel for the petitioner had been directed to obtain instructions as to what the letters 'HTC' stand for, as have been written in the aforesaid medical certificate.

12. Today, when the petition came up for hearing again, learned counsel has been unable to give any answer as to what the said disease/illness is, but has further produced photocopies of two outdoor patient prescriptions, one of which is dated 06.12.2006, and the other, as per the date given below

the signatures of the doctor, is of 12.12.2006.

Very obviously, the said prescriptions show the blood pressure of the patient as being too high by normal standards (160/100 and 150/illegible). The disease recorded is seen to be “HTN” which would appear to be hypertension, though of course this Court can only conjecture on that, with no other explanation coming from the counsel for the petitioner.

It is also seen that in one of the prescriptions, she has been advised blood tests for her sugar level, HB and TLC/DLC etc. She is also seen to be advised an ECG and has been prescribed certain medicines. Other than these two 'out-patient' prescriptions, and the medical certificate simply stating that she was advised complete rest for 11 long months between 16.12.2006 to 15.11.2007, there is nothing to show what illness she was suffering from for that long period, due to which she had to be on long leave.

It is to be specifically noticed that even this medical certificate (Annexure P-4), has been issued after the period of 11 months was over and not before or during the period that the petitioner wanted to avail of medical leave.

On specific query to learned counsel, he has also not been able to show any medical certificate showing that the petitioner was admitted to hospital at any point of time.

13. Though undoubtedly asking the petitioner to furnish 3 months' pay as security prior to granting her leave on medical grounds would be a highly arbitrary and unsustainable condition, but with the petitioner unable to show any medical certificates to prove that she was indeed ill for eleven long months on account of any serious illness, her case has to be held to be without any merit.

14. Consequently, looking at all the aforesaid facts and seeing that she did not appear before the enquiry committee to submit any medical certificate at that stage also, I see no reason to interfere with the impugned order of the learned Additional District Judge, Narnaul, though it is not otherwise a very detailed order.

Consequently, this petition is dismissed.

(AMOL RATTAN SINGH)
JUDGE

19.12.2017

vcgarg/dinesh

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No