CWP No. 14019 of 2010

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH 203.

CWP No. 14019 of 2010

Date of Decision : March 31, 2014

Sushila Devi

... PETITIONERS

Vs

State of Haryana and another

..... RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH** 

Present: Mr. R.K.Malik, Sr. Advocate,

with Mr. Ramandeep, Advocate,

for the petitioner.

Mr. Sunil Nehra, Sr. DAG, Haryana,

for the respondents.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court praying for quashing of the order dated 30.04.2008 (Annexure P-3), vide which the intervening period i.e. 04.09.2001 to 30.04.2008 has been treated as leave of the kind due for the period the petitioner was unable to attend the duties because of her illness.

It is the contention of the counsel for the petitioner that the petitioner was appointed as an Assistant Cashier on regular basis on 06.09.1988 in the Department of Treasuries and Accounts. She

For Subsequent orders see COCP-2876-2014

continued serving the respondents when from 04.09.2001 she was unable to join her duties because of her illness. It ultimately was determined that she was suffering from Schizophrenia. Petitioner submitted various medical certificates issued by the private Doctors, copies of which have been appended as Annexures P-7 to P-11, which pertain to the period 31.08.2001 to 30.04.2005 claiming medical leave. His further contention is that on 06.05.2006, the Head of the Psychiatry Department Pt. B.D.Sharma, PGIMS, Rohtak, certified that the petitioner was suffering from Schizophrenia disease and recommended rest for 244 days i.e. 05.04.2005 to 06.05.2006. Thereafter, a Medical Board was constituted at PGIMS, Rohtak, which came to a conclusion that the petitioner is completely and permanently incapacitated for further service in the Department of Treasury as Assistant Cashier on account of Schizophrenia with cognitive impairment and intellectual functioning. The report of the Board is dated 11.09.2006 (Annexure P-13).

Counsel contends that the petitioner was not granted any benefit of the said medical certificate and the decision of the Board, which led to the petitioner filing CWP No. 18301 of 2007, which came to be decided on 29.02.2008 (Annexure P-1) by directing the respondents to appoint the petitioner against the post of Clerk. This benefit was conferred upon the petitioner in the light of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as '1995 Act'). Petitioner is now working on the said post but as it was left open to the respondents to decide the period for which she was

not serving the respondents, which claim of the petitioner has been rejected vide the impugned order dated 07.01.2013 (Annexure P-15) treating the period as extra-ordinary leave whereas the petitioner was entitled to the grant of medical leave and the other consequential benefits. He, thus, contends that the impugned order cannot sustain and deserves to be set aside.

On the other hand, counsel for the respondents contends that a perusal of the medical certificates, which have been appended as Annexures P-7 to P-11 along with the writ petition, would show that at each stage, the petitioner, after a particular span of illness, was found to be medically fit for re-joining the duties but she has chosen not to join duties at any stage w.e.f. 04.09.2001. She continued to remain absent although she did submit the medical certificates but those certificates cannot be a ground for granting her the medical leave as firstly, the certificates are issued by the private practitioners and secondly, none of the said certificates suggest that the petitioner was, all through the said period, not fit for joining the He, in any case, contends that the petitioner has been granted the benefit of the provisions of Section 47 of the 1995 Act and, therefore, has been adjusted as a Clerk in compliance of the order passed by this Court dated 29.02.2008 (Annexure P-1). The procedure, as prescribed under the Statutory Rules/Instructions, for the grant of medical leave, copy of which has been appended as Annexure R-3, having not been fulfilled by the petitioner, medical leave could not have been granted to her and no further relief can be claimed by the petitioner or granted to her. He, thus, prays for dismissal of the present writ petition.

I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the records of the case.

The contention of the counsel for the petitioner with reference to the medical certificates, Annexures P-7 to P-11, is not being accepted by this Court on the ground that these certificates, at each stage, indicate that the petitioner was medically fit for re-joining the duties but she preferred not to do so nor is there any complete continuance with regard to the illness of the petitioner which would justify such a relief as has been claimed by the petitioner.

However, the claim of the petitioner, when seen in the context of and in the light of the medical certificate dated 06.05.2006 (Annexure P-12) issued by the Head of the Psychiatry Department, Pt. B.D.Sharma, PGIMS, Rohtak as also the report of the Special Medical Board dated 11.09.2006 (Annexure P-13), the contention of the counsel for the respondents cannot be accepted. These certificates clearly hold that the petitioner was suffering from Schizophrenia and had been recommended rest w.e.f. 05.04.2005 till the date when the certificate dated 06.05.2006 (Annexure P-12) was issued and thereafter, the Medical Board, which was constituted, found the petitioner in such a position that she was completely and permanently incapacitated for further service in the Department of Treasury as Assistant Cashier on account of Schizophrenia with cognitive impairment and intellectual functioning. The benefit of medical leave, therefore, would be permissible and needed to be

granted to the petitioner w.e.f. 05.04.2005 till the date she was adjusted on the post of a Clerk.

In view of the above, the present writ petition is partly allowed by holding that the petitioner is entitled to the medical leave from 05.04.2005 onwards till she exhausts the same and half pay leave etc. as admissible till the date she joined on the post of a Clerk. The consequential benefits be released to the petitioner within a period of two months' from the date of receipt of certified copy of the order.

**March 31, 2014** pj

(AUGUSTINE GEORGE MASIH )
JUDGE