

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

Date of decision : 14.12.2018

(i) CWP-23726-2014 (O&M)

Pawan Kumar

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

(ii) CWP-15867-2015 (O&M)

Vidya Devi

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Harpal Singh, Advocate,
for Mr. C.M. Munjal, Advocate,
for the petitioner(s).

Ms. Bhavna Gupta, DAG, Punjab.

JITENDRA CHAUHAN, J.

The above noticed two writ petitions are being decided by this single judgment having arisen out of common facts.

Petitioner Pawan Kumar has filed CWP-23726-2014 seeking direction to respondent Nos.3 to 5 to grant him appointment on compassionate grounds as the mother of the petitioner who is a permanent

employee of the respondents has developed serious mental disorder.

Petitioner Vidya Devi, being a person of unsound mind, has preferred CWP-15867-2015 through her son Pawan Kumar, for quashing of charge-sheet dated 16.06.2015 (Annexure P-8), issued by respondent No.5, *inter alia*, for continuously remaining absent from today.

It is submitted that petitioner-Vidya Devi, a permanent employee (Sewadar) with the respondents, has developed mental disorder during her service. Therefore, she is unable to perform her duties. She was also subjected to medical examination by the Board of Doctors. The Civil Surgeon vide report dated 10.02.2014 (Annexure P-1), has opined that the petitioner being a patient of Hypertension, Chronic, Psychotic Disorder and Post Menopausal Syndrome, was unable to perform her duties. Thereafter, petitioner Pawan Kumar submitted application dated 18.02.2014 (Annexure P-4) with respondent No.5 for grant of appointment in place of her mother on compassionate basis in pursuance of the Circular (Annexure P-3). However, the claim of petitioners for grant of compassionate appointment to petitioner-Pawan Kumar was rejected by respondent No.4 vide letter dated 14.03.2014 (Annexure P-6). Thereafter, petitioner-Pawan Kumar also served legal notice upon the respondents on 17.07.2014 (Annexure P-7) to which no reply was filed. The petitioner Vidya Devi was served with a charge-sheet dated 16.06.2015 (Annexure P-8 in CWP-15867-2015) for remaining absent from duty from 02.09.2014.

Learned counsel contends that the impugned action of the respondents in not providing compassionate appointment to petitioner

Pawan Kumar on account of medical condition of his mother-Vidya Devi, is against the dictum of law laid down by this Court in ***Roshni Devi Vs. Haryana Vidyut Prasaran Nigam and others***, rendered in CWP-5436-2009, decided on 06.03.2012 (Annexure P-2) and implemented by the State of Punjab vide circular letter dated 30.04.2013 (Annexure P-3). It is further contended that the impugned charge-sheet dated 16.06.2015, issued to petitioner Vidya Devi is perverse and against the principles of natural justice.

On the other hand, learned State counsel has submitted that petitioner Vidya Devi absented herself from duty w.e.f. 02.09.2014 without any prior intimation/permission. She was directed to report on duty vide letters dated 17.09.2014, 16.10.2014, 10.11.2014, 29.01.2015 and 09.03.2015 (Annexures A-1 to A-5), but she neither joined her duties, nor responded to the letters aforesaid. She further refers to the report of the medical board to contend that petitioner Vidya Devi has not been declared permanently unfit to perform her duties. Otherwise also, the case of the petitioners is not covered under any policy of the State government.

Heard.

While dealing with a similar matter in ***Roshni Devi's case (supra)***, this court issued the following directions:-

“7. The copy of this judgment is directed to be circulated to the Central Ministry of Social Justice & Empowerment as well as to the and State Co-ordination Committees constituted under the 1995 Act for them to issue appropriate guidelines

to the Departments of Labour, Human Resources Development and the State Agencies dealing with empowerment of persons with disabilities that no employer shall terminate the services of an employee who has become mentally ill during the service, without due consideration of suitability of the employee to any other post and without properly counselling the employee about his rights. It is also further directed that wherever compassionate assistance scheme exists that contains provision for giving employment to any dependent to such employee, the employer shall counsel the dependent for appropriate application in that regard and adjust such dependent for suitable employment.”

In pursuance of the aforesaid guidelines, the State of Punjab issued instructions (Annexure P-3), for compliance of the guidelines issued by this Court in Roshni Devi's case (supra). In the case in hand, petitioner-Vidya Devi developed certain mental psychological disorder. Thereafter, the respondents got her medically examined by the Board of Doctors to ascertain her medical condition which concluded that the petitioner was a patient of Hypertension, Chronic Psychotic Disorder and Post Menopausal Syndrome and therefore, was unable to perform her duties. Thereafter, petitioner Pawan Kumar, being son of Vidya Devi, approached the authorities to give him employment on compassionate grounds as his mother was unable to perform her duties. However, his case for

appointment on compassionate grounds has been rejected solely on the ground that there is no policy/provision to provide employment to dependents on medical grounds (Annexure P-6) and petitioner Vidya Devi was issued charge-sheet dated 16.06.2015 (Annexure P-8 in CWP-15867-2015) as she absented from duty since 02.09.2014.

The act and conduct of the respondents in this case is in contravention of the dictum of law laid down in Roshni Devi's case (supra) and the consequent instructions (Annexure P-3) issued by the State of Punjab. The employer-respondent, instead of treating the case of the petitioner with compassion and displaying concern for the employee who has lost her mind during service, has charge-sheeted her for absence from duty. Once, there is medical opinion on record that petitioner Vidya Devi is unable to live a normal life and discharge her duties, the act and omission of petitioner Vidya Devi deserves to be dealt with sympathy and compassion. The violation alleged by the respondents in view of the medical report dated 10.02.2014 (Annexure P-1) was beyond her control.

In view of the above discussion, the instant writ petitions are allowed in the following terms:-

CWP-23726-2014 - Impugned letter dated 14.03.2014 (Annexure P-6) is set aside and petitioner Pawan Kumar is ordered to be given appointment on compassionate basis in terms of the law laid down in Roshni Devi's case (supra).

CWP-15867-2015 – Impugned charge-sheet dated 16.06.2015 (Annexure P-8) is quashed and the respondents are directed to

consider the case of the petitioner for pre-mature retirement in the light of the guidelines issued in Roshni Devi's case (supra).

A photocopy of this order be placed on the file of the connected case.

14.12.2018
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(JITENDRA CHAUHAN)
JUDGE

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