

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-20420-2018 (O&M)
Date of Decision:22.09.2023

JOGINDER KAUR

.....Petitioner

V/s.

**STATE OF PUNJAB THROUGH ITS PRINCIPAL SECRETARY TO
GOVERNMENT OF PUNJAB EDUCATION DEPARTMENT, PUNJCH
CIVIL SECRETARIAT AND OTHERS**

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: None for the petitioner.

Mr. R.K. Kapoor, Addl. A.G., Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. No one has put in appearance on behalf of the petitioner.
2. The petitioner by way of this Writ Petition claiming benefit of release of the salary of her husband w.e.f. 03.07.2008 to 14.10.2013 in terms of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as “the Act of 1995”).
3. The petitioner’s husband, while in service, suffered from brain tumor and became mentally ill. On account of the same, he was granted Medical Leave w.e.f. 21.05.2008 to 02.01.2009 and then w.e.f. 03.01.2009 to 17.09.2018, he has been unable to perform his duties. It is the case of the petitioner that her husband was entitled to receive the regular salary w.e.f. 03.07.2008 to 14.10.2013. The petitioner had earlier filed CWP-3888-2016

the salary was released w.e.f. 05.10.2013 upon directions of passing of a speaking order, but the salary prior to 05.10.2013 has not been released.

4. *Per contra*, the respondents have filed their reply and stated that the period from 03.07.2008 to 29.05.2009 and 10.07.2009 to 04.10.2013 has been treated as leave on medical grounds without pay and therefore, the salary for the said period cannot be granted.

5. I have considered the submissions of learned counsel for the parties.

6. Section 47 of the Act of 1995 provides as under:-

“47. Non-discrimination in Government Employment –

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability: Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

7. Thus, it is the liability of the State to pay the salary to an employee who has become disabled while in service and his services cannot be dispensed with.

8. In the circumstances, therefore, salary of the petitioner's deceased husband has to be paid from the day he became mentally ill i.e. from the year 2008 and it cannot be converted into the leave without pay.

9. In view thereof, the Writ Petition is allowed and respondents are directed to release the salary of the petitioner's deceased husband w.e.f. 03.07.2008 to 29.05.2009 and 10.07.2009 to 04.10.2013 to the petitioner, who is the wife of the deceased employee, within a period of 4 months henceforth. It is clarified that no interest is required to be paid by the respondents.

10. All the pending applications in this Writ Petition stand disposed of accordingly.

September 22, 2023

Ess Kay

**[SANJEEV PRAKASH SHARMA]
JUDGE**

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No