

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

**CWP No.10898 of 2019
Date of decision:03.10.2019**

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... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. Harish Nain, AAG, Haryana.

AMIT RAWAL J. (Oral)

Prayer in present writ petition is for issuance of a writ in the nature of mandamus directing the respondents to allow the petitioner to join the duties, mark the presence and for release of salary.

As per the averments in writ petition, petitioner vide letter dated 02.11.2010 was appointed on Class IV post on contract basis under National Rural Health Mission for First Referral Unit (FRU) of District Faridabad through proper channel. However, in 2016, petitioner, alongwith some other persons was not allowed to join the duties or mark the presence, thus, constrained to file CWP No.7918 of 2016 whereby this Court vide order dated 28.04.2016 protected the services of petitioner and similarly situated persons qua dispensation till initiation of regular process of recruitment. Thereafter, the petitioner had been performing his duties continuously and sincerely. However, on 13.12.2018, petitioner fell ill, thus,

could not attend the duties. In this regard, submitted the application for grant of leave for 20 days (Annexure P-3) sought to be placed on record alongwith civil miscellaneous application which according to him was submitted on 17.12.2018. On having declared fit, reported to joint dut but was not allowed, thus, in such circumstances, has approached this Court.

Reliance was also laid to Attendance Register, Annexure P-4 for the month of December 2018 whereby in the column of attendance against the name of petitioner, 8th December and 9th December, had been shown 'Off whereas, 10th December to 12th December ' casual leaves' and 13th December to 31st December as 'leave'.

Though the State has already filed reply but to rebut the contents of Annexures P-3 and P-4, State filed an affidavit of one Dr. Jyoti Sharma, Senior Medical Officer averring that petitioner had taken off on 08.12.2018 and 09.12.2018 and thereafter, without giving any information was absent from 10.12.2018 to 31.12.2018. He reported on duty only on 01.01.2019 by submitting the application for granting him leave from 10.12.2018 to 31.12.2018 which was accompanied by medical record but by that time, petitioner had already violated clause 5(g) of Contract Letter as he remained absent from duty consecutive for 15 (fifteen) days. Respondent no.4 referred the case of petitioner to Civil Surgeon for necessary action.

It was next contended that leave application for the period upto 07.02.2019 was forwarded vide letter dated 01.01.2019 and 25.01.2019 by that time his absent period came out to be 62 days. It is pertinent to mention here that Civil Surgeon has power to grant the leave for 30 days. The

Custodian of the Attendance Register Smt. Manju Chaudhary, Clerk has given the explanation that attendance register was in her custody but she did not mark any L/LWP/Leave of the petitioner in the attendance register. Reliance has been laid to Annexure R-4.

Smt. Sushma Nursing Sister stated in her explanation that she marked sympathetically casual leave in the column of attendance register of petitioner after inquiring from the staff as he was not well. Petitioner submitted his leave application first time from 13.12.2018 to 26.12.2018 and 27.12.2018 to 21.01.2019 on 01.01.2019. Sushma, Nursing Sister marked 'L' i.e. 14.12.2018 to 31.12.2018 in his column for the month of December and LWP till 05.02.2019 for the month of January from 22.01.2019 to 05.02.2019.

On going through the contents of aforementioned additional affidavit and main reply, I am of the view that certain disputed question of fact and law are involved but fact of matter is that in the attendance register, Leave Without Pay has been marked against the column of petitioner. Since there is already order dispensing the services of petitioner till initiation of process of recruitment of regular employees. In my view, department ought not to have applied provision of Clause 5(g) of Contract Letter, at the best, should have treated absence from duty as Leave Without Pay as he was drawing paltry salary of Rs.8,000/- per month, rather should have adopted sympathetic view.

Accordingly, writ petition stands disposed of and his absence from duty be treated as leave without pay and he be allowed to join the services.

(AMIT RAWAL)
JUDGE

October 03, 2019
savita

Whether Speaking/Reasoned
Whether Reportable

Yes/No
Yes/No