

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

(Proceedings conducted through video conferencing)

CWP No.18706 of 2020(O&M)

Date of decision: 14.12.2020

Seema

.....Petitioner

VERSUS

State of Haryana and others

.....Respondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Sardavinder Goyal, Advocate for the petitioner.

 Mr. S.S. Pannu, DAG, Haryana.

 Mr. Nilesh Bhardwaj, Advocate for respondent No.2.

REKHA MITTAL, J.

By invoking Article 226 of the Constitution of India, Dr. Seema, a Professor, Radiodiagnosis and Imaging in Pt. B.D. Sharma Post Graduate Institute of Medical Sciences, Rohtak prays for the following relief:-

1. Writ of certiorari for quashing impugned orders bearing endorsement No.ME-1/A-11/2020/5973 dated No.03.07.2020 (Annexure P-4) and bearing No.ME-I/A-II/2020/8490 dated 25.08.2020 (Annexure P-10) whereby she has been denied one month salary in lieu of Leave Travel Concession (in short 'LTC') for the block year 2016-2019.
2. Writ of mandamus to sanction one month salary in lieu of LTC for the aforesaid block year.

3. Writ of certiorari for quashing letter dated 28.07.2020 (Annexure P-19) whereby the petitioner has been compelled to apply for leave of kind due for the period 01.07.2020 to 16.07.2020.
4. Writ of certiorari for quashing office order dated 14.10.2020 (Annexure P-22) whereby she has been directed to resume duty on or before 15.10.2020.

Counsel for the petitioner would argue that the petitioner did not avail LTC for the block year 2016-2019 and in lieu thereof, she claimed one month salary vide letters (Annexure P-3 and P-5). It is argued that prayer of the petitioner was wrongly rejected vide orders impugned. In support of his contention, counsel has relied upon letter dated 31.12.1984 (Annexure P-7) particularly the last lines of para 2 (i) thereof that reads as follows:-

“...If this concession for visiting any place in India is not utilised during the block of four years, it can be carried forward to the first year of the next block of 4 years with the permission of the Head of the department.”

It is argued that taking into consideration this concession for carrying forward to the first year of the next block of 4 years, petitioner is well within her right to get one month salary in lieu of LTC for the block year 2016-2019 which could be extended upto the year 2020.

To bring home his contention with regard to challenge against letter dated 28.07.2020 (Annexure P-19) and order dated 14.10.2020 (Annexure P-22), counsel would argue that the petitioner is physically disable to the extent of 90% as she has disability of both her legs and

cannot walk without help of crutches etc. It is argued that State of Haryana and Government of India issued guidelines concerning functioning of handicapped and disabled employees in the wake of Covid-19 pandemic. The petitioner submitted applications dated 25.03.2020 and 26.03.2020 (Annexure P-12 colly.) seeking exemption from physical appearance in her office. She was allowed to work from home vide order dated 07.04.2020 (Annexure P-13). On 08.05.2020, Government of Haryana issued instructions (Annexure P-15) for protection and safety of persons with disabilities. Petitioner submitted her application on 11.05.2020 for exemption from physical appearance in the wake of instructions dated 08.05.2020 and started working from home w.e.f. 16.05.2020. On 16.07.2020, the State of Haryana issued instructions (Annexure P-18) whereby it was decided that persons having disability of 50% or more may be allowed to work from home and exempted from attending office. It is argued that despite instructions dated 08.05.2020 were never withdrawn, respondents No.2/3 vide order dated 28.07.2020 asked the petitioner to apply for leave of kind due for the period from 01.07.2020 to 16.07.2020. It is further argued that respondent No.3 passed office order dated 14.10.2020 (Annexure P-22) asking her to resume duty on or before 15.10.2020. Counsel would pray that the petitioner may be allowed to work from home both in the interest of the petitioner herself and society as in case the petitioner is infected by Corona Virus, there is likelihood of her infecting others and contributing to the bad situation.

Counsel for the respondents while relying upon short reply by way of affidavit of Dr. Rohtas K. Yadav, Director, Post Graduate Institute of Medical Science, Rohtak (to be referred to as 'institute') would

controvert the submissions made by counsel for the petitioner. It is argued that the petitioner applied for one month's salary in lieu of LTC for the block year 2016-2019 after the block year aforesaid had already exhausted. The Government had sought clarification 'whether block year of Leave Travel Concession will be extended for one year automatically as per provisions of old policy of LTC', but this query was answered in negative and the Financial Advisor opined that action may be taken in accordance with point No.6 mentioned in Government Letter No.13/19/2008-2SII dated 21.04.2010 (Annexure R-2).

Due to spread of Covid, the institute dedicated a complete building for covid patients and the said building is separated from other blocks of the institute. The staff deputed on covid duty is not permitted in any other wing till the time they complete mandatory isolation period. The institute issued order dated 14.10.2020 (Annexure P-22) whereby all the staff members who fall under 'disabled quota' were directed to resume duties on or before 15.10.2020 with a condition that no covid duty shall be assigned to them. The instructions are directory/recommendatory in nature and not mandatory. It is further argued that the institute has approximately 100 employees working under disability quota. Except the petitioner, all other employees have joined since 15.10.2020 and till date no one of them has been detected positive. Counsel would refer to para 4 of the reply to contend that various doctors suffering from disability to the extent of 90%/80% have already joined. It is argued that the petitioner is working as Professor in Radiology Department. In addition to her teaching duties, she is one of the senior-most doctor in Radiology. Out of 11 posts of teachers, only 6 persons are working namely 3 Professors and 3 Assistant

Professors. Since the petitioner is a Professor and senior doctor in the Department, her services are of extreme importance. The workload on the Radiology Department is ever increasing after complete services of the institute are opened from August 2020. The petitioner was permitted to work from home vide letter dated 07.04.2020 with the condition that she will maintain the Headquarter, be ready for deployment at short notice and be available on landline/mobile number.

I have heard counsel for the parties, perused the paper-book particularly various annexures appended to the petition.

Indisputably, the petitioner did not avail LTC for the block year 2016-2019. She never made a request to carry forward this block year to the first year of the next block of 4 years which could be allowed with the permission of Head of the Department, in view of letter dated 31.12.1984 (Annexure P-7). The Government of Haryana in the Department of Personnel issued certain clarifications relating to new scheme of LTC for visiting home town and any place in India for the State Government employees. In para 6 of Annexure R-2, the query was “whether block year of leave travel concession will be extended for one year automatically as per provision of old policy of leave travel concession” but the same was answered in the negative. As the petitioner never sought extension of LTC for the block year 2016-2019 in the year 2020 i.e. first year of the next block of 4 years, she cannot be permitted to claim one month salary in lieu of LTC for the block year 2016-19. Counsel for the petitioner has failed to point out any materials on record that if an employee has not availed LTC for a particular block year, the same would be carried forward to the first year of the next block of 4 years

automatically or to say that no permission of Head of the Department was required. In this view of the matter, I find myself unable to accept contention of the petitioner that rejection of her claim for one month salary in lieu of LTC for the block year 2016-19 is illegal or violative of any instructions/rules etc. As a result, claim of the petitioner for grant of one month salary in lieu of LTC for the aforesaid block year is unfounded and accordingly rejected.

This brings the Court to plea of the petitioner for leave of kind due for the period 01.07.2020 to 16.07.2020. The Government of Haryana issued instructions dated 08.05.2020 (Annexure P-15) on the subject 'Preventive measures to contain the spread of Coronavirus (Covid-19)/Guidelines for protection and safety of Persons with Disabilities. A relevant extract therefrom, reads as follows:-

“2. The matter has been considered by the Government and it has been observed that in case blind and disabled employees are not exempted from attending the offices in the wake of spread of Corona virus, including those working in essential services such as Health, Municipal Corporations, Police etc., they would not only risk themselves but could also potentially be harmful for co-workers as well....”

Later, the matter was re-considered and letter dated 16.07.2020 (Annexure P-18) was issued. Counsel for respondents has failed to point out if during the period 08.05.2020 to 16.07.2020, any other instructions were issued by the State of Haryana whereby the employees working in essential services were asked to resume duty. Counsel for respondents has also failed to justify action of respondents for issuance of

letter dated 28.07.2020 (Annexure P-19) whereby the petitioner was asked to apply for leave of kind due for the period from 01.07.2020 till issuance of government instructions dated 16.07.2020. That being so, the impugned letter dated 28.07.2020 (Annexure P-19) cannot stand the test of judicial scrutiny and accordingly set aside. In case the petitioner has already applied for leave of kind due for the aforesaid period or the same has been sanctioned by a competent authority, the said period would be considered as 'spent on duty' for all intents and purposes.

Coming to the last submission with regard to requiring the petitioner to resume duty w.e.f. 15.10.2020. It is pertinent to note that despite letter dated 14.10.2020 has been issued, the petitioner continues to work from home under orders of the Court. As has been noticed hereinbefore, in the instructions dated 08.05.2020, blind and disabled employees were exempted from attending the offices including those working in essential services such as Health, Municipal Corporations, Police etc. Nevertheless, when the matter was re-considered and letter dated 16.07.2020 (Annexure P-18) was issued, a modification was made whereby the employees working in essential services such as Health, Municipal Corporation, Police etc. were deleted. The State Government decided that employees working on regular basis/contract/daily wages who are unable to walk having physical disability of 50% or above and also those who are blind from both eyes may be allowed to work from home, if necessary, otherwise may be exempted to attend office. Taking into consideration the spirit of instructions dated 08.05.02020 vis-à-vis the one dated 16.07.2020, it can safely be held that employees working in essential services were not exempted from attending office when the matter was re-

considered and decision gets conveyed vide letter (Annexure P-18). This apart, counsel for the petitioner has not disputed that all other persons that fall in the category of physically disabled and working in the institute have already resumed their duty in pursuance of letter dated 14.10.2020. He has also not disputed that there is shortage in the Department of Radiology as only 6 doctors against sanctioned strength of 11 are working. The Government of Haryana issued instructions dated 08.05.2020 as a measure of concession in order to provide safeguard to its employees who suffer from disabilities/blindness. The petitioner cannot claim as a matter of right that she should be permitted to work from home and cannot be asked to join duty, if necessary. The petitioner being a doctor and working in the Department of Radiology can well take adequate precautions to ensure her safety but not at the cost of staying away from work. In this view of the matter, I do not find merit in contention of the petitioner that office order dated 14.10.2020 is liable to be quashed.

In view of what has been discussed hereinbefore, the petition is partly allowed in the aforesaid terms, leaving the parties to bear their own costs.

DECEMBER 14, 2020

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no