

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANIDGARH

216

CWP No.5619 of 2018 (O&M)

Date of Decision: 29.10.2019

Dr. Anil Kumar Tyor and another

..... Petitioners

Versus

Kurukshetra University, Kurukshetra and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Dinesh Kumar, Advocate for the petitioners.

Mr. Rajinder Singh Rana, Advocate for the respondents.

AMIT RAWAL, J (ORAL)
CM-6001-CWP-2019

Replication to the written statement filed by respondents No.1 and 2, is taken on record subject to just exceptions.

Application is allowed.

Main Case

Challenge in the present writ petition is to quash the orders dated 07.02.2018 (Annexure P-8) and order dated 31.10.2017 (Annexure P-4).

As per averment stated in the writ petition, petitioner No.1 appointed as Assistant Professor in the Department of Zoology vide appointment letter dated 11.11.2006 and joined on 16.11.2006. He is husband of petitioner No.2. On 20.09.2017, unfortunately, petitioner No.1 suffered a brain stroke was admitted in Fortis Hospital, Mohali and underwent surgery on 21.09.2017. On 30.09.2017, he was discharged but

again re-admitted in the Hospital on 06.10.2017 and accordingly, after follow up procedure, was again discharged on 16.10.2017. Petitioner No.1 was advised for regular nursing care for 24 hours and physiotherapy. Petitioner No.2 (wife) informed about the serious ailment vide letter dated 22.09.2017 (Annexure P-3) for grant of the medical leave which was forwarded to the Deputy Registrar (Estt.). She received a communication dated 31.10.2017 regarding the decision of the Vice Chancellor allowing petitioner No.1 to avail 98 days earned leave w.e.f. 20.09.2017 and was directed to apply for extraordinary leave (without pay) till the joining time. Again a detailed representation dated 21.11.2017 was submitted and supplementary representation by taking aid of provisions of the Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Rights & Full Participation) Act, 1995.

Mr. Dinesh Kumar, learned counsel for the petitioners submits that the decision of Vice Chancellor treating the earned leave of 98 days without pay is not in consonance with the Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 (hereinafter called 'the 1995 Act') and also in terms of the judgment rendered by this Court in **CWP No.21828 of 2014** titled as **Dr. Anil Kumar Kundu V/s Kurukshetra University and others** decided on 31.03.2015 (Annexure P-13). In this regard, representations dated 21.11.2017 (Annexure P-5) and dated 16.12.2017 (Annexure P-6) as well as reminder dated 04.01.2018 (Annexure P-7) were submitted by petitioner No.2-Ramanjit Kaur wife of Dr. Anil Kumar Tyor/petitioner No.1, for considering the availed earned leave period with pay to be on duty but the request of the petitioners was declined.

In pursuant to notice of motion, reply on behalf of the respondents-University has already been filed and in the reply, it is averred that the employee has not acquired any disability and the doctors have also not declared him disabled as per the provisions of Section 47 of the 1995 Act.

I have heard learned counsel for the parties, appraised the paper book and of the view that request of the petitioner is required to be revisited in view of the judgment cited supra as the decision of the respondents in rejecting the prayer for granting of the relief is not in consonance with Section 47 of the 1995 Act and paramateria provisions of the new Act as well as in view of the ratio culled out therein, particularly when the reply of the respondents does not reflect any dispute with regard to the applicability of the law as in vogue.

Accordingly, the impugned orders Annexures P-4 and P-8 are set-aside. The concerned person i.e. Vice Chancellor, Kurukshetra University is directed to take decision afresh within a period of two months from the date of receipt of certified copy of this order, keeping in view the judgment cited supra and without being influenced by the impugned orders (Annexures P-4 and P-8), failing which, the respondents shall pay costs of ₹25,000/- to the petitioners.

However, it is made clear that in case, matter is decided in favour of the petitioners, consequential benefits, if any, shall be released within a period of another one month.

This condition of imposing costs is only to prevent petitioners to run from pillar to post and avail remedy of contempt in case of non-compliance of directions issued by this Court.

The writ petition stands disposed of with the above direction.

(AMIT RAWAL)
JUDGE

29.10.2019
D.Bansal

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No