

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.9260 of 2013(O&M)
Date of Decision: 15.11.2017

Gurdial Kaur

--Petitioner

Versus

State of Punjab and others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Surinder Garg, Advocate for the petitioner.

Mr. Avinit Avasthi, A.A.G., Punjab.

TEJINDER SINGH DHINDSA.J (Oral)

The instant petition was instituted in the year 2013 when the petitioner was working as a Class-IV employee with the E.S.I Hospital, Mohali.

The challenge in the instant petition is to the order dated 8.2.2012 (Annexure P-13), passed by the Director, Health Services (H.B), Punjab and in terms of which the period w.e.f. 6.2.2011 to 16.6.2011 (131 days) has been approved as leave without pay.

Petitioner asserts that such period should have been counted and approved as leave of the kind due.

Facts of the case are in a very narrow compass.

Petitioner applied for leave on medical basis for the period w.e.f. 6.2.2011 to 20.2.2011 on medical grounds and such application was supported by a medical certificate dated 6.2.2011 issued by one Dr. Puran Singh, who was running a private clinic. As per such certificate petitioner was stated to be suffering from “Limbosciacia ® Lower Limb” and was advised bed rest from 6.2.2011 to 20.2.2011. Placed on record is memo

dated 22.2.2011 (Annexure P-2) from the Senior Medical Officer Incharge, E.S.I. Hospital, Mohali, whereby the leave application supported by the petitioner was returned and she was advised that a medical certificate from some Govt. hospital be furnished. Thereafter, leave on account of the same medical ailment was applied for from 21.2.2011 onwards and till 16.6.2011 and the various applications were again supported by certificates having been issued by the same very medical practitioner i.e. Dr. Puran Singh.

Petitioner resumed duties on 17.6.2011 and has since retired upon attaining the age of superannuation.

The passing of the impugned order dated 8.2.2012 (Annexure P-13) and thereby treating the period w.e.f. 6.2.2011 to 16.6.2011 as leave without pay is sought to be justified by learned State counsel by adverting to the stand taken in para 4 of the written statement. It has been submitted in the written statement that the petitioner was suffering from “Limbosciacia @ Lower Limb” and which is an orthopedic or neurological problem and was, as such, required to be treated by an Orthopedician or Neurologist. State counsel contends that Dr. Puran Singh, who had issued the certificates in favour of the petitioner and which have been relied upon at the stage of submitting the leave application was neither an Orthopedician nor a Neurologist. State counsel further contends that since the petitioner was herself employed in a hospital and residing within the hospital campus, she had chosen not to avail of the medical facilities available at the Govt. hospital and that by itself casts a doubt on the authenticity of the medical certificates issued by Dr. Puran Singh (Harman Clinic) and placed on record at Annexures P-1, P-4 to P-9.

Counsel for the parties have been heard at length and the pleadings on record have been perused.

The issue with regard to grant of leave on medical grounds is governed by Rule 8.13 (a) of the Punjab Civil Services Rules Vol.I, Part I. The Rule in question in the statute book as on the date of passing the impugned order is extracted hereunder:-

“8.13 (a) Every application for leave on medical grounds made by a Government Employee shall be accompanied by a Medical Certificate given by a registered medical practitioner or a vaid or Hakim or a Homeopathic Practitioner defining as nearly as possible the nature and probable duration of the illness or by a request for the issue of a requisition for examination by a medical officer of the Government:

Provided that the authority competent to sanction leave, at its discretion, waive the condition of producing a medical certificate in the case of a Gazetted Government Employee if the leave applied for does not exceed three days at a time and such leave shall not be treated as leave on medical certificate and shall be debited against leave due other than the leave on medical grounds.”

Bare perusal of the rule makes it clear that an application for leave on medical grounds by a Govt. employee has to be accompanied by a medical certificate given by a Registered Medical Practitioner or a Vaid or Hakim or a Homeopathic Practitioner defining the nature of ailment/illness. In a case where the Govt. employee is seeking to rely upon a certificate to be issued by a Medical Officer of the Govt., the application for leave has to be accompanied by a request for the issue of a requisition for examination by such Medical Officer under the State Govt.

Proviso to Rule 8.3 (a) leaves it to the discretion of the authority competent to sanction leave to even waive of the condition of producing a medical certificate in the case of a Gazetted Govt. employee if the leave applied for does not exceed three days time.

The language of the rule is clear and unambiguous. It is open for a Govt. employee even to make an application for leave on medical grounds accompanied by a certificate issued by a registered medical practitioner or Vaid or Hakim or a Homeopathic Practitioner.

In the instant case the certificates that were relied upon by the petitioner along with the leave application have been issued by one Dr. Puran Singh and who describes his qualifications as M.B.B.S, M.R.S.H (London) and claims his credentials to be an Ex Emergency Medical Officer, Govt. Hospital, Sector 16, Chandigarh, Ex Emergency Medical Officer, Govt. Medical College, Sector 32, Chandigarh and Ex Resident Officer, Casualty Department I.G.M.C, Shimla (H.P).

It was certainly open for the respondent State to have undertaken an exercise of verification as regards the authenticity of the certificates produced by the petitioner in support of medical leave sought as also to inquire into the credentials of the doctor in question. Even though, in the written statement it has been averred that Dr. Puran Singh is neither an Orthopedician nor a Neurologist but there is no material coming forth on the basis of which such conclusion has been arrived at.

On a pointed query having been put, learned State counsel would concede that no such inquiry had been initiated in the matter.

The mere factual premise that the petitioner was employed in a hospital and was residing within the hospital campus and still chose to seek

treatment from a private medical practitioner would not suffice to conclude that the petitioner had produced a false medical certificate as is sought to be contended as per pleadings contained in para 12 of the written statement.

Requirement of the rule was for an application for medical leave to be supported by a medical certificate given by a Registered Medical Practitioner or a Vaid or Hakim or a Homeopathic Practitioner. It is not the case of the State that Dr. Puran Singh was not a registered medical practitioner.

No material has come forth at the hands of the State for this Court to conclude that the medical certificates placed on record at Annexures P-1 and P-4 to P-9 have not been issued by a Registered Medical Practitioner.

The impugned order dated 8.2.2012 (Annexure P-13) has been passed against the mandate of the relevant rule i.e. Rule 8.13 (a) of the Punjab Civil Service Rules, Vol.I, Part I. The order, as such, cannot sustain.

For the reasons recorded above, the writ petition is allowed. Order dated 8.2.2012 (Annexure P-13) is set aside. Directions are issued to the State Govt./competent authority to treat the period w.e.f. 6.2.2011 to 16.6.2011 (131 days) as leave of the kind due subject to the leave account of the petitioner. Fresh order in such regard be passed within a period of eight weeks from the date of receipt of a certified copy of this order. Consequential benefits emanating from passing of the fresh order as directed would be released to the petitioner without any further delay.

Disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

15.11.2017

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No