

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

CWP-5296-2019 (O&M)

Date of decision: August 01, 2022

Chhotu Ram

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Devender S. Punia, Advocate for the petitioner.

Mr. R.K.S. Brar, Additional AG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing impugned order dated 19.07.2017 (Annexure P-3) whereby salary of the petitioner has been released w.e.f. 11.05.2017 instead of 01.02.2014 while granting the benefit under the provision of Section 47 of the Persons with Disabilities (Equal Opportunities), Protection of Rights and Full Participation) Act, 1995 (for short 'Act of 1995'). Further a Mandamus has been sought directing the respondents to grant the annual increment to the petitioner from the year 2014 alongwith arrears and revised pay scale from 01.01.2016.

2. Succinct factual background first. Chhotu Ram who is 100% disabled is before this Court through his wife-Krishna. Chhotu Ram was appointed as Patwari in the year 1987 on regular basis and posted in District Jhajjar. In the month of January 2014, Chhotu Ram met with a motor vehicle accident and sustained head injuries, due to which he became 100% disabled.

Even after submitting medical certificates and various representations,

respondent-Department sanctioned the extra-ordinary medical leave to the petitioner's husband without pay. Petitioner approached this Court by way of CWP-12338-2017, which was disposed of vide order dated 31.05.2017 (Annexure P-2) directing respondent No.2 to decide legal notice by passing a speaking order within a period of 2 months, and in case, petitioner was found entitled for the relief claimed, the same be released within the aforesaid period. Petitioner filed COCP-2625-2017, in which notice was issued. Upon which, vide speaking order dated 19.07.2017 (Annexure P-3), representation of the petitioner was partly decided and he was granted salary from 11.05.2017, but not from the date when the petitioner met with the accident and became disabled. Said COCP was withdrawn with liberty to challenge the speaking order. Hence, the present petition.

3. I have heard competing contentions of learned counsel for the petitioner as well as learned State counsel.

4. In the return, stand taken by the defence is that since the petitioner failed to submit his disability certificate from the date he met with the accident in the month of January 2014, and therefore, it was not possible for the competent authority to decide the benefits from that date including the payment of salary for the period from 01.02.2014 when petitioner was undergoing the treatment and was unable to report for duty. Though the conceded case is that owing to the nature of injuries suffered by the petitioner, he could not even work after 2017, but salary was released after verification of his medical records and the delay in verification is attributed to the petitioner, and therefore, he was not paid salary from January 2014 till May 2017. Having perused the record, the defence taken by the respondents flies in the face of Rule 19 of the Haryana Civil Services Rules, 2016, which is as below:-

“19. Medical fitness for efficient discharge of duties.—

The appointing authority shall have power to require a Government employee to appear before a medical board to test his physical fitness for the efficient discharge of the duties of his post, whenever, it has reason to believe that the Government employee is not physically fit to carry out his duties satisfactorily.

Note 1.— *The entire expenditure of medical examination including travelling allowance shall be reimbursable/borne by the Government. The prescribed fee shall also be refunded, if the Government employee is found fit for further service.*

Note 2.— *If the Government employee is not found fit for his duties by the competent medical authority, his case shall be considered under section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996).”*

5. Perusal of the above leaves no ambiguity that it is a duty casted upon the competent authority though it is worded as “power” by exercising which he can ask a Government employee to appear before a medical Board to test his physical fitness and if found not fit for duties, then only the case is to be considered under Section 47 of the Act of 1995. What thus, emerges is that the statutory benefits envisaged under Section 47 *bid*, all the special increments are to be duly accorded but only upon appointing authority verifying the medical condition of an employee by making employee appear before a medical Board. In this aspect, even Rule 19 does not really make it mandatory on the part of the appointing authority. It simply vests him with the power that in case, he is not satisfied with the medical record of the petitioner, he shall, in that case, require the Government employee to appear before the medical Board. Be that as it may, even the defence that the petitioner did not submit his medical record/ disability has also been taken in the cavalier and nonchalant manner inasmuch as vide letter dated 18.04.2014 (Annexure P-6) duly endorsed in the office of Tehsildar, where the petitioner was working, it was intimated that he is undergoing medical treatment and/ or on that time was in Coma due to the

accident which occurred on 02.01.2014. The receipt of that leave application is not disputed as same is duly endorsed as Sr. No.495 DK dated 18.04.2014. That apart vide certificate dated 09.04.2014 (Annexure P-5), a medical certificate issued by Senior Consultant, Neuro Surgery Artemis Health Institute, Gurgaon was also submitted which states in as many words that patient is unconscious and is likely to need long term medical management and nursing care. It is rather intriguing that the competent authority instead discharging its duty and/or as the Rule envisages, exercising its power to constitute a medical Board, the petitioner is rather being held responsible for not taking steps to inform the Department. Clearly, the shoe is on the other foot.

6. As an upshot of the discussion above, writ petition is allowed. Respondents are directed to disburse the salary from January 2014 till May 2017 by granting him revised pay-scale from 01.01.2016 including interest at the rate of 6% per annum, with effect from the date of his entitlement of salary until actual payment. Needful be done within a period of 2 months from today.

(ARUN MONGA)
JUDGE

August 01, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No