

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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LPA No.24 of 2020(O&M)

Date of Decision: March 21, 2022

Saroj Karkara

....Appellant

VERSUS

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE G. S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Nakul Sharma, Advocate for the appellant.
Mr. Hitesh Pandit, Addl. A.G. Haryana.

G.S. SANDHAWALIA, J(Oral).

Challenge in the present Letters Patent Appeal is to the order dated 24.10.2019 passed by learned Single Judge in CWP No.18378 of 2019 (*Saroj Karkara vs. State of Punjab and others*). The learned Single Judge has dismissed the writ petition, wherein the petitioner-appellant had challenged the order dated 05.11.2018 (Annexure P-5), whereby she was prematurely retired from the post of Junior Assistant. The petitioner had also sought the benefit to be treated as a “person with disability” as defined under Section 2 (s) of the Rights of Persons with Disabilities Act, 2016 (later referred to as “2016 Act”) on account of her mental illness.

The reasoning, which prevailed with the learned Single Judge, was that the pre-mature retirement was done at the instance of the writ petitioner herself, who had made a request dated 12.02.2018 (Annexure P-4) and in pursuance of the same, she had been granted the benefit of premature retirement. She had accepted all the retiral benefits, which had already been released to her and the argument that it was under any duress/threat, could not be gone into in the exercise of writ jurisdiction under Article 226 of the Constitution of India. The claim of mental illness/depression was rejected

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on the ground that no certificate was issued by the appropriate authority, whereby the petitioner could claim to come within the definition of “person with disability” under the 2016 Act. It was noticed that in her request itself, she had stated that she was on leave without pay on medical grounds and that she wanted to take premature retirement and the same had been dealt with and therefore, it could not be said that she was not in a fit state of mind.

Counsel has vehemently submitted that the appellant was under depression and that was the reason for leave applied as per Annexure P-3/1 to P-3/13 from period 01.01.2015 to 30.09.2018 and it was apparent that she was suffering from mental illness as defined under the 2016 Act. He has also referred to the certificate dated 24.04.2019 (Annexure A-1) now placed on record, issued by the Rajindra Hospital, Patiala and submits that she was suffering from “Chronic Schizophrenia”, which was declared as complicated Chronic Disease vide Punjab Govt. Letter No.12/69/98-5HBV/21329-21333 dated 01.09.2000.

It is pertinent to notice that the said certificate (Annexure A-1) was issued after the petitioner had been prematurely retired vide the impugned order. Even otherwise, in the said certificate, there is a validity period from 24.04.2019 to 23.04.2024. The said certificate does not, in any manner, show the factum that the appellant will fall within the definition of “person with disability” with long term physical, mental, intellectual or sensory impairment which hinders her full and effective participation in society equally with others. The learned Single Judge was right in observing that rather the request was very much specific that it was on account of illness she was asking for premature retirement and having not attending office and being without pay, therefore, she had asked for premature retirement which was a calculated, well thought decision on the part of the

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appellant. The same had been acted upon and after receiving all her retiral dues, she had filed a representation dated 15.04.2019 (Annexure P-7), wherein she raised the issue of right under the 2016 Act and that she was under a mistaken belief and was not aware of the aforesaid benevolent provisions.

Section 58 of 2016 Act provides procedure for certification in manner, prescribed by the Central Government, to a certifying authority having jurisdiction, for issuing of a certificate of disability and the assessment of disability of the concerned person in accordance with relevant guidelines in the form as may be prescribed by the Central Government. The certificate which has now been placed on record as Annexure A-1, does not specify the extent of appellant's mental disability, she is suffering from. As per Rules 17 and 18 of the Rights of Persons with Disability Rules, 2017, the certificate is to be applied in Form IV for a certificate of disability, which has to provide that the person is suffering from intellectual disability or any other disability, which renders him unfit or unable to make such an application himself. The application on his behalf may be made by his legal guardian or by any organization registered under the Act.

The competent authority under Rule 18 has to verify the information and assess the disability in terms of the relevant guidelines issued by the Central Government and after satisfying itself that the applicant is a person with disability, the competent authority shall issue a certificate of disability in his favour in Form V, VI and VII. Perusal of Form VII, which would go to show that the mental illness has been shown at Serial No.13 and it has been mentioned that the condition has to progressive/non-progressive/likely to improve/not likely to improve. The said form reads as under:

Form – VII
CERTIFICATE OF DISABILITY
(In cases other than those mentioned in Forms V and VI)
(Name and Address of the Medical Authority issuing the Certificate)
[See rule 18(1)]

Recent Passport size attested
photograph (Showing face
only) of the person with
disability.

Certificate No..... Date.....

This is to certify that I have carefully examined
Shri/Smt/Kum.....son/wife/daughter of ShriDate of Birth
(DD/MM/YY)..... Age.....years,male/female..... Registration
No..... permanent resident of House No..... Ward/Village/Street.....
Post Office..... District..... State....., whose photograph is affixed above,
and am satisfied that he/she is a case ofdisability. His/her extent of
percentage physical impairment/disability has been evaluated as per guidelines (.....
number and date of issue of the guidelines to be specified) and is shown against the
relevant disability in the table below:-

Sl. No.	Disability	Affected part of body	Diagnosis	Permanent physical impairment/mental disability (in %)
1.	Locomotor disability	@		
2.	Muscular Dystrophy			
3.	Leprosy cured			
4.	Cerebral Palsy			
5.	Acid attack Victim			
6.	Low vision	#		
7.	Deaf	€		
8.	Hard of Hearing	€		
9.	Speech and Language disability			
10.	Intellectual Disability			
11.	Specific Learning Disability			
12.	Autism Spectrum Disorder			

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13.	Mental illness			
14.	Chronic Neurological Conditions			
15.	Multiple sclerosis			
16.	Parkinson’s disease			
17.	Haemophilia			
18.	Thalassemia			
19.	Sickle Cell disease			

(Please strike out the disabilities which are not applicable)

2. The above condition is progressive/non-progressive/likely to improve/not likely to improve.

3. Reassessment of disability is:

- (i) not necessary, or
- (ii) is recommended/after years months, and therefore this certificate shall be valid till (DD/MM/YY)

@ - eg. Left/Right/both arms/legs

- eg. Single eye/both eyes

€ - eg. Left/Right/both ears

4. The applicant has submitted the following document as proof of residence:--

Nature of document	Date of issue	Details of authority issuing certificate

(Authorised Signatory of notified Medical Authority)
(Name and Seal)
Countersigned
{Countersignature and seal of the Chief Medical Officer/Medical Superintendent/ Head of Government Hospital, in case the Certificate is issued by a medical authority who is not a Government servant (with seal)}

Signature/thumb impression
of the person in whose
favour certificate of disability is issued.

Note.-- In case this certificate is issued by a medical authority who is not a Government servant, it shall be valid only if countersigned by the Chief Medical Officer of the District.”

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The certificate (Annexure A-1), which has now been relied upon, does not fulfill the statutory requirement that is provided under the Rules. In such circumstances, we are of the considered opinion that the learned Single Judge was well justified in holding that in the absence of the certificate in terms of Section 2(s), the petitioner is not entitled for any benefit as claimed by her. Even otherwise, the principle of estoppel would come in the way of the appellant, who with open eyes had opted for premature retirement, which was acceded to in the prescribed period by the competent authority. The appellant’s turn round after almost a year, thus, cannot be justified in any manner.

Accordingly, we are of the opinion that learned Single Judge has not erred in any manner and the order passed by him does not require any interference in the present appeal.

Thus, there is no merit in the present appeal and the same is dismissed in limine.

(G. S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

March 21, 2022
Sachin M.

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No