LPA-807-2020 CH-2251-LPA-20 1 Online Mentioning Details: 1015393 CM- 2253-LPN-2025 Mentioning Type.: CIVIL MATTERS-DB Mentioning For: Fresh Filing: LPA Case Title: state of haryana and others Vs gopi ram Mentioned Case Statús: Mentioned Case Next Date: -----**Mentioning Advocate Details** Advocate Name: deepak balyan additional Advocate Code: p/286/2003 advocate general haryana Advocate Mobile: 9815440630 Advocate E-mail ID: deepakbalyan286@gmail.com Advance copy of the petition/appeal/application has been served to the official respondents/opposite NO party through e-mail: **Constitution of India** Acts/Statue: Copy of Caveat u/s 148 NO CPC Received or Not **Lower Court Details** District: Date of Decision: Case-ID No: cwp-10158-2017 JIND 14-jan-2020 Details of Any Other Case: Details of any other request that has been по filed: Whether Stay has been Prayed For or Not: The writ petition was allowed on 14.01.2020 and the petitioner has filed Cocp no. 1616 of 2020 and the next date of hearing is 05.11.2020. Stay of order dated 14.01.2020 is required. In view of the above, there is an Reason for Urgency: urgency to file LPA. Kindly allow the mentioning of State of Haryana to file LPA. Date of Cause of 02-nov-2020 Action: Mentioning Request 03-11-2020 08:33:26 AM Date:

By order of Hon'ble Mrs. Justice Daya Chaudhary accepted for listing.

Mentioning Status:

filed at the Ordinary Filing Counter:

Case has already been

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### Punjab & Haryana High Court Acknowledgement



e-Filing No

EC-PHHC01-02984-2020

e-Filed Date/Time

10-11-2020 03:36:51 PM

Petitioner

STATE OF HARYANA AND OTHERS

Respondent

GOPI RAM

IA(s)

: 0

Advocate

Kamal Joshi (HR/31/2015)

Matter Nature

Urgent

Efiling Admin

sahil garg

To Be Listed Before

MΔ

Payment Details :

Rs. 18 (Offline(Judicial Stamps))

Generated Date: 10-11-2020

### 11 SCLAIMER :-

discritions/applications filed through e-Filing mode by Advocate/Litigants then hard copy of the same is also required to be filed before the Registry of this Hon'ble High Court (In filing/DRR Section) between 10.00 a.m. to 4.00 p.m. on Court working days, along with hard copy of petition/application. Advocates/litigants are required to attach acknowledgement receipt of the e-filing of petition/application.

2

## IN THE HON'BLE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

To

The Deputy Registrar, Punjab and Haryana High Court, Chandigarh.

Title of case:

L.P.A. No. 807 of 2020

IN CWP NO.10158 of 2017

State of Haryana & Ors.

.... Applicants/ Appellants

Versus

Gopi Ram

....Respondent

Will you kindly treat the accompanying petition as an urgent one in accordance with the provision of Rule 9 Chapter-3/A. Rules and Orders of the High Court, Chandigarh Volume-V.

Grounds of Urgency: - for staying the operation of the impugned judgment dated 14.01.2020

As prayed for

Yours faithfully

**CHANDIGARH:** 

Dated: 05.10.2020

Government Pleader, Haryana

Tarun Walia AAL



### High Court of Punjab and Haryana

Chandigara

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(Same)

Case No. Party Name

Advocate

Name

FIR No. Complaint

No.

LAC/LR No.

Lower Court

Impugned

Order

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1015393

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**CIVIL MATTERS-DB** 

Mentioning

For

Fresh Filing: LPA

Case Title

Advocate<sup>-</sup>

state of haryana and others Vs gopi ram

deepak balyan additional advocate general

haryana(p/286/2003)

Contact

Detail:

Mentioning

Status

**ACCEPTED** 

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## IN THE HON'BLE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA NO. 907 OF 2020

CWP NO. 10158 of 2017

State of Haryana & Others.

.... Appellants

Versus

Gopi Ram

.....Respondent

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**Note**: 1. Whether any caveat has been filed in this case or not;

- 2. No such or similar appeal has been filed in the Hon'ble High Court or in the Hon'ble Supreme Court of India.
- 3. Similar Case if any- No

4. Hard Copy and soft copy are same.

Place: Chandigarh

Dated: 05.10.2020

Government Pleader, Haryana

Saurabh Mago, AAG, Haryana

## IN THE HON'BLE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

% → LPA NO. OF 2020

IN

CWP NO. 10158 of 2017

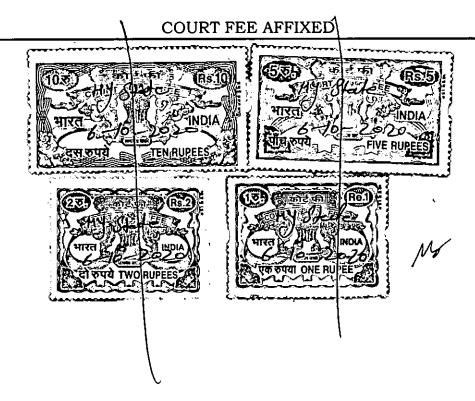
State of Haryana & Ors.

.... Applicants/ Appellants

Versus

Gopi Ram

....Respondent



Court Fee of Rs. \_\_\_\_\_has been fixed in the present case.

Place: Chandigarh

Dated 5-10-2020

Government Pleader, Haryana

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## IN THE HON'BLE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

807

LPA NO.

OF 2020

IN

CWP NO. 10158 of 2017

State of Haryana & Ors.

Appellants

Versus

Gopi Ram

.....Respondent

### **CERTIFICATE**

It is certified that the undersigned is filing the present LPA titled as State of Haryana and others Vs. Gopi Ram and others in this Hon'ble Court and complete paper book of CWP alongwith Annexures, Written Statement and other pleadings before the Ld. Single Judge in CWP are being annexed with the accompanied LPA.

Place: Panchkula
Dated: 05 10.2020

(Dr. Vandana Disodia)
Additional Secretary to Govt. Haryana
Elementary Education Department
Panchkula.

IN THE HON'BLE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Q251-UA CM NO.\_\_\_OF 2020

LPA NO. 867 OF 2020

CWP NO. 10158 of 2017

State of Haryana & Ors.

.... Applicants/ Appellants

Versus

Gopi Ram

.....Respondent

Civil Misc. Application under Section 151 of the Code of Civil Procedure with a prayer to allow the application & exempt from filing of certified copies of Civil Writ Petition written statements, affidavit and Annexures annexed along with respective pleadings before the Ld. Single Judge and also for exemption from filing of typed copies of civil writ petition along with its Annexures, written statement and judgment dated 14.01.2020 passed by the Hon'ble Single Judge.

### RESPECTFULLY SHOWETH:

- 1. That the present Letters Patent appeal has been filed by the applicants/appellants against the judgment dated 14.01.2020 passed by the Hon'ble High Court, in this Hon'ble High Court.
- 2. That the applicant/appellant is not in possession of certified copies of the civil writ petition along with its Annexures and written statement, however, photo copies of the same are being filed in this High Court.
- 3. That the applicants/appellants are filing certified copy of the judgment dated 14.01.2020 passed by the Hon'ble High Court, which is clear and legible.
- 4. That it is in the interest of justice and equity that the

B 3

applicants/appellants may kindly be exempted from filing of certified copies of

civil writ petition along with its Annexures and written statement and other

pleadings. The appellant may also be exempted from filing of typed copies of

Civil Writ Petition along with its Annexures, written statement and judgment

dated 14.01.2020 passed by the Hon'ble High Court.

It is, therefore, respectfully prayed that the application may kindly be

allowed & the applicants/appellants may kindly be exempted from filing of

certified copies of civil writ petition along with its Annexures and written

statement. The appellants may also be exempted from filing of typed copies of

Civil Writ Petition along with its Annexures, written statement, and judgment

dated 14.01.2020 passed by the Hon'ble High Court.

Place: Chandigarh

Dated: 5-10-2020

Government Pleader, Haryana

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## IN THE HON'BLE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH 2851-LPA

CM NO.\_\_\_\_OF 2020

IN

LPA NO. 807 OF 2020

IN

CWP NO. 10158 of 2017

State of Haryana & Ors.

.... Applicants/ Appellants

Versus

Gopi Ram

.....Respondent

Affdiavit of Dr. Vandana Disodia, Additional Secretary to Govt. Haryana,
Elementary Education Department, Haryana

I, the above named deponent do hereby solemnly affirm and declare as under:-

- 1. That the deponent declares that the contents of accompanying application for exemption have been drafted as per my knowledge and belief which are true and correct to my knowledge.
- 2. That the deponent verifies that content of the same are true No part of it is wrong and no material fact has been concealed therein.

Deponent

Place: Chandigarh

Dated: [ ] o ] 207

(Dr. Vandana Disodia)
Additional Secretary to Govt. Haryana
Elementary Education Department
Panchkula.

### **VERIFICATION:-**

Place: Panchkula o

Dated:

Verified that the contents of the above affidavit are true and correct as per information and knowledge derived from the official record, which I believe to be true, no part of it is false and nothing material concealed therein.

Deponent

(Dr. Vandana Disodia)

Additional Secretary to Govt. Haryana Elementary Education Department Panchkula.

2/10/2083

Jydu Yadau (t. h.)

IN THE HON'BLE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM NO.\_\_\_\_OF 2020

LPA NO. 867 OF 2020

CWP NO. 10158 of 2017

State of Haryana & Ors.

.... Applicants/ Appellants

Versus

Gopi Ram

....Respondent

Civil Misc. Application under Order 41 Rule 5 read with Section 151 of the Code of Civil Procedure with a prayer to allow the application for staying the operation of the impugned order dated 14.01.2020 passed by this Hon'ble High Court

### RESPECTFULLY SHOWETH:

- 1. That the applicant/appellants are filing the accompanying appeal in this

  Hon'ble High Court and the same is likely to be succeed on the basis of
  grounds mentioned therein.
- 2. That the grounds mentioned in the accompanied appeal may be read as a part of the present application.
- 3. That the applicant/appellants have very good prima-facie case.
- 4. That if the stay is not granted to the applicant/appellants, the applicant
  State shall suffer an irreparable loss.
- 5. That the balance of convenience is also in favour of applicant/appellants.

It is, therefore, respectfully prayed that this application may kindly be accepted and the operation of the impugned order dated 14.01.2020 passed by the Hon'ble Single Judge may kindly be stayed during the pendency of the present appeal in the interest of justice.

Place: Chandigarh

Dated: 5-10-2020

Government Pleader, Haryana

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### IN THE HON'BLE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

2253-LPA

CM NO.\_\_\_\_OF 2020

IN LPA NO. ダクナ

OF 2020

IN

CWP NO. 10158 of 2017

State of Haryana & Ors.

.... Applicants/ Appellants

Versus

Gopi Ram

.....Respondent

Affdiavit of Dr. Vandana Disodia, Additional Secretary to Govt. Haryana, Elementary Education Department, Haryana

I, the above named deponent do hereby solemnly affirm and declare as under:-

- 1. That the deponent declares that the contents of accompanying application for stay have been drafted as per my knowledge and belief which are true and correct to my knowledge.
- 2. That the deponent verifies that content of the same are true No part of it is wrong and no material fact has been concealed therein.

Deponent

(Dr. Vandana Disodia)

Additional Secretary to Govt. Haryana Elementary Education Department

Panchkula.

Place: Chandigarh

Dated: 5 10 20

FVERIFICATION:-

Inplu Yadau (L.,

Verified that the contents of the above affidavit are true and correct as per information and knowledge derived from the official record, which I believe to

be true, no part of it is false and nothing material concealed therein.

Deponent

Alicolopial

(Dr. Vandana Disodia)

Place: Panchkula

Dated:

S

SHADWA TRIKHA NOTARY, Chandigath

Additional Secretary to Govt. Haryana Elementary Education Department Panchkula.

5/10/2027

## IN THE HON'BLE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

g6 → LPA NO. OF 2020

\_\_\_\_\_

CWP NO. 10158 of 2017

IN

### MEMO OF PARTIES

- 1. State of Haryana through its Principal Secretary to Govt, of Haryana, School Education Department, Haryana Civil Secretariat, Sector-17, Chandigarh.
- 2. Director General, Elementary Education Haryana, Shiksha Sadan, Sector-5, Panchkula (Haryana).
- 3. District Elementary Education Officer, Jind.
- 4. Sub Divisional Educational Officer (Elementary), Julana, Jind.
- 5. Accountant-General (A&E) Haryana Sector-33B, Chandigarh.

...Applicants/ Appellants

### **VERSUS**

Gopi Ram S/o Sh. Jai Karan (Retd. Science Master) aged 51 years through his wife being guardian/representative Smt. Meena Devi W/o Sh. Gopi Ram aged 49 years resident of Village & P.O. Garhwali, Block Julana, District Jind.

.... Respondent

Place: Chandigarh

Dated: 05, 10.2020

Government Pleader, Haryana

Jagur Was

Toreum walta AA4

Letters Patent Appeal under Clause X of the Letters Patent Act to set aside the order dated 14.01.2020 passed by the Hon'ble Single Judge in CWP No. 10158 of 2017 whereby the writ petition filed by the petitioner was allowed, with a further prayer to dismiss the writ petition filed by the petitioner being devoid of merits.

### RESPECTFULLY SHOWETH:

- 1. That the appellants are aggrieved with the order dated 14.01.2020 which has been passed by the Hon'ble Single Judge without the appreciation of facts as well as law.
- 2. That vide judgment/order dated 14.01.2020, the Hon'ble Single Judge was pleased to direct the respondents to pay salary' to the petitioner w.e.f. 09.06.2004 up to date in terms of mandate of section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the 'Act-1995')
- 3. That the brief facts of this case as alleged by the petitioner are that he has filed the present petition through his wife Meena Devi for issuance of writ in the nature of certiorari for quashing the impugned order dated 14.6.2004 (Annexure P-3) passed by Sub Divisional Educational Officer (Elementary), Julana, Jind-appellant no.4 vide which the petitioner who was working as Science Master in the Education Department, Haryana has been relieved/retired w.e.f 9.6.2004 from Government Service on the basis of medical report dated 9.6.2004 (Annexure P-2) submitted by the Special Medical Board of PGIMS, Rohtak in utter violation of Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and to grant him all service benefits considering the petitioner on duty till 23.05.2024 for all intents and purposes. The writ petition is filed by the wife of the petitioner being guardian/representative appointed vide order dated (Annexure P-1) passed by the Guardian Judge, Jind. The petitioner was appointed as science master on ad-hoc basis and joined Government

High School Buwana Block-Julana District Jind. While he was working as Science Teacher, he met with fatal road accident on 17.10.2002. Due to head injury, he remained in Comma. Further as per report dated 09.06.2004 (Annexure P-2) of the medical board, Pt. B.D.Sharma, PGIMS, Rohtak, it was mentioned that the petitioner was completely and permanently incapacitated for further service in the department of education on account of dementia due to Head Injury. The medical board was of the opinion that the petitioner was UNFIT FOR FURTHER SERVICE as Science Teacher. On the basis of report dated 09.06.2004 (Annexure P-2), the petitioner was retired from service w.e.f 09.06.2004 vide order dated 14.06.2004 (Annexure P-3).

4. That on notice the appellants contested the case of the petitioner by filing reply and raised the objection that the present writ petition is barred by limitation as filed on 10.4.2017 after a delay of 13 years and this writ petition should be dismissed on the ground of delay and latches. The appellants further pleaded that petitioner has been granted the benefit of invalid pension as per Rule 5.11 of Punjab Civil Service Rules Volume-II as applicable to State of Haryana and his services cannot be continued beyond 6 months under Rule 5.18 of Punjab Civil Services Rules, Volume-II. The petitioner was relieved from service on 09.06.20044 on the medical report and with the consent and request issued by PGIMS Rohtak vide which he was declared completely and permanently incapacitated for further service as science teacher. The medical board further opined the petitioner as unfit for further service. As per medical report, the petitioner was not declared as 'Disabled' for service under any terms of disabilities defined in section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The petitioner was granted his retiral dues by the appellants and the writ petition of the petitioner was barred by the principle of res jusdicata and the petitioner is not allowed to re-open the issue again. The action of the appellants to retire the petitioner is fully justified and sustainable as per the rules.

- 5. That the Hon'ble Single Bench has allowed the writ petition vide impugned order dated 14.01.2020 while relying upon section 47 of the person with disabilities Act 1995. The impugned order dated 14.01.2020 is illegal, against the provisions of Act of 1995 and service jurisprudence and as such the same deserves to be set aside on the following grounds:

  I) That admittedly the petitioner was relieved from service with his consent on the basis of medical report vide which he was declared completely and permanently incapacitated for further service and the petitioner has been granted his due benefits of invalid pension as provided under Rule 5.11 of Punjab Civil Services Rules Volume-II as applicable to State of Haryana and the same was accepted by the petitioner and never agitated his relieving order from service.
  - II) That the term disability is defined under section 2(i) of the Act which is reproduced as under-:

### (i) "disability" means-

(i) blindness;
(ii) low vision;
(iii) leprosy-cured;
(iv) hearing impairment;
(v) locomotor disability;
(vi) mental retardation;
(vii) mental illness"

Section 2(t) of the Act provides for meaning of person with disability and the same is reproduced as under-:

"person with disability" means a person suffering from not less than forty per cent. of any disability as certified by a medical authority;

That further, the Hon'ble Single Judge has not considered the provisions of the section 47 of the person with disabilities Act 1995.

As per Section 47 of the Act, the word used is 'Disability' and not

'Permanent incapacitated'. The Hon'ble Single Judge has further ignored medical report dated 09.06.2004 (Annexure P-2) which says 'completely and permanently incapacitated'. The relevant sections 33 and 47 of the Act are reproduced as under-:

"33. Reservation of posts. - Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from -

- (i) blindness or low vision;
- (ii) hearing impairment;
- (iii) locomotor disability or cerebral palsy, in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

"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."

That the Hon'ble Single Judge has passed the judgment ignoring the plain wording of the section 2(t) and section 47 of the Act 1995. The petitioner was not declared disabled by the medical board and was declared as completely and permanently incapacitated for further service. There is an difference between NOT FIT FOR NORMAL ACTIVE DUTY AND PERMANENT INCAPACITATION FOR FURTHER SERVICE. In Amrut Yeshwant Mate v. State of Maharashtra 2015(12) SCT 477, the Hon'ble Division Bench of Bombay High Court dismissed the writ petition for claim under section 47 of the Act of 1995 and held in para 6 and 7 of the judgment that the certificate produced by the petitioner before this Court shows the paralysis and the disability to the extent of 84%. It is not in dispute, that he is not in a position to comprehend anything i.e. his faculty to reason is fully affected. It is, in this background, that we have to consider the provisions of Section 47 of the Act, 1995. Section 2(i) defines the "disability" to mean (i) blindness, (ii) low vision, (iii) leprosycured, (iv) hearing impairment, (v) locomotor disability, (vi) mental retardation and (vii) mental illness. Thus, the definition does not show that the person who looses mental functions or reason or who has become insane and therefore is not in a position to understand anything, can be covered under the said definition. Section 2(i) and Section 47 of the Act, 1995 call for harmonious consideration. Therefore, the judgment of the Hon'ble Single is liable to be set aside.

III) That the Hon'ble Supreme Court of India in Union of India v. Dileep Kumar Singh 2015(3) SCT 123 has allowed the appeal of the Union of

India and set aside the order passed by the Hon'ble High Court which allowed the claim of the employee who was permanently incapacitated and had 100% disability and recommended that he be relieved from service on medical grounds. The Hon'ble Supreme Court of India further held as under-:

"14. One argument that weighed with the High Court was that under the second proviso to sub-section (1), if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post. From this it was sought to be inferred that under no circumstance can an employee who acquires disability during his service have his service dispensed with. This reasoning is fallacious for the reason that sub-section (1) deals with dispensing with service as well as reduction in rank. The argument that an employee's services can never be dispensed with under Section 47(1) having due regard to the second proviso thereof fails to take into account that there is no such requirement as far as reduction in rank is concerned. If an exemption can be given so far as reduction in rank is concerned, then there is no reason why such exemption cannot be given so far as dispensing with service is concerned, as both are contained in Section 47(1) of the Act.

### XXXXX

24. Learned counsel also cited before us Kunal Singh v. Union of India & Anr., 2003(1) S.C.T. 1029: (2003)4 SCC 524. This judgment decided that the benefit of Section 47 would be available to a person as an additional benefit even though he may get certain other benefits under the service Rules applicable to him. No question as to the proviso to Section 47 arose before the court in that case and for the purposes of the present controversy, the ratio of that decision will have little or no bearing."

**IV)** That further, the Hon'ble Single Judge has failed to consider that now the petitioner after delay of 13 years has filed the present petition

without assigning any reason for such huge delay and hence the Hon'ble Single Bench has committed legal error while granted pay to the petitioner since his reliving from service i.e. 2004 till the date of superannuation i.e.31.05.2024 and that too with interest 8% per annum. The Hon'ble Apex Court in the identical case titled as Geetaben Ratilal Patel Versus District Primary Education Officer cited as 2013 AIR (SC) 3092 wherein the appellant was dismissed from service on 15.04.2004 in violation of Section 47 of Person With Disabilities Act 1995 and he filed claim before Disability Commissioner in the year 2007 after delay of three years and ultimately the apex court has granted salary from the date of order passed by the disability commissioner and not from date of dismissal of the appellant. Therefore if in any case the petitioner is entitled for salary that would be from the date of passing of the impugned order by the Hon'ble Single Bench and not from relieving of the petitioner. Further it is settled law that the monetary benefits can be restricted to 38 months prior to filing of the writ petition.

¥.

V) That further while passing the impugned order Hon'ble Single Judge has allowed all the consequential benefits with 8% interest from the date of dismissal of the petitioner from service which is illegal and unjustified as the petitioner was relieved on 09.06.2004 with his consent and granted all benefits pension as per Rule 5.11 of Punjab Civil Service Rules Volume-II. He had served legal notice first time on 03.11.2016 and before this date he had not even requested for granting relief under section 47 of Person with Disabilities Act 1995. So grant of consequential benefits w.e.f. 09.06.2004 that too with 8% interest is illegal and liable to be set aside as this relief is not permissible in law.

VI) That the judgments relied upon by the Hon'ble Single bench distinguishable and are not applicable to the facts and circumstances of the case of the petitioner in view of the judgment passed by the Hon'ble Supreme Court of India in Dileep kumar singh (supra) and judgment passed by the Hon'ble Division Bench of Bombay High Court in Amrut

15

Yeshwant Mate case (supra) as there is an difference between NOT FIT

FOR NORMAL ACTIVE DUTY AND PERMANENT INCAPACITATION FOR

FURTHER SERVICE which the judgment passed by the Hon'ble Punjab

and Haryana High Court in Hari Singh versus State of Haryana and

others CWP No. 15488 of 2012 and Pravesh Devi versus State of Haryana

CWP 5715 of 2005 does not considers.

That the appellants have not filed any other such or similar appeal either 6.

in the Hon'ble Supreme Court or before this Hon'ble High Court except

the present appeal.

It is therefore, respectfully prayed that present Letter Patent Appeal may

kindly be allowed and the impugned order dated 14.01.2020 passed in the

present writ petition may kindly be aside and present writ petition may kindly

be dismissed being devoid of merits.

It is further prayed that the appellants may kindly be exempted from

filing certified copies of the Civil Writ Petition along with all the Annexures as

the same are not readily in possession and permission may kindly be granted

for placing on record true copies of the same in the interest of justice.

Place: Chandigarh

Dated 05-10-2020

Sawabh Maga, AAG, Haryana

### IN THE HON'BLE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

OF 2020 CM NO. LPA NO. OF 2020

IN

CWP NO. 10158 of 2017

State of Haryana & Ors.

.... Applicants/ Appellants

Versus

Gopi Ram

.....Respondent

Affidavit of Dr. Vandana Disodia, Additional Secretary to Govt. Haryana, Elementary Education Department, Haryana.

- I, the above named deponent do hereby solemnly affirm and declare asunder:-
- 1. That the deponent is filing the accompanying appeal before this Hon'ble Court, the grounds taken therein may kindly be read as part and parcel of the present affidavit.
- 2. That the deponent declares that the contents of the accompanying grounds of appeal are true and correct as per knowledge and information derived from the official record.
- 3. That the deponent has not filed any other similar appeal, either in this Hon'ble Court or in the Hon'ble Supreme Court of India except the present appeal.

Deponent

(Dr. Vandana Disodia)

Additional Secretary to Govt. Haryana **Elementary Education Department** 

Panchkula.

**VERIFICATION:-**

Place: Chandigarh

Verified that the contents of the above affidavit are true and correct as per information and knowledge derived from the official record, which I believe to be true, no part of it is false and nothing material concealed therein.

Deponent

(Dr. Vandana Disodia)

Additional Secretary to Govt. Haryana : Elementary Education Department

Panchkula.

Place: Panchkula

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CWP\_10158\_2017\_MEMO\_OF\_PARTIES 27-A

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# IN THE HIGH COURT FOR THE PANJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 1018 of 2017

Gopi Ram s/o Sh. Jai Karan (Retd.Science Master) aged 51 years through his wife being guardian /representative Smt. Meena Devi w/o Sh. Gopi Ram aged 49 years resident of Village & P.O. Garhwali Block, Julana Distt. Jind

..... Petitioner

### **VERSUS**

- 1. State of Haryana through the Principal Secretary to Government, Haryana, School Education Department, New Secretariat Haryana, Sector 17 Chandigarh.
- 2. Director-General, Elementary Education Haryana, Shiksha Sadan, Sector 5, Panchkula.
- 3. District Elementary Education Officer, Jind.
- 4. Sub Divisional Educational Officer (Elementary), Julana, Jind.

PLACE: CHANDIGARH

SURESH AHLAWAT

ADVOCATE

DATED. /o. \$2017

COUNSEL FOR PETITIONER

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CWP\_10158\_2017\_MEMO\_OF\_PARTIES 27-Aug-2020 at 10:43

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CIVIL WRIT PETITION under Articles 226/227 of the Constitution of India for issuance of Writ, in the nature of Certiorari for quashing the impugned order dated 14.6.2004 (Annexure P-3) passed by the respondent no.4, vide which petitioner, who was working as Science master in the education department ,Haryana has been relieved/retired w.e.f 9.6.2004 from Government Service on the basis of medical report, in utter violation of Section 47 of the Persons with Disabilities Act-1995 and further a writ in the nature of Mandamus be issued to grant him all consequential service benefits with interest, considering on Government duty till he attains the the petitioner superannuation age i.e 31.5.2024 for all purposes and intents w.e.f. 9.6.2004 (relieving date) in the light of the provision of Section 47 of The Persons with Disabilities Equal Opportunities Protection of Rights and Full Participation Act-1995

### RESPECTFULLY SHOWETH.

1. That the petitioner is a resident of District Jind (Haryana) and as such being a citizen of India, he is fully competent to invoke the extraordinary writ jurisdiction of this Hon'ble Court under Articles 226/227 of the Constitution of India by way of the present writ petition since the petitioner is 100% mentally disabled (insane). So, he is not fit to pursue this matter on account of the "DEMENTIA" according to "HEAD INJURY", therefore,

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CWP No. 10158 of 2017

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### IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

\* \* \* \* \*

CWP No. 10158 of 2017 (O&M) Date of decision: January 14, 2020

Gopi Ram through his wife Smt. Meena Devi

.....Petitioner

Versus

State of Haryana and others

.....Respondents

\* \* \* \*

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

\* \* \* \* \*

Present:

Mr. Suresh Ahlawat, Advocate for the petitioner.

Mr. Harish Nain, AAG, Haryana.

\*\*\*\*

### RITU BAHRI, J.

The petitioner has filed the present petition through his wife Meena Devi for issuance of writ in the nature of certiorari for quashing the impugned order dated 14.6.2004 (Annexure P-3) passed by Sub Divisional Educational Officer (Elementary), Julana, Jind-respondent no.4 vide which the petitioner who was working as Science Master in the Education Department, Haryana has been relieved /retired w.e.f 9.6.2004 from Government Service on the basis of medical report dated 9.6.2004 submitted by the Special Medical Board of PGIMS, Rohtak (Annexure P-2).

On 16.12.1988, petitioner was appointed as Science Master on

RITU KUKREJA 2020.02.03 11:25 I attest to the accuracy and integrity of this document

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ad hoc basis in the Department of Education Haryana and joined in Government High School Buwana Block, Julana Distt. Jind. His services were regularized on 1.1.1991. On 17.10.2002, when he was returning home after attending his duties in the school, unfortunately, he met with a fatal road accident and due to head injury, he remained in COMA for many months and remained under treatment. The petitioner according to Medical Report dated 9.6.2004 (Annexure P-2) submitted by the Special Medical Board of PGMIS Rohtak was found to be permanently incapacitated for further service in the department as Science Master on account of On 9.6.2004, the petitioner was subsequently retired from service vide order dated 14.6.2004 (Annexure P-3) on medical ground mentioning that the petitioner was declared incapacitated for further service with the department as per the medical certificate issued by the Special Medical Board, PGIMS, Rohtak. After relieving the petitioner w.e.f 9.6.2004, the service benefits i.e gratuity/DCRG of the petitioner amounting to Rs.94,202/- has been calculated for total service of 15 years 5 months 21 days i.e 16.12.1988 to 8.6.2004 vide certificate and report dated 11.8.2005 (Annexure P-4) issued by the Accountant General Haryana. Petitioner, thereafter, was granted invalid pension under Rule 5.11 of Punjab Civil Services Rules Volume-II w.e.f 9.6.2004.

By way of the present writ petition, the petitioner has prayed that he should have been extended the benefits flowing from the provision of Section 47 of The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the Act') and treated in service by creating supernumerary post and

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J.

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otherwise been paid had he continued in service in normal course. Section 47 of the Act is hereby reproduced as under:

Section 47 in The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

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.

Counsel for the petitioner while referring to the report of the Medical Board contends that even though the petitioner was found to be unfit for the service as Science Master but the certificates does not declare that he is completely unfit for any kind of service. Reference was made to

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Nigam Ltd. And another 2007(1) SCT 743, wherein the petitioner was a regular employee of the respondent-Nigam and while in the employment of the respondents, at the time of changing the transformer, he suffered an electric shock. The petitioner, thereafter remained under treatment till 26.11.1999 in the PGIMS, Rohtak. Thereafter, he was declared unfit and retired from service vide order dated 7.4.2000 as the official had been declared incapacitated for further service of the Nigam as per Medical Certificate. This Court held the petitioner entitled to the benefit under Section 47 (1) of the Act. It was held that the petitioner cannot be denied the benefit of the mandatory provisions of the Act simply on the ground that the department cannot be allowed to be burdened with the salary/remuneration of an incapacitated person.

Further reference was made to a judgment of this Court in the case of *Santoshi Sondhi* @ *Sonia vs. State of Punjab and others, 2015 (3)*PLR 710, wherein the husband of petitioner acquired disability during his service. It was held that the 1995 Act is a beneficial piece of legislation. It casts an obligation on the employer and correspondingly confers right on the employee. Even if husband of the petitioner is retired under Rule 5.11 of the Punjab Civil Services Rules, Volume - II, that will not stand in the way for granting him relief as is available to him under Section 47 of the Act as there is no estoppel against the statute. Action of the respondents was held to be illegal. Respondents were directed to grant all benefits available to the employee concerned in terms of Section 47 of the Act.

Reference was made to another judgment passed by a Coordinate Bench of this Court in the case Virender Singh vs. State of

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#### CWP No. 10158 of 2017

this case, the petitioner was retired from service as he was suffering with a chronic disease *Rheumatoid Arthritis*. The petitioner pleaded that he should not have been retired from service on account of his disability rather a supernumerary post should have been created till he attained the age of superannuation. It was observed by this Court that the intended purpose of Section 47 of the Act is beneficial in nature and is inclined benevolently towards the persons/employees who acquire disability during the service and the purpose is obviously to protect their rights and ensure their adjustment elsewhere by giving them a different assignment which will not be in conflict with their disability. It was held that such a beneficial legislation has to be interpreted liberally so that the flow of intended benefit is not obstructed. The petition was allowed and the respondent was directed to consider the claim of the petitioner in terms of the observations made

The stand taken by the respondents is that the petitioner had retired vide order dated 14.6.04 (Annexure P-3) and has filed the present writ petition on 10.4.2017 after a delay of 13 years and this writ petition should be dismissed on the ground of delay. Learned state counsel has further submitted that he has been granted the benefit of invalid pension as per Rule 5.11 of Punjab Service Rules Volume-II and his services cannot be continued beyond 6 months under Rule 5.18 of Punjab Civil Services Rules, Volume -II which reads as under:

above and also in terms of the mandate of Section 47 of the Act.

"5.18. A Government employee, who has submitted a medical certificate of incapacity for further service shall, if he is on duty, be invalided from service,

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from the date of relief of his duties which should be arranged without delay on receipt of the medical certificate or, if he is granted leave under rule 8.18 of Punjab Civil Services Rules, Volume I, Part I, on the expiry of such leave. If he is on leave at the time of submission of the medical certificate, he shall be invalided from service on the expiry of that leave or extension of leave, if any, granted to him under rule 8.18 of Punjab Civil Services Rules, Volume I, Part I. Note 1.—The report required by this rule may in the case of head constable and constable of Police be submitted to the Inspector-General of Police instead of to the Government. Note 2.-When a Government employee is retained in service, after he has submitted a medical certificate of invalidment, and is, thereafter, granted leave under rule 8.18(c) of Volume I(Part I) of these rules, the maximum period up to which, he can be allowed under this rule to count for pension, the service after the date of medical certificate shall not exceed six months.

Learned State counsel has referred to a judgment in the case of Government of West Bengal vs. Tarun K. Roy reported at (2004) 1 SCC 347, wherein it has been opined by Hon'ble Supreme Court of India that the persons who approach the Court at a belated stage placing reliance upon an

order passed in some other case earlier can be denied the discretionary relief

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on account of delay and laches.

After hearing learned counsel for the parties and carefully going through the records of the case, in my opinion, the present writ petition deserves to be allowed. At the outset, reference can be made to judgment of the Supreme Court in *Bhagwan Dass and another vs. Punjah State Electricity Board 2008 (I) SCT 623*. In this case, appellant no.1, who was a class IV employee completely lost his vision. Board relieved the employee from service from the date of issuance of Medical Certificate. While examining the provisions of Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) At, 1995, it was held that when an employee acquires disability during the service and he was not aware of any protection under the Law, it was the duty of the Superior Officers to explain to the employee the correct legal position and to tell him about his legal rights. The action of the officers concerned was held to be deprecatable. In paragraphs 12 & 13, Hon'ble the Supreme Court observed as under:

12. Appellant No.1 was a Class IV employee, a Lineman. He completely lost his vision. He was not aware of any protection that the law afforded him and apparently believed that the blindness would cause him to lose his job, the source of livelihood of his family. The enormous mental pressure under which he would have been at that time is not difficult to imagine. In those circumstances it was the duty of the superior officers to explain to him the correct legal position and to tell



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him about his legal rights. Instead of doing that they threw him out of service by picking up a sentence from his letter, completely out of context. The action of the concerned officers of the Board, to our mind, was deprecatable.

13.We understand that the concerned officers were acting in what they believed to be the best interests of the Board. Still under the old mind-set it would appear to them just not right that the Board should spend good money on someone who was no longer of any use. But they were quite wrong, seen from any angle. From the narrow point of view the officers were duty bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. From the larger point of view the officers failed to realise that the disabled too are equal citizens of the country and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largess but their right as equal citizens of the country.

In the facts of the present case, the petitioner, as per the

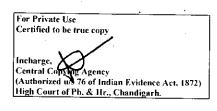
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disability certificate Annexure P-2 dated 9.6.2004 was held to be completely incapacitated for further service in Department of Education on account of Dementia and immediately thereafter vide order dated 14.6.2004, he was retired from service and as per the short reply filed by the Principal Accountant General (A&E), Haryana-respondent no.5 his due date of retirement was 31.5.2024 and hence as per the provisions of the Act, even he is found not fit to do any job under the provisions of Section 47, he could be kept on a supernumeric till he attains the age of superannuation. However, this benefit has not been extended to the petitioner and he is to retire in 2024. In the case of Parvesh Devi vs. State of Haryana and others (CWP No.5715 of 2005) decided on 10.10.2006, a Division Bench of this Court was considering the case of an employee who was working on the post of Sanskrit Teacher in Samaj Kalyan High School Rohtak (Sonepat). The husband of the petitioner was found to be completely and permanently incapacitated for further service in the Department as Sanskrit master according to the medical report submitted by the Special Medical Board of PGIMS, Rohtak on account of the head injury suffered by him. Accordingly, he was relieved from service on 4.6.2002. When his case was sent for grant of pension, Accountant General-respondent no.4 did not sanction any pension to him on the ground that he had worked as a government employee only for a period of 7 years 10 months. The writ petition was allowed by this Court while observing that as per Section 47 of the Act, if an employee after acquiring the disability is not suitable for the post which he was holding then he may be shifted to some other post with the same pay scale and service benefits as he was enjoying before acquiring

the disability. The provision clearly stipulates that a person with disability





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is to superannuate on attaining the ordinary age of superannuation. Orders dated 4.6.2002 (Mark A) relieving the petitioner from service and order dated 15.2.2005 (Annexure P-8) declining the request of the husband of the petitioner for grant of pension were quashed. Respondents were directed to pay salary to the petitioner as per the rates by deeming fiction as if he is in service and has been working against a supernumerary post every month till the date of superannuation.

Reference can be made to another Division Bench judgment of this Court in the case of Haryana Vidyut Prasaran Nigam (HVPN) and others vs. Smt. Roshni Devi in LPA No.823 of 2012 decided on 5.7.2012, wherein an appeal was directed against the judgment and order dated 6.3.2012 of the Single Judge who while denying quashing of the order of premature retirement passed on 10.7.2002 (P-6) by the appellant against late Vijay Sudarshan Sharma, husband of the petitioner-respondent has, however, directed consideration of the case of petitioner's son for compassionate appointment on the premise that the retirement was made on account of physical unfitness. It was held by the Division Bench that the order of premature retirement/termination cannot be legally sustained being in violation of Section 47 of the 1995 Act. In another judgment passed by a Division Bench of this Court in Nirmal Rani vs. Union of India and others 2008 (4) SCT 689 in which the services of Yash Pal were terminated w.e.f. 13.8.1994 on a finding that for all practical purposes he had been declared permanently incapacitated vide medical report dated 5.8.1994 and declared unfit for service. The termination order was passed on 11.6.2002 with retrospective effect from 13.8.1994. The claim for terminal benefits and for

compassionate appointment was turned down by the employer and the

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Tribunal in the original application brought for redressal of the grievance. The issue before the Court was whether in the face of Section 47 of the 1995 Act, the services of an employee acquiring disability during service could be terminated. Since, it was not disputed that the order of termination was passed in 2002 after coming into force of the the 1995 Act, the same was held to be in violation of the provisions of Section 47 of the 1995 Act and thus could not be sustained

In the case of Hari Singh vs. State of Haryana and others (CWP No. 15488 of 2012) decided on 19.5.2015, the petitioner who was working on the post of Conductor in Haryana Roadways Sirsa, during the service, contracted the disease, namely, 'diffuse brain atrophy and parkinsonism'. The respondent-authorities after obtaining the opinion from the department of PGI, Rohtak found him to be not fit for the post of Conductor and accordingly he was compulsorily retired from service. This Court allowed the writ petition while observing that the state of mind/depression a person undergoes when being contracted with such deadly disease is tremendous and the plight of the person is undefinable and, therefore, keeping in view the aforementioned facts, the writ petition cannot be dismissed on the ground of delay and laches and it is statutory right of the employee to be given a suitable post as per the provisions of Section 47 of the Act. The respondent-authorities were directed to offer a suitable post where the petitioner can perform his duties. The petitioner was also held entitled to all the consequential benefits as per law.

In view of all that has been discussed above and in view of all the aforementioned judgments, this writ petition is allowed and a direction

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CWP No. 10158 of 2017

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terms of the observations made above and also in terms of the mandate of Section 47 of the Act. Respondents are directed to pay salary to the petitioner as per the rates by deeming fiction as if he is in service and has been working against a supernumerary post. The arrears of pay as was being drawn by the petitioner be calculated from 9.6.2004 up to date and the payment be made to the wife of the petitioner in accordance with the rules within a period of one month from the date certified copy of the order is produced before the respondents. The salary shall be paid to the petitioner every month till the date of superannuation. The respondents shall also be liable to pay interest @ 8% on the arrears of salary from the date the salary was due i.e 9.6.2004 till the date of its payment. The amount of gratuity/DCRG already paid to the petitioner shall be set off from the arrears of salary. On attaining the age of superannuation, the respondents shall pass an order of retirement along with an order calculating the pension of the petitioner in accordance with law. The wife of the petitioner shall also be entitled to the family pension in accordance with the Rules.

January 14, 2020

ritu

( RITU BAHRI )

Whether speaking/reasoned

Yes

Whether reportable

No

Superintendent HRM-II Haryana, Panchkula

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## LIST OF DATS AND EVENTS

8.5.1966 The date of birth of the petitioner is 8.5.1966 and the petitioner will attain the superannuation age on 31.5.2024

16.12.1988 The petitioner Sh. Gopi Ram was appointed as Science Master on ad-hoc basis, in the Department of Education Haryana, further his services were regularized on 1.1.1991.

17.10.2002 That on 17.10.2002 when he was returning home after attending his duties in the school unfortunately, he met with a fatal road accident and due to head injury he remained in COMA for many months and remained under treatment. The petitioner according to Medical Report dated 9.6.2004 submitted by the Special Medical Board of PGMIS, Rohtak has been found to be completing and permanently incapacitated (100%) for further service in the department as Science Master on account of the DEMENTIA according to "HEAD INJURY"

9.6.2004 The petitioner relieved from government service and granted invalid pension under Civil Service Rule 5.11

3.11.2016 That petitioner have been representing to the respondents to extend benefit of Section 47 of the "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995". but nothing has been done. Finally the petitioner's wife Smt., MeenaDevi sent a legal notice through counsel vide notice dated 3.11.2016 to the respondents.

KANCHAN 2017.05.12 11:47 TRUE SCANNED COPY OF ORIGINAL Chandigarh -32--31=

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.3.2017 The present writ petition is being filed on various grounds mentioned in para no.10 of the writ petition and main grounds are as under:-

- i. THAT AS PER THE PROVISIONS OF SECTION47 OF THE PERSONS WITH DISABILITIES (EQUAL APPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995, THE PTITIONER WAS ENTITLED TO CONTINUE UP TO THE AGE OF SUPPERNNUTION.
- ii. THAT THE CONTOVERSY INVOLVED IIN THE WRIT PETITION IS SQURELY COVERED BY THE JUDGEMENT OF THE HON'BLE SUPREME COURT IN KUNAL SINGH V/S UNION OF INDIAREPORTED IN 2003 SCC (L&S) 482.
- iii. THAT SIMILAR CONTROVERSY HAS BEEN CONSIDRED BY THIS HON,BLE COURT IN PARVESH DEVI V/S STATE OF HARYANA REPORTED IN 2007(2) RSJ 16. In CWP no.5715of 2005
- Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995, IS A SPACIAL LAW, WHERE AS RULE 5.11 OF PUNJAB CIVIL SERVICE RULE IS THE GENRAL LAW. IT IS STELLED PROPOSITION OF LAW THAT SPACIAL LAW WILL PRIVAIL OVER GENRAL LAW...

V. THAT THE ACTION OF THE PERPODENTS NOT TO GRANT

THE SALARY TO THE PETITIONER AFTER 9.6.2004 ( Date of MANCHAN 2017.05.12 11:47 TRUE SCANNED COPY OF ORIGINAL Chandigarh Relieving from Service ) IS ON THE FACE OF IT ILLEGAL AND

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\*CONTRARY TO THE OBJECTS AND REASONS AND PROVISIONS
OF SECTION47 OF THE 1995 ACT.

vi. THAT EVEN THE RESPODENTS ARE WRONGLY READING THE REPORT OF THE MEDICAL BOARD (P-2)

VIII. THAT RESPONDENT NO. 4 I.E S.D.E.O JIND WAS NOT COMPETENT AUTHORITY TO RELIEVE THE PETITIONER'S HUSBAND. THE APPOINTING AUTHORITY OF THE MASTER/MISTRESS WAS/IS DIRECTOR, SCHOOL EDUCATION (ELEMENTARY) HARYANA.

CHANDIGARH

يى ئىگىد.

(SURESH AHLAWAT)

DATED: /o 14.2017

ADVOCATE

COUNSEL FOR THE PETITIONER

Superintendent HRM-II
For Director Elementary Education
Haryana, Panchkula

#

# IN THE HIGH COURT FOR THE PANJAB AND HARYANA

#### AT CHANDIGARH

C.W.P. No. 10158 of 2017

Gopi Ram s/o Sh. Jai Karan (Retd.Science Master) aged 51 years through his wife being guardian /representative Smt. Meena Devi w/o Sh. Gopi Ram aged 49 years resident of Village & P.O. Garhwali Block, Julana Distt. Jind

...... Petitioner

### **VERSUS**

- 1. State of Haryana through the Principal Secretary to Government, Haryana, School Education Department, New Secretariat Haryana, Sector 17 Chandigarh.
- 2. Director-General, Elementary Education Haryana, Shiksha Sadan, Sector 5, Panchkula.
- 3. District Elementary Education Officer, Jind.
- 4. Sub Divisional Educational Officer (Elementary), Julana, Jind.

PLACE: CHANDIGARH

SURESH AHLAWAT

ADVOCATE

CANCHAN CRUE SCANNED CANTED. 10.4.2017 CRUE SCANNED CANTED. 10.4.2017

COUNSEL FOR PETITIONER

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CIVIL WRIT PETITION under Articles 226/227 of the Constitution of India for issuance of Writ, in the nature of Certiorari for quashing the impugned order dated 14.6.2004 (Annexure P-3) passed by the respondent no.4, vide which petitioner, who was working as Science master in the education department ,Haryana has been relieved/retired w.e.f 9.6.2004 from Government Service on the basis of medical report, in utter violation of Section 47 of the Persons with Disabilities Act-1995 and further a writ in the nature of Mandamus be issued to grant him all consequential service benefits with interest, considering the petitioner on Government duty till he attains the superannuation age i.e 31.5.2024 for all purposes and intents w.e.f. 9.6.2004 (relieving date) in the light of the provision of Section 47 of The Persons with Disabilities Equal Opportunities Protection of Rights and Full Participation Act-1995

### RESPECTFULLY SHOWETH

Al W

1. That the petitioner is a resident of District Jind (Haryana) and as such being a citizen of India, he is fully competent to invoke the extraordinary writ jurisdiction of this Hon'ble Court under Articles 226/227 of the Constitution of India by way of the present writ petition since the petitioner is 100% mentally disabled (insane). So, he is not fit to pursue this matter on account of the

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petitioner Sh. Gopi Ram is filing this present writ petition through his wife Smt. Meen Devi being guardian /representative and his wife already appointed as Guardian by Ld. Civil Court ,Jind . Copy of order dated 11.4.2008 passed by the Ld. Civil Court Jind to this effect is attached as Annexure P-1.

Link to

- 2. That on 16.12.1988 petitioner was appointed as Science Master on ad-hoc basis, in the Department of Education Haryana, and joined in Govt. High School Buwana Block –Julana Distt. Jind, further his services were regularized on 1.1.1991 according to the regularization policy of the State Govt.
- 3. That it is pertinent to mention here ,that in pursuance of the Civil Service Rules applicable in Haryana, petitioner was medically examined by the competent authority to ascertain that as to whether the petitioner is fit to be appointed on the post of Science Master .The concerned medical authority after medically examining the petitioner declared him, fit to be appointed on the post of Science Master in Education Department ,Haryana.
- 4. That on 17.10.2002 when he was returning home after attending his duties in the school unfortunately, he met with a fatal road accident and due to head injury he remained in COMA for many months and remained under treatment. The petitioner ,according to Medical Report dated 9.6.2004 submitted by the Special Medical Board of PGMIS, Rohtak has been found to be completing and permanently incapacitated (100%) for further service in the formation.

department as Science Master on account of the DEMENTIA

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defined as 'Disability' under Section 2(t) of the "The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,1995." and the same read as under:

- 2. Definitions. In this Act, unless the context otherwise requires
  - a) to (s) xxxxxxx
- (t) "person with disability" means a person suffering from not less then forty percent of any disability as certified by a medical authority'

It is submitted that now the petitioner is in position of insane due to "DEMENTIA" being 100 percent permanent disabled. It is pertinent to add here that even according to the report of Medical Board dated 9.6.2004, aforesaid incapacity does not appear to have been caused by irregular or intemperate habits on his part. A copy the Medical Report of Medical Board of PGI dated 9.6.2004 to this effect is attached as Annexure P-2. It is submitted the petitioner has been exhausted all kind of leave between the period of October 2002 to June 2004.

5. That on 9.6.2004 petitioner subsequently relieved/retired from Govt. service by the respondent/ department from Govt. Middle School ,Jai-jai-wanti Block-Julana(Jind) vide order no. 3.2004/726-728 dated 14.6.2004 issued by respondent no.4 i.e. S.D.E.O. Jind (which was not competent authority) on medical ground, mentioned that Sh.

TRUE SCANNED COOPE Ram Science Master having been declared incapacitated for ORIGINAL Chandington

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further service with the department, as per the medical certificate issued by the Special Medical Board, PGMIS Rohtak. A copy the retiring/relieving order dated 14.6.2004 to this effect is attached as Annexure P-3.

- 6. That after relieving to the petitioner w.e.f 9.6.2004 accordingly , the service benefits i.e. Gratuity/DCRG of the petitioner amounting to Rs. 94,202/- has been calculated for total service of 15 Years 5 Months 21 Days i.e 16.12. 1988 to 8.6.2004 . A copy the Certificate and Report dated 11.8.2005 issued by the Accountant General Haryana i.e. respondent no. 5 to this effect is attached as Annexure P-4.
- 7. That after relieved/retired the petitioner from govt. service, respondent/ department sectioned his invalid pension under Rule 5.11 of C.S.R. Vol.II. w.e.f 9.6.2004 (i.e from relieving date) which is being reproduced here as under:
- "5.11. An invalid pension is awarded, on his retirement from the public service, to a Government employ who by bodily or mental infirmity is permanently incapacitated for the public service, or for the particular branch of it to which he belongs."

But respondents /department completely ignored the statutory provision of Section 47 and Statement of objects and reasons of "The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,1995."

As per the provisions of section 47 of the 1995 Act, which is Table 1995 act, which is reproduced below for ready reference:-

"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 DISABOLITY:

PROVIDED THAT THE APPROPRIATE GOVERNMENT MAY, HAVING REGARD TO THE TYPE OF WORK CARRIED ON IN ANY ESTABLISHED, BY NOTIFICATION AND SUBJECT TO SUCH CONDITIONS, IF ANY, AS MAY BE SPACIFIED IN SUCH NOTIFICATION EXEMPT ANY ESTABLISHMENT FROM THE PROVISIONS OF THIS SECTION."

## STATEMENT OF OBJECTS AND REASONS OF THE ACT

- TO SPELL OUT THE RESPONSIBILITY OF THE State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;
- II) To create barrier free environment for persons with disabilities;
- III) To remove any discrimination against persons with disabilities in the sharing of development benefits, vis-vis non-disabled persons:

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- IV) To counteract any situation of the abuse and the exploitation of persons with disabilities;
- V) To lay down a strategies for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and
- VI) To make special provision for the integration of persons with disabilities into the social mainstream.

Accordingly , the petitioner although has been retired/relieved but he can not be deemed to have retired from service till his age of superannuation which is 8.5.2024 . he would retire w.e.f 31.5.2024 when supernumerary post for the petitioner has to be created as per the requirement of section 47 of the Act. Therefore, petitioner would be entitled to payment of salary from the date he was relieved i.e. from 9.6.2004 till date and he shall be paid salary thereafter till his retirement i.e. 31.5.2024.

- 8. That under The Persons with Disabilities Equal Opportunities, Protection of Rights and full participation Act, 1995, an employee who is 100% incapacitated is not to be shifting to some other posts with the same pay scale and services benefits as no establishment can dispensed with, or reduce in rank an employee who acquires a disability during his service. In this way, petitioner's case is fully covered by the provision of Section 47 of The Persons with Disabilities Equal Opportunities, Protection of Rights and full participation Act, 1995.
- 9.. That As clear from the medical report of the Medical Board (P-2) that the petitioner is unfit for further service as Science Master but nowhere, it is received and that the petitioner is completely unfit for further service, So the

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respondents are bound to kept the petitioner on supernumerary post till he attains the superannuation age i.e. 31.5.2024.

- 10.. That date of birth of petitioner Sh. Gopi Ram is 8.5.1966 and he will attain the superannuation age on 8.5.2024. Petitioner should have been extended the benefits flowing from the provision of the aforesaid enactment of year 1995 and treated in service by creating supernumerary post and petitioner should have been paid regularly the salary which would have otherwise been paid had he continued in service in normal course. Such a treatment has not been extended to him. Petitioner was wrongfully treated on invalid pension under rule 5.11 of C.S.R. Vol.II vide P.P.O. no. 129181-s/Hr..
- 11. That the action on the part of the respondents not to be take action as per the provision of Section 47 of the 1995 Act, is illegal, unjust, unfair, unconstitutional, arbitrary and liable to be set aside on the following grounds:-
- i. THAT AS PER THE PROVISIONS OF SECTION47 OF THE PERSONS WITH DISABILITIES (EQUAL APPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995, THE PTITIONER WAS ENTITLED TO CONTINUE UP TO THE AGE OF SUPPERNNUTION.

So, in view of the above provisions since the petitioner has been declared unfit for the post of Science Master, then he has to be kept on a supernumerary post until he attained the age of supernumerary. So the action of the respondent to relieve the petitioner from government service is totally contrary to the Section 47 of 1995 Act.

The above provisions were made by the Parliament in its wisdom to secure the interest of all those who suffer disability during service but is

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matter of surprise that the benefit of such law has not yet been extended to petitioner by the respondents / department. Petitioner's wife Smt. Meena Devi has been suffering a lot due to non payment of salary of her husband and she is suffering the burden of liability which is increasing on her head.

ii. THAT THE CONTOVERSY INVOLVED IIN THE WRIT PETITION IS SQURELY COVERED BY THE JUDGEMENT OF THE HON'BLE SUPREME COURT IN KUNAL SINGH V/S UNION OF INDIAREPORTED IN 2003 SCC (L&S) 482.

Similar controversy has been considered by the Hon,ble Supreme Court in Kunal Singh,s case and held as under:-

Once it is held that the appellant has acquire disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits, if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provisions of Sevetion47 of the Act."

iii. THAT SIMILAR CONTROVERSY HAS BEEN CONSIDRED BY THIS HON,BLE COURT IN PARVESH DEVI V/S STATE OF HARYANA REPORTED IN 2007(2) RSJ 16. In CWP no.5715of 2005

Exactly similar controversy has been considered by this Hon,ble

Court in Parvesh Devi Case. The relevant observations are reproduced

below for ready reference:-

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"Persons with Disabilities ( Equal Opportunities, Protection of Rights and Full Participation Act, 1995, Section 2 (t) and 47-Punjab civil Services Rules, Volume II, Rule 5.11 and 6.16-Pension- Declining of on ground that petitioner has rendered less than 10 years of qualifying service- Petitioner appointed as Sanskrit Teacher on 18.12.1972 in recognized aided school taken over by government w.e.f 1.9.1994 - Petitioner could work under Government up to June- 2002 and he was relieved from service on 4.6.2002 -He is lying in coma being 100% incapacitated which condition has not been caused by any of his irregular or habits. Petitioner held to be a person with disability with in meaning of section 2 (y) of the Act of 1995 - In View of Section-47 of the Act, employer cannot dispense with or reduce the rank as he acquired disability during service -Order relieving the petitioner from service and order declining the request of the husband of the petitioner for grant of pension quashed - respondents directed to pay salary to the petitioner as per the rates by deemed fiction as if he is in service and has been working against a supernumerary post .- The arrears of pay be calculated from 1.7.2002 up to date of payment with interest @ 8% p.a. from the date of salary due, from 1.7.2002 till the date of payment. On the date of superannuate on 30.6.2007 respondents shall pass an order calculating pension in accordance with law."

A Copy of this order dated 10.10.2006 to this effect is attached as Annexure P-5.

iv. THAT "The Persons with Disabilities ( Equal Opportunities, Protection of Rights and Full Participation Act, 1995, IS A SPACIAL ACT, WHERE AS RULE 5.11 OF PUNJAB CIVIL

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PROPOSITION OF LAW THAT SPACIAL LAW WILL PRIVAIL OVER THE GENRAL LAW.

V. THAT THE ACTION OF THE RESPODENTS NOT TO GRANT THE SALARY TO THE PETITIONER, AFTER 9.6.2004 (Date of retiring from Service) IS ON THE FACE OF IT ILLEGAL AND CONTRARY TO THE OBJECTS AND REASONS AND PROVISIONS OF SECTION 47 OF THE DISABILITIES ACT -1995.

- OFFICERS TO EXPLAIN TO FAMILY MEMBERS OF THE EMPLOYEE THE CORRECT LEGAL POSITION AND TO TELL THEM ABOUT HIS LEGAL RIGHT. INTEAD OF DOING THAT THEY THREW HIM OUT OF SERVICE.
- vii. THAT RESPONDENT NO. 4 i.e SUB DIVISIONAL EDUCATION OFFICER (S.D.E.O JIND) WAS NOT COMPETENT AUTHORITY TO RETIRE / RELIEVE THE PETITIONER. THE APPOINTING AUTHORITY OF THE MASTER/MISTRESS IN EDUCATION DEPARTMENT IS DIRECTOR, SCHOOL EDUCATION (ELEMENTARY) HARYANA.
- 12. That in the light of such legal position, to relieve/retire the petitioner from Government service and grant him invalid pension is wholly arbitrary, illegal, improper, unjustified, unreasonable and amounts to disrespect to the authority of law, which had enacted the law, for the protecting of the suffering human beings in the service of the Government.
- That family member, s of the petitioner have been representing to the respondents to extend benefit of Section 47 of the "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation

Act, 1995". but nothing has been done. Finally the petitioner's wife Smt.

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Meena Devi sent a legal notice through counsel vide notice dated 3.11.2016 to the respondents. The copy of this legal notice is annexed herewith as Annexure P-6.

14. That it is pertinent to mention here that when petitioner Sh. Gopi Ram was receiving service pension from the State bank of Patiala branch Julana (Jind) later on, official of the Bank denied to make the payment of pension to Gopi Ram on the ground that he is mentally unfit, so payment of pension can not be made to him and suggested that applicant should move to the Court of competent jurisdiction for appointment of Guardian of Gopi Ram. Than petitioner's wife filed petition no.50 of 19.7.2007 titled as "Smt. Meena Kumari v/s General Public." Which was allowed by the Hon.ble Court Jind vide order dated 11.4.2008/29.8.2008. (Annexure P-1) and appointed as Guardian of the person and property of her husband Sh. Gopi Ram.

15. That, in such type of matter, there is no limitation, laches and delay. In those circumstances, it was the duty of the superior officers to explain to the employee, the correct legal position and to inform the affected person about his legal right under the provision of section 47 of the Disabilities Act-1995 instead of doing that, threw him out of service. It has been so held by the Hon, ble Supreme Court in case titled as Bhagwan Dass v/s State of Punjab (Civil Appeal no. 8 of 2008 decided on 4.1.2008), where in para no.12 of the judgment, it has been held as under:-

" Appellant no.1 was a Class IV employee, a Lineman. He completely lost his vision. He was not aware of any protection that the law afforded him and apparently believed that the blindness would cause him to lose his job, the source of livelihood of his family. The enormous mental pressure under which he would

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have been at that time is not difficult to imagine. In those circumstances it was the duty of the superior officers to explain to him the correct legal position and to tell him about his legal rights. Instead of doing that threw him out of service by picking up a sentence from his letter, completely out of context. The action of the concerned officers of the Board , to our mind, was deprecatable."

further kipping in view of natural justice the pension amount is not sufficient to meet the family requirement including medical expenses.

Therefore, in such type of matter, there is no limitation ,laches and delay, as it that there is no delay and laches is filing the present petition.

16. That it is further submitted that in such type of matter i.e pay scale, salary or pension there is no delay and laches that cause of action arises every month since it is recurring loss to the petitioner giving rise to recurring cause of action w.e.f. 9.6.2004 (annexure –P-3) when petitioner sh. Gopi Ram relieved/ retired from government service, which was contrary to the statuary provision of section 47 of the of "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act. 1995".

It is further submitted that exactly similar controversy regarding delay and laches has been considered by this Hon, ble Court in Hari Singh v/s State of Haryana Case, CWP No.15488 of 2012. The relevant observations are reproduced below for ready reference:-

(Annexure P-7)

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".....The state of mind/depression a person undergoes when being contracted with such deadly disease is tremendous and the plight of the person is indefinable and, therefore, keeping in view the aforementioned factors, the writ petition cannot be dismissed on the ground of delay and laches and it is a statutory right of the employee to be given a suitable post as per the provisions of Section 47, ibid. Rather, it was the duty of the employer to apprise the petitioner qua his statutory legal right and since the authority has failed in its duty, the petition cannot be thrown out on the ground of delay and laches, particularly the authority being State. The drawing of pension shall not come into the way of the petitioner in seeking employment on a suitable post in view of the provisions of Section 47 of the Act as the Legislature in its wisdom drafted/came out with such provisions keeping in view the hardship being faced by such employees who unfortunately contracted disease while in service.

In view of what has been observed above, the writ petition is allowed. The impugned order dated 1.2.2002 (Annexure P-4), being illegal and against the mandate of provisions of Section 47 of the Act, is here by quashed. The respondent-authorities are directed to offer a suitable post where the petitioner can perform his duties. The petitioner shall also been titled to all consequential benefits, if permissible in law.

It is made clear that the benefit of pension already taken by the shall be adjusted."

A Copy of this order dated 19.5.2015 passed by this Hon,ble Court to this effect is attached as Annexure P-7.

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- 17. That under Section 47 of "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,1995" the respondents being employer of petitioner were bound to retain him service and pay regular salary and other service benefits as admissible. By relieving him from service, the respondents have violated Section 47 and objects of the Disability Act-1995 as well as their own instruction dated 19 Sep.-2011, which directs them to comply with the provisions of Section 47 of "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,1995"
  - 18. That the main law points involved in this writ petition are as under:-
- a) Whether the action of the respondents is arbitrary and violative of Articles 14 and 16 of the Constitution of India?
- b) Whether a grave and manifest injustice has been caused to the petitioner?
- c) Whether the action of the respondents is contrary to Section 47 of "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995".
- 19. That there is no other alternative remedy of appeal or revision available to the petitioner except to approach this Hon'ble Court by way of the present writ petition under Article 226 of the Constitution of India.
- 20. That the petitioner has not so far filed any such or similar writ petition either in this Hon'ble Court or in the Hon'ble Supreme Court

KANCHAN 2017.05.12 11:42 Fred to India for seeking the same relief against the impugned action of the ORIGINAL CONTROL OF THE CONTROL OF THE



respondents except CWP no. 1024 of 2017 titled as Meena Devi v/s State of Haryana which was withdrawn from this Hon'ble Court to file fresh one with better particulars.

#### PRAYER

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It is, therefore, respectfully prayed that this Hon'ble Court may be pleased to call for the records of the present case and after perusal thereof may be pleased to issue: -

- i) a Writ, in the nature of Certiorari for quashing the impugned order dated 14.6.2004 (Annexure P-3) passed by the respondent no.4, vide which the petitioner ,who was working as Science master in the education department ,Haryana has been relieved/retired w.e.f 9.6.2004 from Government Service on the basis of medical report ,in utter violation of Section 47 of The Persons with Disabilities Act-1995 and further a writ in the nature of Mandamus be issued to grant him all consequential service benefits with interest, considering the petitioner on Government duty till he attains the superannuation age i.e 31.5.2024 for all purposes and intents w.e.f. 9.6.2004 (relieving date) in the light of the provision of Section 47 of The Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act-1995
- ii) And/or any other appropriate writ, order or direction be also issued which this Hon'ble Court may deem fit, just and proper in the peculiar facts and

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- iv) circumstances of this case and to which the petitioner is found entitled in law justice and equity.
- v) Filing of true typed of annexures and certified copy of Annexures be also dispensed with;
- vi) Costs of the present writ petition be also awarded in favour of the petitioner and against the respondents.

CHANDIGARH

Through:

DATED: 10-4-2017 (SURESH AHLAWAT)

ADVOCATE

Counsel for the petitioner.

(MEENA DEVI)

PETITIONER

### VERIFICATION

Verified that the contents of Para No. 1 to 17 and 19 and 20 of the writ petition are true and correct to my knowledge. Legal submissions made in para no. 18 is believed to be true on the advice received from the learned Counsel. No part of it is false and nothing has been kept concealed therefrom.

CHANDIGARH

DATE:- 10.4.2617

Meenofeer, (MEENA DEVI) PETITIONER





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IN THE HIGH COURT FOR THE PANJAB AND HARYANA

## AT CHANDIGARH

C.W.P. No. 10158 of 2017

Gopi Ram through his wife Smt. Meena Devi----- Petitioner

Versus

State of Haryana and others

-----Respondents

Affidavit of Meena Devi w/o Sh. Gopi Ram

. Science Master (Retd), Education Department Haryana resident of Village & P.O. Garhwali Block, Julana Distt. Jind

I, the above named deponent do hereby solemnly affirm and declare on oath as under: -

- 1. That the deponent has gone through the contents of the accompanying petition which have been drafted by the counsel or my instructions. The contents of the same are admitted to be true and correct and be read as part and parcel of this affidavit.
- 2. That no such or similar petition has earlier been filed

Either before this Hon, ble Court or Hon, ble Supreme Court.

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DATED .18. 01.2017

**VERIFICATION** 

Identified by Mark July 10 is personally known to me

DEPONENT

Oath Commissioner

Verified that the contents of my above affidavit are true and correct to my knowledge. No part of it is false and nothing has been kept concealed therein.

KANCHAN 2017.05.12 11: GHANDIGARH TRUE SCANNED COPY OF ORIGINAL Dated: | 8 9.2017

Superintendent HRM-II
For Director Elementary Education

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Annexure PI

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## IN THE COURT OF SANJAY KHANDUJA, GUARDIAN JUDJE, JIND

Petition no.50 of 19.7.2007

Date of Decision: 11.4.2008

Smt. Meena Devi w/o Sh. Gopi Ram aged 39 years, resident of Village & P.O. Garhwali

Tehsil Julana Distt. Jind

..... Petitioner

Versus

General Public

...... Respondent

Petition under the provision of the Guardians and Wards Act, 1890.

Present:

Sh. M.S.Dhull, Advocate for petitioner

Respondent:

Exparte.

#### Judgment:

Petitioner has filed the present petition under the provision of the Guardians and Wards, 1890 for appointment as Guardian of the person and property of her husband Gopi Ram on the averments that her husband has been declared by Pt. BD Sharma, PGIMS, Rohtak as completely and permanently incapacitated for further service in the Education Department as Science Teacher due to head injury and his incapacitated does not appear to the Board of Doctors to have been caused by irregular or intemperate habits, Special Medical Board is of the opinion that Gopi Ram is unfit for further service as Science Teacher. Mentally unfit said Gopi Ram is living in the care and custody of the petitioner and he is pensioner vide Pension PPO No. 129181-S/Hr. and pension letter no.3/G-303/2-5-06/149531-32 dated 1.8.2005 issued by the office of Accountant General (A&E) Haryana. No application was moved earlier in this regard. The pension of Gopi Ram has not been paid on account of his mental incapacity and still lying in the State Bank of India branch office Julana in his account. Hence ,this petition.

- 3. Notice of the petition was given to the respondent general public. It was published in Hindi News Paper "Danik Jagat Kranti" on 10.8.2007. None had appeared from the respondent- general public either in person or through any advocate and the respondent general public was ordered to be proceeded against exparte vide order dated 12.10.2007.
- 4. In the course of exparte evidence, petitioner herself appeared in the witness KANCHAN 2017.05.12 11:47
  TRUE SCANNED CODY OF as PW-1, has examined Ram Kishan as PW-2 and Jagdish Rai as PW-3.

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5. I have heard Ld. Counsel for the petitioner and gone through the file carefully.

6. PW-1 Meena Kumari, petitioner has tendered her affidavit Ex. PW-1/A and fully

supporting the averments in the petition and prayed for appointing her as guardian of her

mentally unfit husband Gopi Ram. She has produced copy of report issued by Special

Medical Board, Pt.BD Sharma, PGIMS, Rohtak Ex. P-1 and copy of letter dated 5.8.2005

issued by the office of Accountant General (a& E) Haryana Ex.P-2.

7. Pw-2 Ram Kumar, Ex-Sarpanch and PW-3 Jagdish, Lamberdar of Village

Gharwali have also tendered their affidavit Ex. PW-2/A and EX. PW-3/A, respectively

and supported the petitioner and deposed that Gopi Ram is mentally unfit and living in

the care AND CUSTODY OF HIS WIFE Meena Kumari.

The exparte evidence led by the petitioner has gone un-rebutted and un-

challenged. From the oral as well as documentary evidence available on record, this fact

has duly been established that Gopi Ram is living under the care and custody of petitioner

, who is her real husband. Petitioner's husband mentally unfit as per the report of the

Special Medical Board, Pt. BD Sharma PGIMS, Rohtak Ex.P-1. Therefore, petitioner

Meena Kumari, who has no adverse interest, is hereby appointed as guardian of the

person and property of her husband Gopi Ram. The application stands allowed. File be

consigned to the record-room.

Pronounced.

April 11,2008

(Sanjay Khanduja)

Guardian Judge,

Jind

Superintendent HRM-II
For Director Elementary Education
Haryana, Panchkula

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### PANDIT B.D. SHARMA PGMIS ROHTAK

Report of Special Medical Board, Pandit B.D. Sharma PGIMS.

Rohtak in respect of Sh. Gopi Ram

Certified that the Special Medical Board has Carefully examined Sh. Gopi Ram s/o Sh. Jai Karan whose signature/thumb impression is appended below, on (dt.) 2.6.2004.

Special Medical Board considers Sh. Gopi Ram-----completely and permanently incapacitated for further service in
the Department of <u>Fducation Deptt.</u> ----- as <u>Science</u>

<u>Teacher</u>----- on account of dementia according to Head

Injury------.

His incapacity does not appear to me (us) to have been caused by irregular or intemperate habits, Spacial Madical Board is of the opinion that Sh. Copi Ram ---- is UNFIT for further service as Science Teacher in the deptt. Of Education Deptt.-----

L.T.I. Gopi Ram

Sd/-

Sd/-

Sd/-

Chairman

Secretary

Member

Spl. Medical Board

Spl. Med, Board

Spl. Med. Board

Endst. No. PGMIS/MS/875

dated

9.6.2004

-56- -54-

Forwarded to the Civil Surgeon ,Jind,-----

In original with the remarks that signature/thumb impression and photo attested by your department are sent herewith. This is with reference to your office letter no. <u>68 dated 16.3.2004</u>.

Sd/-

Secretary

Special Medical Board

Immediate:-

Pt. B.D. PGMIS -Rohtak

Page Sr. No. S/CMO (c) 04/537

dated

11.6.2004

One copy of its, forwarded to the Block Education Officer ,Jind for information and further necessary action.

Sd/-

Civil Surgeon

Jind.

Superintendent HRM-II
For Director Elementary Education
Haryana, Panchkula

KANCHAN 2017.05.12 11:47 TRUE SCANNED COPY OF ORIGINAL Chandigarh

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Annexuse P-3

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# OFICE OF THE SUB DIVISION EDUCATION OFFICER.

#### JIND

No. L. 3.2004/726-728

Dated 14.6.2004

Original is being sent to the Head Master Govt. Middle School Jaijaiwanti. It is written that Pandit B.D.Sharma PGIMS, Rohtak through letter no. PGIMS/MB/875 dated 9.6.2004 and endorsement by Civil Surgeon -Jind vide letter no. CMO(i) 04/537 dated 11.6.2004 that Gopi Ram, Science Teacher, has been declared unfit for further service than after taking complete charge, he be retired from service and documents relating to pension be also sent to this office and the employee be retired from service w.e.f. 9.6.2004.

Sd- 1

Sub Divisional Education Office

Jind.

Leπer no. same dated same---

One copy of this ,sent for information following-

- Concerned employee
- 2. EI (total)

Sd-

Sub Divisional Education Office

Jind. .14.6.2004

Superintendent HRM-II
For Director Elementary Education
Haryana, Panchkula

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Annexure P-4

Pension:- P-3/G-303/2005-06/149531-31 Dt. 11.8.2005

DY No. 200502683

## OFFICE OF THE ACCOUNTANT GENERAL (A&E) HAR.

Plot no. 4 & 5 Sector-33-B, CHANDIGARH

## **CERTIFICATE AND REPORT**

TO

DIR. Secondary Education Haryana, Chandigarh.

Subject:- Certificate and Report of the A.G. (A&E) Haryana,

Chandigarh on the admissibility of Family Pension/DCRG in

respect of Sh. Gopi Ram s/o Sh. Jai Karan.

Certified that ( subject to the remarks recorded below and over leaf ) Qualifying service of Sh. Gopi Ram has been approved for 15 Y. 5.M. 21.D. and that INV (SUP) Pension not exceeding Rs. 2572 on the basis of average emoluments of Rs. 7300.00 & DP 3650.00 and DCRG not exceeding Rs. 94202.00 on the basis of the last pay of Rs. 7300.00 & DP 3650.00 for completed 15 Y. 5 M. 21 D. half years of service in one lump sum are admissible under the Haryana CSR. The Pension will commence from 9.6.2004.

After the death of the Govt. Servant, family pension not exceeding Rs. 3285 per month will be admissible Smt. MEENA KUMARI,W from the day, following the day of death of Sh. Gopi Ram till the expiry of 7 years or completion of 65 years of age by the employee, had the Govt. employee survived

whichever is earlier and thereafter @ Rs. 3285 per month subject to the condition specified in PPO 129181-S/HR.

The observation made ( ) overleaf may be attended to any reply sent within 7 Days positively/20 days before retirement.

Asstt. Account Officer / Section Officer

Forwarded to -----

Gopi Ram s/o Sh. Jai Karan

VPO. Garhwali Tehsil & Distt. Jind

For information and necessary action---

Asstt. Account Officer / Section Officer

Superintendent HRM-II
For Director Elementary Education
Haryana, Panchkula

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Annexuse P\_5

CWP 5715 of 2005

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

CWP No. 5715 of 2005 Date of decision 10 10.2006

Parvesh Devi

.. petitioner

Versus

State of Haryana and others

.. Respondents

HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr.R.N.Sharma, Advocate for the petitioner

Mr. Jaswant Singh, Addl. AG Haryana.

M.M.Kumar, J.

This petition filed under Article 226 of the Constitution prays for quashing order dated 14.2.2005 (Annexure P.8) declining the request made by the husband of the petitioner for grant of pension on the ground that he had rendered less than 10 years of qualifying service.

Brief facts of the case are that the petitioner had been working on the post of Sanskrit teacher in Samaj Kalyan High School Rohat (Sonepat). He was appointed on 18.12.1972 (Annexure P.4) as Sanskrit teacher as it had been a recognised aided school within the meaning of the Haryana School Education Act, 1995 (for brevity 'the Act'). The petitioner rendered service upto 30.8.1994 in the afore-mentioned school which had been an aided and recognised institution. However, the school was taken over by the government w.e.f. 1.9.1994 (Annexure P.5). After taking over the petitioner could work only upto 30.6.2002 because he was declared permanently incapacitated for future service. According to the medical report submitted by the Special Medical Board of PGIMS, Rohtak, the husband of the petitioner has been found to be completely and permanently

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incapacitated for further service in the department as Sanskrit master on account of the head injury suffered by him. The afore-mentioned incapacity was not caused by an irregular or intemperate habits of the petitioner as it had been certified by the Medical Board (Annexure P.1). Accordingly he was relieved from service on 4.6.2002 as per the record file produced before us. A copy of the relieving order is taken on record as Mark "A" and as such he was considered to have retired from service from 1.7.2002. When his case was sent for grant of pension, Accountant General-respondent no.4, did not sanction any pension to him on the ground that he had worked as a government employee for a period of 7 years 10 months. However, the petitioner was granted death cum retirement gratuity amounting to Rs.39040/- in pursuance to order dated 10.5.2003 (Annexure P.2). The petitioner on behalf of her husband sent a legal notice dated 3.12.2004 (Annexure P.7) claiming invalid pension/ family pension and gratuity by computing the service rendered by her husband in the Samaj Kalyan High School which was an aided school. The Accountant General-respondent no.4 rejected the claim of the petitioner vide order dated 14.2.2004 by setting up the plea that death cum retirement gratuity/ service gratuity is admissible to the retirees in accordance with the rule 6.16 of the Punjab Civil Service Rules, Volume II (for brevity 'the Rules'). It has further been asserted that the service rendered in aided school was not computable towards pensionary benefits/ qualifying service as per Note 1 of Rule 3.16 of the Rules.

On 19.4.2006, we have heard the arguments in part and the hearing of the case was adjourned to produce the record which became necessary for the purposes of ascertaining whether any order of retirement

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in respect of the husband of the petitioner has been passed or not. When the case again came up for hearing on 21.4.2006 the record was eventually produced and there is no order showing that the petitioner has been formally retired. The order dated 4.6.2002 (Mark "A") simply relieves the petitioner from service by referring to the special report of the Medical Board dated 10.5.2002 (Annexure P.1).

Mr. R.N.Sharma, learned counsel for the petitioner has argued that Rule 3.16(b) Note I, Entry 2 read with Rule 6.16 of the Rules is not applicable to the petitioner as the afore-mentioned rule pre-supposes that an employee has retired from service. According to the learned counsel, the petitioner has not retired from service but has simply been relieved on the basis of the Medical report dated 10.5.2002 (Annexure P.1). He has then referred to Rule 5.11 of the Rules which deals with the grant of invalid pension and argued that the respondents cannot deny such a pension to the petitioner. In support of his submission, learned counsel has placed reliance on two judgements of this Court in the cases of Avtar Singh v. State of Punjab 1989(3) SLR 623 and Raghbir Chand v. State of Haryana 1997(2) RSJ 198 and argued that if a particular matter is specifically dealt with under a separate rule then it would preclude the applicability of general rule. He has maintained that the framers of the Rule have not made the provision of Rule 5.11 subject to the provision of any other rule. He has then placed reliance on two Division Bench judgements of this Court in the cases of Ranjit Singh v. State of Haryana 1994(3) PLR 687 and Mohinder Singh v. State of Harvana 2000(1) SCT 149 and argued that the petitioner is entitled to be paid some extra allowance alongwith the retirement benefits. He has made another submission that gratuity for the whole period deserved to the

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granted to the husband of the petitioner on the principles laid down by the Hon'ble Supreme Court in the case of Chander Sain v. State of Haryana 1994(2) RSJ 690 and argued that in para 4 it has been made explicit that the staff of the privately managed schools taken over by the government would be entitled to pension and provident fund which has been granted by the Hon'ble Supreme Court even to the staff of the taken over government colleges.

Mr. Jaswant Singh, learned State counsel, has argued that pension or family pension is not admissible to the petitioner and the only relief available to him would be to the amount of death cum retirement gratuity as per the provisions made in Rule 6.16 of the Rules. He has then argued that the employees of the aided schools would not be entitled to any other incentives which would be available to the teachers/ employees of government colleges. For the afore-mentioned purpose, he has placed reliance on a judgement of the Hon'ble Supreme Court in the case of State of Haryana v. Champa Devi 2002(2) SLR 1. He has emphasised that the petitioner has been given death cum retirement gratuity in lieu of the pension as has been provided by Rule 6.16 of the Rules which contemplates that employees who have less than 10 years of service are not to be deprived of the benefits of the service rendered by them and are granted the service gratuity. Accordingly, the service gratuity of the petitioner amounting to Rs.39040/- has been calculated for the total service of 7 years and 10 months.

We have thoughtfully considered the submissions made by the learned counsel for the parties. It is admitted fact that husband of the petitioner is lying in Coma being 100 percent incapacitated which

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condition has not been caused by any of his irregular or intemperate habits. The record shows that date of birth of the petitioner is 15.6.1949 and he was to attain the age of superannuation on 14.6.2007. It is also admitted fact that the petitioner joined Samaj Kalyan High School as Sanskrit teacher on 18.12.1972 where he served upto 30.8.1994. The total period of service rendered therein comes to 21 years and 8 months. However, the school was taken over by the respondent State on 1.9.1994. There is no dispute that no order of superannuation has been passed so far and the petitioner has been given only service gratuity in accordance with Rule 6.16 of the Rules. The question arises whether the rigors of Rule 6.16 which provides minimum 10 years of service for becoming entitled to pension would be applicable in the case of the husband of the petitioner. In that regard reference may be made to the provisions of Sections 2(t) and 47 of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act,1995 and the same reads as under:

- " 2. Definition.- In this Act, unless the context otherwise requires,-
- (a) to (s) xx xx xx xx
- (t) 'person with disability' means a person suffering from not less than forty percent of any disability as certified by a medical authority'

XX XX XX XX"

"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

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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."

A perusal of the afore-mentioned provision makes it explicit that an employee who acquires disability during his service is sought to be protected because if no protection is provided by law not only such an employee suffers himself but all those would equally suffer who have been dependent upon him as has been held by the Hon'ble Supreme Court in the case of Kunal Singh v. UOI 2003(4) SCC 524. It becomes further evident that person with disability is the one who had suffered from not less than 40 percent disability as certified by the medical authorities. It is thus evident that the petitioner is a person with disability within the meaning of Section 2(t) of the Act.

It is further clear from a perusal of Section 47 that no establishment shall dispense with or reduce the rank of an employee who might have acquired disability during his service. The afore-mentioned

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provision is qualified by the provisos that if an employee after acquiring the disability is not suitable for the post which he was holding then he may be shifted to some other post with the same pay scale and service benefits as he was enjoying before acquiring the disability. It has further been provided that if it is not possible to adjust such an employee because no post is available then he is required to be kept on a supernumerary post until such post is available or he attains the age of superannuation whichever is earlier. This provision clearly stipulates that a person with disability is to superannuate on attaining the ordinary age of superannuation applicable to such an employee. Accordingly, the petitioner although has been relieved but he cannot be deemed to have retired from service till his age of which is 30.6.2007. Accordingly, it is held that the superannuation petitioner would be deemed to have rendered service from 1.9.1994 to 30.6.2007 after taking over the privately managed schools. Such service would be qualified service as it would be exceeding the period of 10 years. He would retire w.e.f. 30.6.2007 when supernumerary post for the husband of the petitioner has to be created as per the requirement of proviso 2nd to Section 47 of the Act. Therefore, it has to be held that the petitioner would be entitled to payment of salary from the date he was relieved till date and he shall be paid salary thereafter till his retirement i.e. 30.6.2007.

The argument of the learned counsel for the petitioner that husband of the petitioner is entitled to invalid pension or gratuity for the whole period of service would not arise for our consideration because the husband of the petitioner has not yet been retired from service. There is no order retiring the petitioner from service who has simply been relieved on 4.6.2002 (Mark "A") by completely ignoring the provisions of Section 47

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of the 1995 Act. We also reject the argument advanced by the learned State counsel for awarding the service gratuity to the husband of the petitioner in accordance with Rule 6.16 of the rules which proceeds on the assumption that the petitioner has retired. The argument suffers from the same fallacy because there is no order of retirement on record passed in respect of the petitioner.

In view of the above, the writ petition is allowed. Order dated 4.6.2002 (Mark "A") relieving the petitioner from service and order dated 15.2.2005 (Annexure P.8) declining the request of the husband of the petitioner for grant of pension are quashed. Respondents are directed to pay salary to the petitioner as per the rates by deeming fiction as if he is in service and has been working against a supernumerary post. The arrears of pay as was being drawn by the husband of the petitioner be calculated from 1.7.2002 upto date and the payment be made to the wife of the petitioner in accordance with the rules within a period of one month from the date certified copy of the order is produced before the respondents. The salary every month shall be paid to the petitioner till the date of superannuation. The respondents shall also be liable to pay interest @ 8 percent on the arrears of salary from the the date the salary was due i.e. 1.7.2002 till the date of its payment. The amount of Rs.32040/- already paid to the petitioner as service gratuity shall be set off from the arrears of salary. On attaining the age of superannuation, the respondents shall pass an order of retirement alongwith an order calculating the pension of the husband of the petitioner in accordance with law. The wife of the petitioner shall also be entitled to

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family pension accordance with the rules.

(M.M.Kumar) Judge

10.10.2006 okg (M.M.S.Bedi ) Judge

Superintendent HRM-II
For Director Elementary Education
Haryana, Panchkula

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Annexwe P-6
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SURESH AHLAWAT, ADVOCATE PUNJAB & HARYANA HIGH COURT # 701, Block-E-1

MAYA GARDEN 'CITY'

Ch.no. 62, CHANDIGARH. (94171-11917)

ZIRKPUR

Registered A.D.

Dated :-

TO

Addition to

- Elementary Education Director-General, The 1. Haryana, Shiksha-Sadan, Sector 5, Panchkula.
- The District Elementary Education Officer, Jind. 2...
- Legal Notice cum Demand for Justice Sub.

To release the salary of Gopi Ram s/o Sh Jai Karan, Ex Science Master, from 9.6.2004 to up to date and further to allow him to continue in service in light of the provision of Section 47 of "The persons with Disabilities ( Equal Opportunities, Protection of Rights and Full Participation) Act,1995."

Under the instructions from and on behalf of my client Smt. Meena Devi w/o Sh. Gopi Ram Ex. Science Master, Education Department, Village & P.O. Garhwali Block, Julana Distt. Jind (hereinafter referred to my client ) I do hereby serve upon you following notice for your compliance and necessary action at your end.

1. That my client,s husband Sh. Gopi Ram was appointed as Science Master, in the Department of Education, Haryana on 16.12.1988 and joined in Govt. High School Buwana Block -Julana Distt. Jind on ad-hoc basis and further his services were regularized on 1.1.1991 according to the regularization

ocopy of policy of the State Govt...

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- 2. That unfortunately on 17.10.2002 husband of my client Sh. Gopi Ram met with an fatal road accident at Julana (Jind) while in the active service of education department, Haryana and due to non availability of medical services at Julana Hospital, he was referred to PGI Rohtak to save his life. My client's husband remained admit in deferent times in PGI Rohtak for long time and since then, he is in deep COMA and treatment of her husband is still continuing.
- 3. That my client's husband Sh. Gopi Ram declared permanently incapacitated for further service as Science Master according to Medical Report dated 9.6.2004 submitted by the Special Medical Board of PGMIS, Rohtak. The husband of the my client Sh Gopi Ram has been found to be completing and permanently incapacitated (100%) for future service in the department as Science Master on account of the "HEAD INJURY "suffering by him. It is pertinent to add here that even according to the report of Medical Board dated 9.6.2004 aforesaid incapacity does not appear to have been caused by irregular or intemperate habits on his part.
  - 4. That my client's husband subsequently relived from Govt. service by the Education Department on 8.6.2004 from Govt. Middle School ,Jaijaiwanti block-Julana(Jind) vide order no. 3.2004/726-728 dated 14.6.2004 issued by S.D.E.O. Jind on medical ground i.e. Sh.Gopi Ram Science Master having been declared incapacitated for further service with the department,

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as per the medical certificate issued by the Special Medical Board ,PGMIS Rohtak . Now, he is on invalid pension under Rule 5.11 of C.S.R .Vol.II.(PPO no. 179181-S/Hr.) Whereas, his case was fully covered of the mandatory provision of the Special Act i.e the provision of Section 47 of "The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,1995."

- 5. That my client's husband suffered 100% permanent disability during his service, due to fatal accident on 17.10.2002 which had put him in deep COMA due to Head Injury, on account of Dementia, which has been defined a disability under section 2(i) of "The persons with Disabilities ( Equal Opportunities, Protection of Rights and Full Participation) Act,1995."
- 6. That my Clint's husband is in the state of deep COMA means thereby he is 100% incapacitated. He had met with an road accident and because of the he went in COMA. Under The Persons with Disabilities Equal Opportunities, Protection of Rights and full participation Act, 1995, an employee who is 100% incapacitated is not to be shifting to some other posts with the same pay scale and services benefits as no establishment can dispensed with, or reduce in rank an employee who acquires a disability during his service. In this way, husband of my Clint's case is fully covered by the provision of Section 47 of The Persons with Disabilities Equal Opportunities, Protection of Rights and full participation Act, 1993. Which is reproduced below for prompt reference:-

"47. Non-discrimination in Government Employment:-

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(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.

- 7. That the above provisions were made by the Parliament in its wisdom to secure the interest of all those who suffer disability during service but is matter of surprise that the benefit of such law has not yet been extended to my client's husband by the Education Department. My client have been suffering a lot due to non payment of salary of her husband and she is suffering the burden of liability which is increasing on her head.
- 8. That my client,s husband is 100% incapacitated and since 17.10.2002, he is in coma. Such patients who are in deep Coma or whose recovery may take time may not be allowed admitted in the Hospitals, so my client's husband was released from the Hospital and Doctors advised him medicines. As per the prescription, my client is spending a huge money on her husband as an outdoor patient. In such circumstances my client is facing a great financial cries due to non-payment of salary.
- 9. That date of birth of my client's husband Sh. Gopi Ram is 8.5.1966 and he will attain the superannuation age on 8.5.2024. My client's husband should have been extended the benefits flowing from the



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provision of the aforesaid enactment of year 1995 and treated in service by creating supernumerary post and my client's husband should have been paid regularly the salary which would have otherwise been paid had he continued in service in normal course. Such a treatment has not been extended to him. My client's husband was wrongfully treated on invalid pension under rule 5.11 of C.S.R. Vol.II vide P.P.O. no. 129181-s/Hr.. In this regard, my client has been guided to make reference of following decision of the Hon,ble Supreme Court & Hon,ble Punjab and Haryana High Court in support of his such claim:-

# 2003 SCC (L&S) 482

## KUNAL SINGH VS UNION OF INDIA

".....Once it is held that the appellant has acquire disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits, if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provisions of Section47of the Act.'

# CWP No. 5715 of 2005 Parvesh Devi Vs State of Haryana

"Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995, Section 2 (t) and 47 Punjab civil Services Rules, Volume II, Rule 5.11 and 6.16-Pension- Declining of

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on ground that petitioner has rendered less than 10 years of qualifying service- Petitioner appointed as Sanskrit Teacher on 18.12.1972 in recognized aided school taken over by government w.e.f 1.9.1994 -Petitioner could work under Government up to June- 2002 and he was relieved from service on 4.6.2002 - He is lying in coma being 100% incapacitated which condition has not been caused by any of his irregular or habits. Petitioner held to be a person with disability with in meaning of section 2 (y) of the Act of 1995 - In View of Section-47 of the Act, employer cannot dispense with or reduce the rank as he acquired disability during service -Order relieving the petitioner from service and order declining the request of the husband of the petitioner for grant of pension quashed - respondents directed to pay salary to the petitioner as per the rates by deemed fiction as if he is in service and has been working against a supernumerary post - The arrears of pay be calculated from 1.7.2002 up to date of payment with interest @ 8% p.a. from the date of salary due, from 1.7.2002 till the date of payment. On the date of superannuate on 30.6.2007 respondents shall pass an order calculating pension in accordance with law."

- 10. That in the light of such legal position, the process for grant of invalid pension is wholly arbitrary, illegal, improper, unjustified, unreasonable and amounts to disrespect to the authority of law, which had enacted the law, for the protecting of the suffering human beings in the service of the Government.
- 11. That the Hon,ble Punjab and Haryana High Court had vide its land marking judgment dated 21.3.2002 given In the case of SATBIR

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SINGH & OTHERS VS THE STATE OF HARYANA REPORTED

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AT 2002(3)RSJ 38 stressed the need for the disposal of the representations /legal notices etc. by passing speaking orders and for conceding the claim which is an conformity with any judgment of the court which has attained finality as early as possible in any case not later than four months ( not later than one month as per Subsequent judgment given in the case of Rajiv Alias Ruli V/s State of Haryana CWP No. 526 of 2004) from the receipt of such representation /notices.

The Worthy Chief Secretary to Government, Haryana has forwarded the gist of said judgment to all the Heads of Departments concerned for strict compliance of verdict of the Hon, ble High Court vide No 62/26/2002 –6GSI dated 2. 5. 2002 for strict compliance and thereby it has been circulated that judgments delivered by the Hon, ble High Court on any point which had attained finality should be followed by the authorities at all levels.

With the above background, it is submitted that case of my clients husband Sh. Gopi Ram is fully supported by the above judgment of the Hon, ble High Court and so, it is prayed that this notice for demand for justice be accepted and appropriate order be kindly passed for creating supernumerary post in the department of education and for treating him in the service of the department till date of his superannuation i.e 8.5.2024 and for the disbursement of unpaid salary from 9.6.2004 till date and for regular payment of salary with all benefits of increments etc. and with interest. as per spirit of the law enacted by the parliament for doing substantial justice with my client's husband Sh. Gopy Ram, Ex Science Master.

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It is submitted that your good offices shall keep in view the latest decision of the Hon,ble Punjab and Haryana High Court given in the CWP No 526 of 2004 titled as Rajiv Alias Ruli Vs State of Haryana, the exact of which has been supplied by the Chief Secretary to Govt.of Haryana vide Memo no. 62/74/2004/6GSI dated 22.3.2004 to all the Heads of Department in Haryana for strict compliance. It has been stressed in the said judgment that legal Notices / notices of demand for justice must be promptly attended to and appropriate reply to the notice should be given within maximum period of ONE MONTH and accordingly request is being made for a prompt decision and appropriate response in the matter.

I, therefore, call upon you to kindly look into my client's husband Sh. Gopi Ram, Ex Science Master humble grievance and he may be deemed in continued service on supernumerary post and his salary with increment etc. and interest from 9.6.2004 onward, be disbursed immediately, so that, my client's sufferings are minimized. I may be informed accordingly and if nothing is heard within ONE MONTH from receipt of this notice by you in that event my client's husband Sh. Gopi Ram shall be left with no option but to move to the court of law for protection of his rights at your cost and risks

Dated 3.11.2016

Yours Sincerely

SURESH AHLAWAT

Advocate

OF

Superintendent HRM-II
For Director Elementary Education
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Annexuse P-7

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Civil Writ Petition No.15488 of 2012

**{1}** 

# IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.15488 of 2012
Date of Decision: May 19, 2015

Hari Singh

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Present:

Mr.Mohit Garg, Advocate,

for the petitioner.

Mr.Keshav Gupta, AAG, Haryana,

for the State.

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#### AMIT RAWAL, J. (Oral)

The challenge in the present writ petition is to the order dated 1.2.2002 (Annexure P-4), whereby the petitioner has wrongly been retired from service on medical ground, which, according to the petitioner is in contravention of provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act (1 of 1996) (for short "the Act"). Prayer in the petition is also for issuance of a writ of mandamus directing the respondent-authorities to take the petitioner back in service with all consequential benefits.

The petitioner was appointed on the post of Conductor in Haryana Roadways, Sirsa on 12.11.1982. During the service, he contracted the disease, namely, 'diffuse brain atrophy and parkinsonism'. In view of

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### Civil Writ Petition No.15488 of 2012

such disease, the petitioner remained absent and was accordingly suspended from his post and subsequently the department authorities, after reviewing the case of the petitioner, reinstated him into service but the petitioner could not join the duties and submitted his leave along with the medical certificates. The case of the petitioner was referred for medical examination by the Chief Medical Officer, Yamuna Nagar, who further referred the case to the Chief Medical Officer, Ambala and Medical Board constituted at Ambala, after examining the petitioner, found that the petitioner was actually suffering from the aforementioned disease and the respondent-authorities, after obtaining the opinion from the department of PGI, Rohtak, found him to be not fit for the post of Conductor and accordingly, vide impugned order, his services have been dispensed with, in essence, has been compulsorily retired as per Rule 5.12 of the Civil Services Rules Vol.II, Part

Mr.Mohit Garg, learned counsel appearing for the petitioner, in support of his submissions, has relied upon the provisions of Section 47 of the Act, which reads as under:-

"Section 47:- Non-discrimination in Government employments-(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 it if 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

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#### Civil Writ Petition No.15488 of 2012

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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."

He further submits that in view of the aforementioned provisions, the petitioner should have been adjusted on some other suitable post, where he could have performed his duties and the manner in which his services have been dispensed with ought not to have been resorted to. In support of his contention, relied upon the judgment rendered by the Hon'ble Supreme Court in <a href="Bhagwan Dass and Anr. Versus Punjab State">Bhagwan Dass and Anr. Versus Punjab State</a> Electricity Board, AIR 2008 Supreme Court 990 to contend that even where the petitioner has been drawing the pension, the other person after having knocked the door of the court has been given benefit of the provisions of Section 47 of the Act.

Mr.Keshav Gupta, learned Assistant Advocate General, Haryana appearing on behalf of the State submits that the writ petition is liable to be dismissed on the ground of delay and laches and since the petitioner had been drawing the pension, therefore, he is not liable to be reinstated, much less, retained into service. He has further referred to Annexure R-8 to submit that the petitioner, during the period he remained in service, was served with a charge sheet and the charges pertained to the embezzlement.

I have heard the learned counsel for the parties and appraised

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**{4}** 

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#### Civil Writ Petition No.15488 of 2012

the paper book.

The language of Section 47 of the Act is plain and ambiguous and there is no dispute to that. Similar controversy arose in the matter pertaining to adjustment of an employee, who was suffering from disability in <a href="Bhagwan Dass">Bhagwan Dass</a>' case (supra) and the Hon'ble Supreme Court, while noticing the contentions, held as under:-

"12. From the materials brought before the court by none than the respondent-Board it is manifest that notwithstanding the clear and definite legislative mandate some officers of the Board took the view that it was not right to continue a blind, uscless man on the Board's rolls and to pay him monthly salary in return of no service. They accordingly persuaded each other that the appellant had himself asked for retirement from service and, therefore, he was not entitled to the protection of the Act. The only material on the basis of which the officers of the Board took the stand that the appellant had himself made a request for retirement on medical grounds was his letter dated July 17, 1996. The letter was written when a charge sheet was issued to him and in the letter he was trying to explain his absence from duty. In this letter he requested to be retired but at the same time asked that his wife should be given a suitable job in his place. In our view it is impossible to read that letter as a voluntary offer for retirement.

13. Appellant No.1 was a Class IV employee, a Lineman. He completely lost his vision. He was not aware of any protection

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#### Civil Writ Petition No.15488 of 2012

that the law afforded him and apparently believed that the blindness would cause him to lose his job, the source of livelihood of his family. The enormous mental pressure under which he would have been at that time is not difficult to imagine. In those circumstances it was the duty of the Superior Officers to explain to him the correct legal position and to tell him about his legal rights. Instead of doing that they threw him out of service by picking up a sentence from his letter, completely out of context. The action of the concerned officers of the Board, to our mind, was deprecatable.

14. We understand that the concerned officers were acting in what they believed to be the best interests of the Board. Still under the old mind-set it would appear to them just not right that the Board should spend good money on someone who was no longer of any use. But they were quite wrong, seen from any angle. From the narrow point of view the officers were duty-bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. From the larger point of view the officers failed to realise that the disabled too are equal citizens of the country and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largess but their right as equal citizens of the country."

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#### Civil Writ Petition No.15488 of 2012

The state of mind/depression a person undergoes when being contracted with such deadly disease is tremendous and the plight of the person is undefinable and, therefore, keeping in view the aforementioned factors, the writ petition cannot be dismissed on the ground of delay and laches and it is a statutory right of the employee to be given a suitable post as per the provisions of Section 47, ibid. Rather, it was the duty of the employer to apprise the petitioner qua his statutory legal right and since the authority has failed in its duty, the petition cannot be thrown out on the ground of delay and laches, particularly the authority being State. The drawing of pension shall not come into the way of the petitioner in seeking employment on a suitable post in view of the provisions of Section 47 of the Act as the Legislature in its wisdom drafted/came out with such provisions keeping in view the hardship being faced by such employees, who

In view of what has been observed above, the writ petition is allowed. The impugned order dated 1.2.2002 (Annexure P-4), being illegal and against the mandate of provisions of Section 47 of the Act, is hereby quashed. The respondent-authorities are directed to offer a suitable post where the petitioner can perform his duties. The petitioner shall also be entitled to all consequential benefits, if permissible in law.

unfortunately contracted disease while in service.

It is made clear that the benefit of pension already taken by the petitioner shall be adjusted.

May 19, 2015 ramesh

(AMIT PAWAL)



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Annex We P-3 -53 कार्यलय उप मण्डल मिस आर्यकारी. जीन्द्र क्रमाम ली. 3:2004/726-728 किंगम 14.6.04

> मुल राष से मूल्या भारपायम राजनीय भारपारीम विद्यालय भे भे वन्ती भी भेज कर लिखा जाता है नि Pandit B.D. Sharma P.GIMS. Rohtak & TH HIMTS P.G.I.M.S/148/875 Proist 9.6.04 & Endst by ATIAM 21 Son, Alog of 47 5 114 CMO(1) 04/537 Anin 11.6.04 =5121 91 situl 2121 (4 2110) 3124144 AT Further service of THE UNFIT AT दिया भाषा है। कर्मणारी की विद्यालय का पूर्ण नगारी भीते इस मेबा- मिस्त मर विधा AIR of URAIR RENSION THOUSAND TIME प्राप्त कर इम मायलय की जिल्लाम / क्रियारी की रिनाया 9.6.04 की सेवा निव्य की विपाजारें। 34 मण्डल ही था आयीकारी

AT 14.6.04 To अंभिन सम विंगित सम \_

इमकी एक प्राप्त विक्रालीवित की सुनातार्थ प्रीपित है।

1. सम्बाह्यत कर्मपारी

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# IN THE HON'BLE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 10158 of 2017

Sh. Gopi Ram

....Petitioner

Versus

State of Haryana and others

....Respondents

Short reply of Sumeet Kumar, Deputy Accountant General (Pension) on behalf of respondent No.5 i.e. Principal Accountant General (A&E), Haryana, Plot no.4 & 5, Sector 33-B, Chandigarh.

# Respectfully Showeth:

- 1. That in reply to writ petition, it is submitted that office of the answering respondent authorizes pensionary benefits on receipt of pension case/recommendations from the Pension Sanctioning Authority and on the basis of rules & instructions issued from time to time by the State Government. Action of the answering respondent starts only on receipt of pension case/ recommendations from the Pension Sanctioning Authority/concerned department.
- 2. That the petitioner retired on medical ground on 08.06.2004 as Science Master from Government Senior Secondary School, Jai Jai Wanti, Jind. On receipt of pension case of the petitioner from the office of the Director, Secondary Education, Haryana, Chandigarh vide memo no.13/35-2005 Pen (2) dated 07.07.2005, pension @ Rs.2,572/- p.m. w.e.f 09.06.2004 vide PPO no.129181-S/HR and gratuity amounting to Rs.84,782/- + Rs.9,420/- were authorized in his favour by the office of the answering respondent on 07.09.2005 and 05.05.2006 respectively.
- 3. That the petitioner has contended for quashing the impugned order dated 14.06.2004 (Annexure P-3) passed by respondent

no.4 i.e. Sub Divisional Education Officer (Elementary), Julana, Jind vide which petitioner was relieved/retired w.e.f 09.06.2004 and further, to grant him all the consequential service benefits along with interest, considering the petitioner on Government duty till he attains the age of superannuation i.e. 31.05.2024 for all purposes and intents w.e.f 09.06.2004 in the light of the provision of Section 47 of the Persons with Disabilities Equal Opprotunities Protection of Rights and Full Participation Act-1995.

That action on the contention and decision to consider the 4. petitioner on Government duty till he attains the age of superannuation i.e. 31.05.2024 for all purposes and intents w.e.f 09.06.2004 in the light of the provision of Section 47 of the Persons with Disabilities Equal Opprotunities Protection of Rights and Full Participation Act-1995, is to be taken by respondent no.1 i.e Principal Secretary to Governemnt Haryana, School Education Department and no action is required to be taken at this stage by the office of the answering respondent in this case.

In view of the submissions made above, it is, respectfully prayed that the writ petition may kindly be dismissed with costs qua the respondent no. 5.

Place: Chandigarh

Date: 01.05.2018

(Sumeet Kumar)

**Dy.Accountant General (Pension)** On behalf of Respondent no. 5

Verification:

Verified that the contents of para 1 to 4 of above short reply are true to the best of my knowledge as derived from the official records and nothing material has been concealed therein.

Place: Chandigarh Date: 01.05.2018

(Sumeet Kumar) Dy. Accountant General (Pension) On behalf of Respondent no. 5

Superintendent HRM-II For Director Elementary Education Haryana, Panchkula

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IN THE HON'BLE HIGH COURT OF PUNJAB & HARYANA AT CHANIDGARH

CWP No.10158 of 2017

Gopi Ram

my.

.....Petitioner

**VERSUS** 

State of Haryana & others

.....Respondents

Short reply of Dilbag Singh, Joint Director, Directorate of Elementary Education Haryana, Shiksha Sadan, Sector-5, Panchkula on behalf of Respondents' No. 1 to

RESPECTFULLY SHOWETH:

1. That the present writ petition has been filed by the petitioner praying therein for

issuance of a writ in the nature of certiorari for quashing the impugned order

dated 14-06-2004 (Annexure P-3) vide which the petitioner was retired w.e.f.

09-06-2004 from government service alleging in violation of Section 47 of the

Persons with Disabilities Act, 1995. The petitioner has further prayed for a writ

of mandamus directing the respondents to take him back in service until he

attains the age of superannuation i.e. 31-05-2024 with all consequential

benefits. In this way this case is highly belated, time barred and suffers from

delay and laches.

2. That in this regard, it is submitted that the petitioner has not come to Hon'ble

High Court with clean hand and true minds. He has admitted the fact that he

was relieved from service on 09-06-2004 on basis of Medical Report (Annexure

P-2) and with his consent and request issued by PGIMS Rohtak vide which he

has been declared completely and permanently incapacitated for further service

in the Department of Education Department as Science Teacher. The Medical

Board further opined about i the petitioner as unfit for further service. A kind

consideration of this Medical Report would reveal that he has not been declared

"Disabled" for service under any of terms of disabilities defined in Section-2 of

the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act, 1995. Further, Section-47 of this Act, 1995 provides as

under;

"47. (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."

That the petitioner has not followed the procedure provided under the above mentioned rule, therefore, the petitioner is not entitled to claim service benefits under above-said provisions of Section 47.

3. That as per provisions of Rule-3.1 of Punjab Civil Service Rules, Vol.-1, Part-1, no person can be appointed in India to a post in Government Service without a medical certificate of health but there is an exception in this rule which says as under:

"Exception (1).— The Administrative Departments may authorize the drawal of pay and allowances for a period not exceeding two months in respect of fresh recruits to Government service without a medical certificate of health, subject to the condition that if the person concerned is subsequently found medically unfit his services should be terminated after the expiry of the period of one month from the date of communication to him of the findings of the Medical Officer /Board if no appeal for second medical examination is made by him during this period of or after the case for second medical examination is finally decided if such an appeal is made and accepted. This condition should be clearly stated in the initial letter of appointment.

The Administrative Department shall, however, exercise this power sparingly and in exceptional circumstances only,

e.g. when it is considered necessary in the public interest that a selected person should be appointed immediately in anticipation of his medical examination."

It is also relevant to submit further that the petitioner has also not examined the provisions of Rule-3.5A of Punjab Civil Service Rules, Vol.-1 part-1 before approaching this Hon'ble High Court which provides as under:

"3.5-A. 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. The Government employee concerned shall, however, have a right of appeal to an appellate Medical Board, against the decision of the first Medical Board."

A kind consideration of whole the writ petition would reveal itself that the petitioner never submitted his representation or appeal to examine him medically regarding his entitlement or continuity in service within prescribed statutory period of one month, therefore, the petitioner is not entitled to claim the benefits after expiry of more than 13 years of granting him invalid pension, therefore the present writ petition is liable to be dismissed on grounds of delay and laches.

- 4. That it is also relevant to submit further that the petitioner has already been granted his due benefits of invalid pension as provided under provisions of Rule-5.11 of the Punjab Civil Service Rules, Vol.-II which provides as under:
  - "5.11: An invalid pension is awarded, on his retirement from the Public service, to a Government employee who by bodily or mental infirmity is permanently incapacitated for the public service, or for the particular branch of it to which he belongs."
- 5. That it is also relevant to submit further that the service of an incapacitated employee cannot be continued beyond six months under provisions of Rule 5.18 of in the Punjab Civil Service Rules, Vol.-II which provides as under:

"5.18 A Government employee who has submitted a medical certificate of incapacity for further service shall, if he is on duty, be invalided from service, from the date of relief of his duties which should be arranged without delay on receipt of the medical certificate or, if he is granted leave under rule 8.18 of these rules, Volume I (Part I) on the expiry of such leave. If he is on leave at the time of submission of medical certificate, he shall be invalided from service on the expiry of that leave or extension of leave, if any, granted to him under the rule 8.18 of these Rules, Volume I (Part I).

- Note 1.— The report required by this rule may in the case of head constables and constables of Police be submitted to the Inspector General of Police instead of to the Government.
- Note 2.— When a Government employee is retained in service, after he has submitted a medical certificate of invalidment, and is, therefore, granted leave under rule 8.18(c) of Volume I, Part I, of these rules, the maximum period up to which, he can be allowed under second subparagraph of this rule to count for pension, the service after the date of medical certificate shall not exceed six months."
- 6. That it is also relevant to submit further that the official respondents have granted the petitioner all due benefits as provided under Rule 5.12 of Punjab Civil Service Rules, Vol.-II but no such request or presentation was made by the petitioner at that time. The petitioner has not disputed the feasible reliefs granted to him under these provisions. These Rules are, hereby, reproduced for consideration as under:
  - 5.12 In the case of partial incapacity (vide alternative certificate in Rule 5.26), a Government employee should, if possible, be employed even on lower pay so that the expense of pensioning him may be avoided. If there be no means of employing him even on lower pay, then he may be admitted to pension, but it should be considered whether, in view of his capacity for partially earning a living, it is necessary to grant to him the full pension admissible under rule."
- 7. That it is also relevant to submit that a kind consideration of Annexure P-1 would reveal itself that Smt. Meena Devi wife of present petitioner has already got authority of guardianships under provisions of Guardians and

Wards Act, 1890 without impleading the State of Haryana as a party therein. In this application, Smt. Meena Devi has admitted this fact that the petitioner has been getting invalid pension vide Pension Pay Order (i.e. PPO) No. 129181-S/Hr. and Pension Letter No. 3/G-303/2-5-06/149531-32 Dated 01-08-2005 but never claimed quashing or setting aside of this benefit, therefore, the issue involved herein has been got settled down by the Hon'ble Civil Court vide its judgment/order dated 11-04-2008. The petitioner is not entitled to get this issue re-opened in second phase of litigation as the present case is barred under principles of constructive resjudicata as settled down by Hon'ble Constitutional Bench of Supreme Court of India in *Daryao v. State of U. P. [Reported at (1962) 1 SCR 574]*. Further, in case of *Workmen of Cochin Port Trust v. Board of Trustees of the Cochin Port Trust, reported at AIR 1978 SC 1283*, the Hon'ble Supreme Court again observed as under:

"It is well-known that the doctrine of res judicata is codified in Section 11 of the Code of Civil Procedure but it is not exhaustive. S. 11 generally come into play in relation to civil suits. But apart from the codified law the doctrine of res judicata or the principle of res judicata has been applied since long in various other kinds of proceedings and situations by Courts in England, India and other countries. The rule of constructive res judicata is engrafted in Explanation IV of Section 11 of the Civil Procedure Code. and in many other situations also principles not only of direct res judicata but of constructive res judicata are also applied. If by any judgment or order any matter in issue has been directly and explicitly decided the decision operates as res judicata and bars the trial of an identical issue in a subsequent proceeding between the same parties. The principle of res judicata also comes into play when by the judgment and order a decision of a particular issue is implicit in it, that it, it must be deemed to have been necessarily decided by implication: then also the principle of res judicata on that issue is directly applicable. When any matter which might and ought to have been made a ground of defence or attack in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of

litigation and to bring about finality in it is deemed to have been constructively in issue and, therefore, is taken as decided."

8. That the judgment in CWP No. 5715 of 2005 – Parvesh Devi vs State of Haryana & others cited by the petitioner does not tenders any help to petitioner as the Hon'ble Division Bench this High Court decided the issue on 10-10-2006 much earlier than the judgment/order passed by Hon'ble Civil Court at Jind i.e. 11-04-2008. It is, therefore, submitted that the present writ petition is also barred under settled principles of equity i.e. "Ignorance of law/rule is no excuse".

Besides the above-said fact, it is also relevant to be considered that the employee therein (i.e. CWP No. 5715/2005) was granted benefit of Gratuity i.e. Rs. 39040/- on 10-05-2003 and he approached this Hon'ble Court in the year 2005 i.e. within period of limitation but in present writ petition, the petitioner has approached this Hon'ble Court after passing over more than 13 years without defining any reason or cause herein.

- 9. That with regard to the judgment passed in CWP No. 15488 of 2012 i.e. Hari Singh cited by the petitioner, it is submitted that Hari Singh was retired compulsorily as he was not found fit to perform duties of conductor. In this case, the petitioner was never declared unfit for other service by PGIMS Rohtak or Chandigarh. It is, therefore, submitted that the facts of present case are not identical to facts in CWP No. 15488 of 2012, therefore, this judgment also does not tender any help to the present petitioner.
- 10. That it is further submitted that the delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up at this belated stage. The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. The fundamental principle of delay and laches is that the Hon'ble Courts are required to weigh the scale of balance of justice in respect of both parties

and the said principle cannot be given a total go by in the name of liberal approach, otherwise, there would be no end to litigation. In *Government of West Bengal v. Tarun K. Roy, Reported at (2004) 1 SCC 34*7, it has been opined by Hon'ble Supreme Court of India that the persons who approach the court at a belated stage placing reliance upon an order passed in some other case earlier, can be denied the discretionary relief on account of delay and laches. Relevant paragraphs thereof are extracted below:

- "5. So far as the principal issue is concerned, that has been settled by this court. Therefore, there is no quarrel over the legal proposition. But the only question is grant of relief to such other persons who were not vigilant and did not wake up to challenge their retirement and accepted the same but filed writ petitions after the judgment of this court in Harwindra Kumar v. Chief Engineer, Karmik, (2005) 13 SCC 300. Whether they are entitled to same relief or not? Therefore, a serious question that arises for consideration is whether the employees who did not wake up to challenge their retirement and accepted the same, collected their post-retirement benefits, can such persons be given the relief in the light of the subsequent decision delivered by this court?
- 6. The question of delay and laches has been examined by this court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has been pointed out that about 9 writ petitions were filed by the employees of the Nigam before their retirement wherein their retirement was somewhere between 30.6.2005 and 31.7.2005. Two writ petitions were filed wherein no relief of interim order was passed. They were granted interim order. Thereafter a spate of writ petitions

followed in which employees who retired in the years 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 and 2006 much after their retirement. Whether such persons should be granted the same relief or not?

#### XX XX XX

- 16. Therefore, in case at this belated stage if similar relief is to be given to the persons who have not approached the court that will unnecessarily overburden the Nigam and the Nigam will completely collapse with the liability of payment to these persons in terms of two years' salary and increased benefit of pension and other consequential benefits. Therefore, we are not inclined to grant any relief to the persons who have approached the court after their retirement. Only those persons who have filed the writ petitions when they were in service or who have obtained interim order for their retirement, those persons should be allowed to stand to benefit and not others."
- 11. That the facts in this case are not disputed, hence the short reply is being filed with crave leave of this Hon'ble Court to file the detailed written statement if required or ordered by this Hon'ble Court later on.
- 12. That the petitioner was retired from Government service on the basis of certificated issued by the PGIMS, Rohtak where he was declared unfit for further service. That the Haryana Government had not adopted the provision of The Persons with Disabilities Equal Opportunities Protection of Right and Full Participation Act 1995 at the time the petitioner was retired, he was retired on the basis of rules applicable at that time as mention in the above mentioned paragraph. Hence, the action of the respondent to retire the petitioner is fully justified and sustainable in the eyes of law.

In view of the aforesaid facts and circumstances and the factual position discussed above, it is submitted that the petitioner has failed to make out a case for reinstatement in service with all consequential benefits in the manner prayed by him. The contents of writ petition do not serve any help to relief prayed herein.

It is, therefore, prayed that the writ petition is devoid of merits, which may kindly be dismissed in the interest of justice.

Place: Panchkula (Haryana)

Dated: 28-3-19

(Dilbag Singh)
Joint Director

Directorate of Elementary Education, Haryana, Panchkula

#### **VERIFICATION**:

Verified that the contents of Para No. 01 to 12 of this short reply are true and correct to my knowledge and based on information derived from the office record which I believe to be true and correct. Nothing has been kept concealed therein.

Place: Panchkula (Haryana)

Dated: 28 - 3 - 19

(Dilbag Singh)
Joint Director

Directorate of Elementary Education, Haryana, Panchkula

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From

The Legal Remembrancer & Administrative Secretary to Government, Haryana, Law & Legislative Department, Haryana Civil Secretariat. 9th Floor, Room No.38. Sector-1, Chandigarh.

The Advocate General Haryana, Chandigarh. Memo No. 12005 /Co. 1105/H/2020 Dated Chandigarh, the (8/1/20

Subject:-

Proposal for filing LPA in CWP No. 10158 of 2017 on behalf of the State of Haryana against the order dated 14.01.2020 passed by the Hon'ble Punjab and Haryana High Court, Chandigarh titled as Gopi Ram.

Reference your memo/endst.No.18264-69 dated 29.05.2020, on the subject

noted above.

This department agrees with your views that it is a fit case for filing LPA and as such, you are requested to file LPA in the above noted case against the order dated 14.01.2020 of the Hon'ble High Court of Judicature for the State of Punjab and Haryana at Chandigarh within the period of limitation and copy of order is returned herewith.

An application for condonation of delay and stay of operation of the order in

question may also be filed, if needed so.

Further, information and relevant documents etc. may please be obtained from

the department concerned.

The uncertified copy of order/judgment alongwith its enclosures are returned herewith.

Superintendent (General)

for Legal Remembrancer & Administrative Secretary

to Government, Haryana

Endst. No.

/Co. 1105/H/2020

Dated

A copy is forwarded to the:-1. Director General, Elementary Education Haryana, Section-5, Panchkula.

2. District Elementary Education Officer, Jind.

3. Sub Divisional Education Officer (Elementary), Julana, Jind.

4. Accountant General (A&E), Haryana, Sector-33, Chandigarh

for information & necessary action with reference to memo/endst. No. even

dated even from the Advocate General, Haryana to their addresses.

This department agrees with the views of the Advocate General, Haryana. Chandigarh that it is a fit case for filing LPA. Accordingly, the Advocate General, Haryana has been requested to file LPA against the order referred as above in the anticipation of Government sanction which may, please, be accorded/obtained and convey the same to this department and to Advocate General Haryana for filing LPA in this case.

An officer fully conversant with the facts of the case may please be deputed to assist the counsel concerned with all relevant record of the instant case/covered case/referred

case, if any, before filing LPA within the period of limitation.

Superintendent (General) for Legal Remembrancer & Administrative Secretary

to Government, Haryana.

Superintendent HRM-II For Director Elementary Education Haryana, Panchkula