

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

CWP-16085-2021 (O&M)

Date of decision: August 22, 2022

Shyam Lal

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. A.K. Walia, Advocate for the petitioner.

Ms. Mamta Singla Talwar, DAG 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 18.09.2020 (Annexure P-11) issued by respondent No.2 dispensing with the service of the petitioner by wrongly treating him as continuously and unauthorizedly absent from duty for more than 5 years and hence deemed to have resigned under Rule-13 of the Haryana Civil Services (Leave) Rules, 2016.

2. Succinct factual background first. Petitioner was appointed as Peon on 21.03.1991 with the respondents. He was promoted as Clerk in the year 2000. On 10.07.2011, at about 9/10.00 PM petitioner met with an accident. Resultantly he suffered serious injuries and went in Coma. He remained under treatment for a few months and a medical certificate dated 02.04.2012 (Annexure P-1) was issued by Jindal Institute, Hisar. Wife of the petitioner had submitted an application dated 12.02.2012 (Annexure P-2/T), on which she received salary/ leave salary for a few months. Petitioner also took treatment

from Ishwar Orthopaedic Hospital, Rohtak, Apex Plus Super Specialty Hospital, Rohtak and PGIMS Rohtak. Petitioner was not fully conscious to the letters issued by respondents No.2 and 3 asking him to join duty, submit his medical record and apply for leave. Petitioner made an application dated 18.03.2020 (Annexure P-7), but he was not allowed to join duties. Respondent No.2-Director, Social Justice & Empowerment, Haryana asked respondent No.3-The District Social Welfare Officer, Rohtak various time to visit the house of the petitioner to confirm his present condition. Respondent No.3 passed impugned order dated 18.09.2020 (Annexure P-11) whereby services of the petitioner were terminated observing that since petitioner is unauthorizedly absent from duty for more than 5 years, his absence is treated as resignation under Rule *ibid*. No show cause notice was issued to him.

3. I have heard rival contentions of learned counsel for the parties. In fact, controversy in hand is somewhat similar to the one in **CWP-5296-2019** titled **Chhotu Ram versus State of Haryana and others** dealt with by me wherein I have already rendered my opinion. I see no reason as to why the benefit of the same be not accorded to the petitioner herein. Since what emerges from the admitted position of facts is that petitioner had indeed met with an accident on 10.07.2011 pursuant where to he had been bed-ridden owing to cerebral/ spinal injuries though not, so in **Chhotu Ram's case supra**. Relevant part of the said order reads as under:-

“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.”

4. In the premise, impugned order dated 18.09.2020 (Annexure P-11) is set aside. Respondents are directed to proceed afresh while constituting Medical Board by exercising their power as per Rule 19 of the Haryana Civil Services Rules, 2016 and to pass fresh orders. Since the impugned order has been set aside, till the fresh course of action is taken, subject to the opinion of the Medical Board, petitioner shall be entitled to the salary as and to the extent admissible under rules from the date he has not been paid till today. In case, Medical Board is not constituted within a period of 2 months, petitioner shall be entitled to the salary w.e.f. the date he was not so paid up to date. In case, Medical Board is not constituted within the time stipulated, it will be presumed that the petitioner's medical record appended with the writ petition is uncontroverted and therefore, as a necessary consequence, he shall be paid up to date arrears of salary.

5. Disposed of, accordingly.

6. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 22, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No