

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-18378-2019 (O&M)
Date of Decision: 24.10.2019

Saroj Karkara

--Petitioner

Versus

State of Punjab & others

--Respondents

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

Present:- Mr. H.C. Arora, Advocate for the petitioner.

TEJINDER SINGH DHINDSA.J (Oral)

Challenge in the instant petition is to the order dated 5.11.2018 passed by the Executive Officer, Nagar Council, Gobindgarh at Annexure P-5, whereby the petitioner, who was serving on the post of Junior Assistant stands prematurely retired from service.

Counsel would submit that petitioner had joined service as a Clerk in the Nagar Council, Gobindgarh in the year 1974. Service record of the petitioner has been without blemish. However, on account of mental illness/depression petitioner was constrained to submit repeated applications seeking leave. Leave without pay for different periods of time between the years 2013 to 2018 was even sanctioned. It is further submitted that the petitioner received a communication dated 6.11.2017 (Annexure P-1) stating therein that she had remained on leave continuously and the leave account since stood exhausted. Subsequently an application for leave for the period 1.9.2017 to 3.12.2017 on the ground of illness had been received but no medical certificate in support thereof had been enclosed. Govt. Instructions dated 12.5.2017 had been cited stating that in case period of absence exceeds one year, the same would be construed as resignation from govt. service. Accordingly, petitioner was put to notice for a period of 7

days to respond to such communication dated 6.11.2017. It is vehemently argued that it was under threat of such communication dated 6.11.2017 (Annexure P-1) that the petitioner submitted letter dated 12.2.2018 (Annexure P-4) seeking premature retirement. It is argued that the petitioner has to be treated as a “person with disability” as defined under Section 2(s) of the Rights of Persons with Disabilities Act, 2016 on account of her mental illness and under such circumstances the State Govt. or instrumentality of the State was obligated to look after the interest of the employee and not to extract a letter seeking premature retirement as has been done in the present case.

Counsel has been heard at length and pleadings on record have been perused.

There is no dispute that a letter dated 12.2.2018 (Annexure P-4) had been addressed by the petitioner to the Executive Officer, Nagar Council, Gobindgarh seeking premature retirement. It is such request that has been acceded to in terms of issuance of the impugned order dated 5.11.2018 at Annexure P-5 whereby she has been retired from service prematurely. Counsel would concede that all the retiral benefits pursuant to the decision of premature retirement have since been released to the petitioner and have been accepted.

The instant petition raises a question of fact as to whether the request seeking premature retirement dated 12.2.2018 had been submitted under any duress/threat. Such a question in the absence of any concrete/cogent evidence cannot be gone into by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India.

Appended along with the instant petition are the various leave applications along with medical certificates citing mental illness/depression. Be that as it may, there is no certificate issued by the appropriate authority wherefrom this Court may infer that the petitioner would be covered under the definition of “person with disability” as per Section 2(s) of the Rights of Persons with Disabilities Act, 2016.

Counsel as a matter of last resort would make an attempt to convince this Court that the request for premature retirement dated 12.2.2018 had not been made in a fit state of mind. The contents of the request letter dated 12.2.2018 (Annexure P-4) would however suggest to the contrary. In such request letter petitioner has stated herself that she is on leave without pay on medical grounds. Further, it is on account of her illness that she wants to take premature retirement. Further request made in this very letter is for release of retirement dues i.e. gratuity, leave encashment, Provident Fund etc. as also pensionary benefits. It is precisely such request that has been dealt with in terms of issuance of the impugned order dated 5.11.2018 (Annexure P-5).

This Court does not find any basis that would warrant interference.

Petition, accordingly, is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

24.10.2019

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