**Grant of benefit of Earned Leave, Maternity Leave and Medical Leave etc.for ad-hoc service period to the teachers working under the Directorate of Secondary Education, Haryana.**

( Copy of E.D. Hr. no.11/73/99/ Edu. iv (3) **dt.7.8.2001**

Reference subject noted above.

The matter regarding grant of certain benefits to the teachers working under the Directorate of Secondary Education , Haryana in the light of following judgment:-

1. Judgment of the Hon,ble Supreme Court of India in Writ Petition no. 4600 of 1983 decided on 16.8.1985 in Rattan Lal and Others vs state of Haryana .
2. Judgment given by Hon,ble Punjab and Haruyana High Court in CWP no. 4050 of 1994 Haryana Rajkiya Adhayapak Sangh vs State of Haryana .
3. Supreme Court of India Petition (s) for SLP no. 20692 of 1996 State of Haryana.

had been under the consideration of the State Govt. for some time.

Now it has been decided by the state Govt. to grant the benifitof Erned Leave, Maternity Leave and Medical Leave etc. for the period of ad-hoc service to the teachers working under the Directorate of Secondary Education in the same way as these benefits are admissible under the rules to the teachers who are in the regular service of the State Govt.

Further in this regard you are requested to frame a policy on the subject of ad-hoc appointment with in a period of two months and get the same approved from the Counsel of Ministers after clearance thereof by the Finance Department

This issue with the concurrence of Finance Department.

IN THE HIGH COURT FOR THE PANJAB AND HARYANA AT CHANDIGARH

C.W.P. No. of 2016

Indra Dhall w/o Sh. Hans Raj, Ex Lecturer (10+2) Govt. Sr. Sec. School Kheri-Sadh Rohtak, resident of House no. 1052 Sector-2, Rohtak. --------------------- -------Petitioner

Versus

1. The State of Haryana through the Principal Secretary to Government, Haryana, School Education Department, New Secretariat Haryana, Sector 17 Chandigarh.

2. The Director-General, Secondary Education Haryana, Shiksha Sadan, Sector 5, Panchkula.

3. The District Education Officer, Rohtak.

……… Respondents

PLACE: CHANDIGARH SURESH AHLAWAT

ADVOCATE

DATED. COUNSEL FOR PETITIONER

CIVIL WRIT PETITION under Articles 226/227 of the Constitution of India for the issuance of a Writ, in the nature of Mandamus directing the respondents to take in to account ad-hoc service rendered by the petitioner from 23.12.1986 to 31.12.1990 towards calculation of Leave ( Earned Leave) for the purpose of leave encashment and release due amount of leave encashment to the petitioner w.e.f. 1.7.2016 ( date of retirement is 30.6.2016) to till the date of actual payment with interest 18**%. in terms of letter** ( E.D. Hr. no.11/73/99/ Edu. iv (3) **dated 7.8.2001 (Annexure P-3)** issued by the Education Department in compliance of Judgment passed by this Hon,ble Court in C.W.P. 4050 of 1994 titled as Rajkiya Adhapak Sangh v/s State of Haryana; and further, also in view of judgment of the Hon,ble Supreme Court in SLP no. 4600 of 1983 titled as Rattan Lal etc. V/s State of Haryana.

***RESPECTFULLY SHOWETH***

1. That the petitioner is a resident of District Rohtak (Haryana) and as such being a citizen of India, she 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.
2. That petitioner was appointed as Science Mistress in the Department of Education ,Haryana and joined on 23.12.1986 in the Govt. Girls Middle School Nigana Distt. Rohtak on ad-hoc basis and further her services were regularized on 1.1.1991 according to regularizing policy of the State Govt. ,when she was posted in Govt. Girls Middle School Roorki (Rohtak). After serving the Department successfully, Petitioner retired from service on dated 30.6.2016 on attaining the age of superannuation from the Govt. Sr. Sec. School Kheri-Sadh (Rohtak) as lecturer 10+2 in the subject of Chemistry. A copy of regularisation order dated 27.6.1991 of the petitioner is being attached herewith as **ANNEXURE P-1** for kind perusal for this Ho,ble Court.
3. That after the retirement from service of the petitioner i.e. on 30.6.2016 respondents released all the retirement benefits admissible to the petitioner i.e. G.P.F, Medical Leave, Gratuity, G.I.S and Leave Encashment of regular service period ( 1.1.1991 to 30.6.2016) but the benefit of Earned Leave of ad-hoc service period ( 23.12.1986 to 31.12.1990) to the petitioner has been not granted by the office of the respondent no.3 .
4. That before the year 1998 large number of teachers appointed on adhoc/contract basis by the education department Haryana and the benefit of the regular pay scale has been given to these persons like the regular teaches but the benefit i.e. Maternity Leave, Medical Leave ,half pay leave and *Earned leave, have not been given to the adhoc teachers, on the ground that this benefit has been granted to only regular employees of the State as per Leave* ***Rules 8.116*** *contained in Punjab C.S.R.Vol.1 Part-1, as applicable to the Haryana. It is pertinent to mention here that earned leave permitted to 10 days on full pay during the year and further in the above said Rule, there is a method of calculation of cash payment in lieu of unutilized earned leave on the date of retirement:-*

|  |  |
| --- | --- |
| ***Cash payment*** | ***Pay + D.A. admissible on date of retirement*** |
| ***30 X*** |

1. *Than large number of representations had been submitted by the adhoc teachers to the State Government for grant the same benefits i.e.* Maternity Leave, Medical Leave ,half pay leave and *Earned leave, which were given to the regular employees because they are also discharging the same duty like regular employees so, they are entitled to the same relief. When the respondents not considered their demand they approached to the Hon,ble High Court by filing various writ petitions and such type of matter reached up to Hon,ble Supreme Court in Rattan Lal case 1985 (3) SLR 548 , one of the writ petition no. 4050 0f 1994 titled as Rajkiya Adhyapak Sangh vs State of Haryana which was allowed on 6.6.1994 by this Hon,ble Court in the light of Rattan Lal case . Conclusion para* ***of the Judgment dated 6.6.1994 is reproduced as under :-***

***4. ” Under the circumstances this writ petition is accepted and a direction is issued to the respondents to grant medical leave, earned leave, maternity leave ,etc to the petitioners . No cost.”***

*The copy of the said order dated 6.6.1994 passed by this Hon,ble Court is annexed herewith as* ***Annexure P-2.***

1. *That in compliance of order dated 6.6.1994 passed in CWP no. 4050 0f 1994 and upheld by Hon,ble Supreme Court of India, the respondents settled this controversy and respondent no.1 had issued a letter dated 7.8.2001, where by, granted this benefit to all teachers in the state who have worked/working on adhoc basis. The copy of the letter dated 7.8.2001 is annexed herewith as* ***Annexure P-3.***
2. *That petitioner utter surprised after her retirement from service when she was given the benefit of leave encashment ( earned leave) only for the regular period of her service i.e. 1.1.1991 to 30.6.2016 and her adhoc service period (23.12.1986 to 31.12.1990) not counted for leave encashment. Official of the Respondent no.3 told to the petitioner that regarding this period ( adhoc ),no letter or order of the court received.*
3. *That this benefit of ad-hoc service as allowed by the Hon,ble Supreme Court and this Hon,ble Court should have been extended to all the teachers .This was the bounded duty of the respondents to have done so. It is further submit that it has been settled by this Hon,ble Court in a long line of cases and respondent itself issued the general order annexure P-3 to extend this benefit of ad-hoc service to all teachers, but the respondents are harassing the petitioner and compel to approach this Hon,ble High Court. It is further mentioned here that respondents are doing step-motherly treatment in the case of the petitioner which is continued as no order has been passed .*
4. *That there is sufficient judicial weight of precedents in favour of the petitioner because respondents have unsettled the settled position for the benefit of ad-hoc period .*
5. *That petitioner have been representing to the respondents to extend benefit of leave encashment/earned leave but nothing has been done . Finally the petitioner sent a legal notice through counsel vide notice dated 24.9.2016 to the respondents that she be granted the benefit of earned leave attached with the ad-hoc service. The copies of these representation and legal notice are annexed herewith as* ***Annexure P-4 and 5*** *respectively.*
6. *That act of the respondents is not extending benefit of leave encashment/ earned leave of the ad-hoc service rendered by the petitioner, in spite of the law laid down by the Hon,ble Supreme Court and this Hon,ble Court and letter dated 7.8.2001 (Annexure P-3). is highly arbitrary, discriminated , illegal and violative of law of equity.*
7. That the main law points involved in this writ petition are as under:-
8. 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 case of the petitioner is covered vide Annexure P-3 ?

1. 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.
2. 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 of India for seeking the same relief against the impugned action of the respondents.

**PRAYER**

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: -

1. a Writ in the nature of Mandamus directing the respondents to take in to account ad-hoc service rendered by the petitioner from 23.12.1986 to 31.12.1990 towards calculation of Leave ( Earned Leave) for the purpose of leave encashment and release due amount of leave encashment to the petitioner w.e.f. 1.7.2016 ( date of retirement is 30.6.2016) to till the date of actual payment with interest 18%. in terms of letter dated 7.8.2001 ( Annexure P-3) issued by the Education Department in compliance of Judgment passed by this Hon,ble Court in C.W.P. 4050 of 1994 titled as Rajkiya Adhapak Sangh v/s State of Haryana and further also in view of judgment of the Hon,ble Supreme Court in SLP no. 4600 of 1983 titled as in Rattan Lal etc. V/s State of Haryana.
2. 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 circumstances of this case and to which the petitioner is found entitled in law justice and equity.
3. Filing of true typed of annexures and certified copy of Annexures be also dispensed with;
4. Costs of the present writ petition be also awarded in favour of the petitioner and against the respondents.

CHANDIGARH Through: Petitioner

DATED: **(SURESH AHLAWAT)**

**ADVOCATE**

**Counsel for the petitioner.**

***VERIFICATION***

Verified that the contents of Para No. 1 to 11 and 13 and 14 of the writ petition are true and correct to my knowledge. Legal submissions made in para no. 12 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:-

IN THE HIGH COURT FOR THE PANJAB AND HARYANA AT CHANDIGARH

C.W.P. No. of 2016

Indra Dhall -------------------------------- Petitioner

Versus

The State of Haryana and others -------------------------Respondents

Affidavit of Indra Dhall w/o Sh. Hans Raj resident of House no. 1052 Sector-2, Rohtak. 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 on 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.

CHANDIGARH

DATED . .2016

*VERIFICATION*

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.

CHANDIGARH

DATED .2016

THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

**C.W.P. No. OF 2016**

**Indra Dhall …….. …. …Petitioner**

**Versus**

**State of Haryana and others. ------------- Respondents**

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*NOTES:-*

1. The main law points canvassed in this writ petition are contained in para No. at page and thereof.

2. *Relevant Acts and Statutes* - Constitution of India.

3. Whether any Caveat/Petition has been filed in this case of not. -Nil-

4. *Similar Case, if any*. -Nil-

CHANDIGARH ( SURESH AHLAWAT )

DATED : .10.2016 ADVOCATE

COUNSEL FOR THE PETITIONER

**LIST OF EVENTS**

**23.12.1986** That petitioner was appointed as Science Mistress in the Department of Education ,Haryana and joined on 23.12.1986 in Govt. Girls Middle School Nigana Distt. Rohtak on ad-hoc basis.

**01.01.1991** Petitioner’s services were regularized on 1.1.1991 according to regularizing policy of the State Govt.

**17.07. 1996** Petitioner was promoted as Lecturer Chemistry in Sr.Sec. School ( 10+2) from the post of Science Mistress.

**30.06.2016** Petitioner retired from service on dated 30.6.2016 on attaining the age of superannuation her from the Govt. Sr. Sec. School Kheri-Sadh (Rohtak) as lecturer 10+2.

**That after** the retirement from service i.e. on 30.6.2016 respondents released all the retirement benefits admissible to the petitioner i.e. G.P.F, Medical Leave, Gratuity, G.I.S etc. but Leave Encashment granted to her, only regular service period i.e 1.1.1991 to 30.6.2016 but the benefit of Earned Leave of ad-hoc service period i.e. 23.12.1986 to 31.12.1990 of the petitioner not considered by the office of the respondent 3.

Where as, such type of controversy already has been settled by the this Hon,ble Court and further in compliance of the various orders passed by the this Hon,ble Court, respondent no. 1 has already been issued the general order / letter dated 7.8.2001 **(Annexure P-3 )** to give the ad-hoc service benefits to all such teachers in the State of Haryana, who have worked on adhoc basis.

***23.8.2016***  *That petitioner has been representing on dated 23.8.2016 to the respondents to extend benefit of leave encashment/earned leave to her but nothing has been done . Finally the petitioner sent a legal notice through counsel vide dated 24.9.2016 to the respondents that she be granted the benefit of earned leave attached with the ad-hoc service.*

but no action has been taken so far.

--------- Hence, the present writ petition.

CHANDIGARH ( SURESH AHLAWAT )

DATED : .10.2016 ADVOCATE

COUNSEL FOR THE PETITIONER

**SURESH AHLAWAT, ADVOCATE**

**PUNJAB & HARYANA HIGH COURT**

**CHAMBER NO. 62, CHANDIGARH. ( 94171-11917)**

**=================================================**

**Registered A.D. Dated :-**

**TO**

Financial Commissioner cum Principal Secretary to Government Haryana, School Education Department, New Secretariat Haryana, Sector 17 Chandigarh.

2. The Director-General, Secondary Education Haryana, Shiksha Sadan, Sector 5, Panchkula.

3. The District Education Officer, Rohtak.

**Sub. Legal Notice cum Final Demand Notice**

Under the instructions from and on behalf of Indra Dhall w/o Sh. Hans Raj, Ex Lecturer (10+2) Govt. Sr. Sec. School Kheri-Sadh Rohtak, presently resident of House no. 1052 Sector-2, Rohtak. (hereinafter referred to my client ) I hereby serve upon you with the following legal notice:-

1. That my client was appointed as Science Mistress in the Department of Education, Haryana on 23.12.1986 and joined in Govt. Girls Middle School Nigana Distt. Rohtak on ad-hoc basis and further her services were regularized on 1.1.1991 according to the regularisation policy of the State Govt. . On dated 17.7.1996, she was promoted as Lecturer from the post of Science Mistress. After serving the department successfully, she retired from service on dated 30.6.2016 on attaining the age of superannuation from the Govt. Sr. Sec. School Kheri-Sadh (Rohtak) as lecturer 10+2 in the subject of Chemistry.
2. That after the retirement from service on 30.6.2016, all the retirement benefits admissible to her i.e. G.P.F, Medical Leave, Gratuity, G.I.S etc were released except benefit of Leave Encashment of adhoc period i.e. 23.12.1986 to 31.12.1990 where as, benefit of Leave Encashment of her regular service period i.e. 1.1.1991 to 30.6.2016 had been released . The benefit of leave encashment/ Earned Leave of ad-hoc service period i.e. 23.12.1986 to 31.12.1990 was not granted by the office of the respondent no.3 (Section Officer) whereas, she was fully entitled to this benefit .
3. That despite the repeated requests by her, to their respective Drawing& Disbursing officers to grant her the benefit of Earned Leave from the date of her joining the service i.e. ,23.12.1986 on ad-hoc basis. No response has been given by the concerned authorities to my client and you have denied the right of benefit of Earned Leave of ad-hoc service period in utter violation of the rules. This action of the concerned authorities in denying the benefit of earned leave from the date of joining ad-hoc service (23.7.1986 to 1.12.1990) which should have accrued to her. It is unjust, illegal, arbitrary and violation of various orders passed by the Hon,ble Pb. & Har. High Court and Hon,ble Supreme Court, and your general order/ letter E.D. Hr. No.11/73/99-Edu. 1V, (3) **dated 7.8.2001** **Annexore -1** was issued by your department in compliance of the order passed by the Hon,ble Courts.
4. That as per observation of the Hon,ble Supreme Court of India in the case reported as “Rattan Lal and Others vs State of Haryana i.e. 1995 Vol.111, SLR Page 548, it is clear enough that ad-hoc employees are not only entitled to the benefit of medical leave /maternity leave allowances but also of other privileges available to other Gove. Servants as long as they hold the office . This benefit i.e. leave encashment /earned leave has been unreasonably denied to my client on account of her adhoc appointment which amount to breach of the spirit of Article 14 and 16 of the Constitution of India . In the light of the above observation by the Apex Court the Hon,ble Punjab & Haryana High Court has also decided in CWP No.4050 of 1994 titled as Rajkiya Adhayapak Sangh vs State of Haryana that benefit of earned leave shall be paid to the adhoc employees also. Hence , the instructions of the office of the D.E.O. Rohtak is denying the benefit of earned leave of adhoc period is illegal , arbitrary and in violation of Article 14 and 16 of the Constitution of India.
5. *That when the benefit of ad-hoc service as allowed by the Hon,ble Supreme Court and Hon,ble High Court should have been extended to all the teachers who worked on adhoc basis like other State Govt. employees .This was the bounded duty of your , to have done so. It had been settled by this Hon,ble Court in a long line of cases and you issued the yourself general order dated 7.8.2001 Annexure- 1 to extend this benefit of ad-hoc service to all the teachers. This way my client is being compelled to approach this Hon,ble High Court. It is further to mention here that you are doing step-motherly treatment in the case of my client which is continuing as no order has been passed as yet.*
6. *That there is sufficient judicial weight of precedents in favour of my client because you want to unsettled the settled position for the benefit of ad-hoc period .*
7. You are , therefore , requested through this Notice to allow the benefit of Earned Leave/Leave Encashment to my client from the date of her joining the service on ad-hoc basis as Science Mistress till her services were regularised i.e (23.7.1986 to 1.12.1990) **with in a pried of 15 days** from the date of receipt of notice failing which my client will be left with no other alternative except to file the writ petition in the Hon.ble Punjab & Haryana High Court, Chandigarh and in that case all the concerned authorities shall be responsible for all types of costs and litigation expenses . Please take this notice and ensure compliance.

A copy of this notice has been retained in my office for further reference and record.

**Encl.Annexure-1** -! letter E.D. Hr. no.11/73/99-Edu. 1V (3) **dated 7.8.2001**

Yours faithfully

SURESH AHLAWAT

ADVOCATE

*respondent hence cannot put forth any reply to the ground taken by the petitioner in the sub-para under reply.*

***(vii)******That*** *in reply to contents of sub-para(vii) of para 10 of the writ petition it is most humbly submitted that the answering respondent has not framed the notification under challenge but is to merely follow it. The petitioner in the entire petition has not raised any contention against the answering respondent. The answering respondent hence cannot put forth any reply to the ground taken by the petitioner in the sub-para under reply.*

*10* ***That*** *contents of para 10 of the writ petition needs no reply.*

*11 That contents of para 11of the writ petition needs no reply.*

*12 That contents of para 12 of the writ petition needs no reply.*

*13 That contents of para 13 of the writ petition needs no reply.*

*In view of the above mentioned facts and circumstances of the case it is submitted that respondent/ Corporation has no role in the issuance of the notification under challenge Than the petition only to be decided on the averments made by the petitioner as well as others respondents.*

***Place:***

***Date Answering Respondent no.5***

***HSDC***

***Through Counsel***

***SURESH AHLAWAT***

***VERIFICATION- Verified that the contents of my above written statement are true and correct to my knowledge. No part of it is wrong and nothing has been kept concealed therein.***

***Place:***

***Date Answering Respondent no.5***

***HSDC***

1. The Director-General, Elementary Education Haryana, Shiksha- Sadan, Sector 5, Panchkula.

2.. The District Elementary Education Officer, Jind.

**Sub. Legal Notice - cum - Demand for Justice**

**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 policy of the State Govt. .
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 , 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, 1995. Which is reproduced below for prompt 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.

**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 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 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 ln the case of SATBIR SINGH & OTHERS VS THE STATE OF HARYANA REPORTED 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.

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 aIl 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 Yours Sincerely

SURESH AHLAWAT

Advocate

IN THE HIGH COURT FOR THE PANJAB AND HARYANA AT CHANDIGARH

C.W.P. No. of 2017

Smt. Meena Devi w/o Sh. Gopi Ram . Science Master (Retd), Education Department Haryana , resident of Village & P.O. Garhwali Block, Julana Distt. Jind

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.

5. Accountant –General ( A&E) Haryana Sector -33-B, Chandigarh

……… Respondents

PLACE: CHANDIGARH SURESH AHLAWAT

ADVOCATE

DATED. COUNSEL FOR PETITIONER

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-2) passed by the respondent no.4 , vide which the husband of the petitioner ,who was working as Science master in the education department ,Haryana has been compulsory retired/relieved w.e.f 9.6.2004 from Government Service ,arbitrary and illegally and further a writ in the nature of Mandamus be issued to grant him/her all consequential service benefits with interst, considering the husband of the petitioner on Government duty till he attains the superannuation age i.e 30.6.2024 for all purposes and intents w.e.f. 9.6.2004 (retiring 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, she 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 husband of the petitioner is in not fit to pursue this matter on account of the **DEMENTIA** according to“**HEAD INJURY, therefore**, petitioner is filling the present petition being legally representative/wedded wife and appointed as Guardian by Civil Court ,Jind of her husband Sh. Gopi Ram. Copy of order dated 11.4.2008 to this effect is attached as **Annexure P-1.**
2. **That** on 16.12.1988 petitioner’s husband Sh. Gopi Ram 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, the husband of the petitioner was medically examined by the competent authority to ascertain that as to whether the petitioner’s husband is fit to be appointed on the post of Science Master .The concerned medical authority after medically examining the petitioner’s husband Sh. Gopi Ram declared him fit to be appointed on the post of Science Master in Education Department ,Haryana.

**4. That** unfortunately, during the service the husband of the petitioner met with a fatal road accident on 17.10.2002 and due to head injury he remained in COMA for many months and remained under treatment. The petitioner’s husband ,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** “suffering by him which has been 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 husband of the petitioner is lying in COMA being 100 percent incapacitated .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 that husband of the petitioner has been exhausted all kind of leave between the period of October 2002 to June 2004.

5. **That o**n 9.6.2004 petitioner ’s husband subsequently retired/ relieved 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. Gopi Ram Science Master having been declared incapacitated for 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’s husband w.e.f 9.6.2004 accordingly , the service benefits i.e. Gratuity/DCRG of the petitioner’s husband 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 retired/relieved the husband of 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 retired 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 statutary provision of Section 47 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 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.**

Accordingly , the petitioner’s husband 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 husband of the petitioner has to be created as per the requirement of section 47 of the Act. Therefore petitioner ,s husband 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. 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, husband of 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 husband of the petitioner is unfit for further service as Science Master but nowhere, it is declared that the husband of the petitioner is completely unfit for further service , So the respondents are bound to kept the husband of the petition on supernumerary post till he attains the superannuation age i.e. 31.5.2024.

**10..** **That d**ate of birth of petitioner’s husband Sh. Gopi Ram is 8.5.1966 and he will attain the superannuation age on 8.5.2024. Petitioner’s husband 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’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. Petitioner’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..

**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,S HUSBAND WAS ENTITLED TO CONTINUE UP TO THE AGE OF SUPPERNNUTION.**

So, in view of the above provisions since the petitioner’s husband has been declared unfit for the post of Science Master, then he has to be kept on a supernumerary post until a until he attained the age of supernumerary. So the action of the respondent to relieve the petitioner’s husband 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 matter of surprise that the benefit of such law has not yet been extended to petitioner’s husband by the respondents / department. She 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 Sevction47 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:-**

“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 to to this effect is attached as **Annexure P-5.**

**iv. THAT PROVISION OF SECTION 47 OF THE “Persons with Disabilities ( Equal Opportunities, Protection of Rights and Full Participation Act, 1995, IS A RULE OF SPACIAL ACT , WHERE AS RULE 5.11 OF PUNJAB CIVIL SERVICE RULE IS THE GENRAL RULE . IT IS STELLED PROPOSITION OF LAW THAT SPACIAL ACT WILL PRIVAIL OVER GENRAL LAW .**

**V.** **THAT THE ACTION OF THE PERPODENTS NOT TO GRANT THE SALARY TO THE PETITIONER,S HUSBAND AFTER 9.6.2004 ( Date of retiring from Service IS ON THE FACE OF IT ILLEGAL AND CONTRARY TO THE PROVISIONS OF SECTION 47 OF THE 1995 ACT.**

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

**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’S HUSBAND. 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 retire/ relieve the petitioner’s husband Sh. Gopi Ram Science from Government service and grant the 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.

13 **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 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’s husband 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 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 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’s husband sh. Gopi Ram compulsory 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”.

***Further* 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)**

**“ ……..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 passed by this Hon,ble Court to this effect is attached as Annexure P-7.**

**16. That** the main law points involved in this writ petition are as under:-

1. 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”.

**17.** **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.

**18. 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 of India for seeking the same relief against the impugned action of the respondents.

**PRAYER**

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: -

a Writ, in the nature of Certiorari for quashing the impugned order dated 14.6.2004 (Annexure P-2) passed by the respondent no.4 , vide which the husband of the petitioner ,who was working as Science master in the education department ,Haryana has been compulsory retired/relieved w.e.f 9.6.2004 from Government Service ,arbitrary and illegally and further a writ in the nature of Mandamus be issued to grant him/her all consequential service benefits with interest, considering the husband of the petitioner on Government duty till he attains the superannuation age i.e 31.6.2024 for all purposes and intents w.e.f. 9.6.2004 (retiring 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

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

CHANDIGARH Through: Petitioner

DATED: **(SURESH AHLAWAT)**

**ADVOCATE**

**Counsel for the petitioner.**

***VERIFICATION***

Verified that the contents of Para No. 1 to 13 and 15 and 16 of the writ petition are true and correct to my knowledge. Legal submissions made in para no. 14 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:-

IN THE HIGH COURT FOR THE PANJAB AND HARYANA AT CHANDIGARH

C.W.P. No. of 2017

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 on 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.

CHANDIGARH

DATED . .2017

*VERIFICATION*

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.

CHANDIGARH

**THE HIGH COURT OF PUNJAB AND HARYANA**

**AT CHANDIGARH**

**C.W.P. No. OF 2017**

**Meena Devi ….. …. …Petitioner**

**Versus**

**State of Haryana and others. ------------ Respondents**

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***NOTES:-***

**1. The main law points canvassed in this writ petition are contained in para No. at page and thereof.**

**2. *Relevant Acts and Statutes* - S.47 of “*The* Persons with Disabilities ( Equal Opportunities, Protection of Rights and Full Participation Act, 1995” and Constitution of India.**

**3. Whether any Caveat/Petition has been filed in this case of not. -Nil-**

**4. *Similar Case, if any*. Controversy in the present writ petition is squarely covered by the decision of the Hon,ble Supreme Court titled as Kunal Singh v/s Union of India as re[ported in 2003 SCC (L&S) 482 and further covered by the judgment of this Hon,ble Court in 2007(2) RSJ 16 (AnnxureP-5.)**

**Facts of the cases**

**In view of the provisions of Section 47 of Persons with Disabilities ( Equal Opportunities, Protection of Rights and Full Participation Act, 1995” if any employee declared medically unfit then he is entitled to be adjusted on equal post and if equal post is not available then he has to be kept on supernumerary post till he attains the age of superannuation.**

**Similar is the controversy in the present case.**

**CHANDIGARH ( SURESH AHLAWAT )**

**DATED : 10 .1.2017 ADVOCATE**

**COUNSEL FOR THE PETITIONER**

**LIST OF DATS AND EVENTS**

**8.5.1966** The date of birth of the petitioner’s husband is 8.5.1966 and the petitioner’s husband will attaint the superannuation age on 31.5.2024

**16.12.1988** The petitioner’s husband 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 during the service, the husband of the petitioner met with a fatal road accident on 17.10.2002 and due to head injury he remained in COMA for many months and remained under treatment. ,according to Medical Report dated 9.6.2004 submitted by the Special Medical Board of PGMIS, Rohtak he 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** “suffering by him.

**9.6.2004** The petitioner’s husband 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 sent a legal notice through counsel vide notice dated 3.11.2016 to the respondents.*

***10.1.2017*** *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,S HUSBAND 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**

iv. **THAT PROVISION OF SECTION 47 OF THE “Persons with Disabilities ( Equal Opportunities, Protection of Rights and Full Participation Act, 1995, IS A RULE OF SPACIAL ACT , WHERE AS RULE 5.11 OF PUNJAB CIVIL SERVICE RULE IS THE GENRAL RULE . IT IS STELLED PROPOSITION OF LAW THAT SPACIAL ACT WILL PRIVAIL OVER GENRAL LAW .**

**V.** **THAT THE ACTION OF THE PERPODENTS NOT TO GRANT THE SALARY TO THE PETITIONER,S HUSBAND AFTER 9.6.2004 ( Date of Relieving from Service ) IS ON THE FACE OF IT ILLEGAL AND CONTRARY TO THE PROVISIONS OF SECTION47 OF THE 1995 ACT.**

**vi. THAT EVEN THE RESPODENTS ARE WRONGLY READING THE REPORT OF THE MEDICAL BOARD (P-1)**

**vii. 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 ( SURESH AHLAWAT )**

**DATED : 10 .1.2017 ADVOCATE**

**COUNSEL FOR THE PETITIONER**

IN THE HIGH COURT OF PUNJAB AND PUNJAB AT

CHANDIGARH

C.M No. of 2017

IN CWP. NO 1024 of 2017

Meena Devi ------------ Petitioner

VERSUS

State of Haryana and another ------- Respondents

Application under section 151 of CP.C. praying for placing on record amended memo of parties

RESPECTFULLY SHOWETH:-

1. That the above cited writ petition is fixed before this Hon'ble Court for 1.3.2017 .
2. That on 23.1.2017 during the course of argument, it was observed by this Hon,ble Court that since the husband of the petitioner is 100% permanent disabled and is not able to pursue his case , the case should have filed in the name of husband of petitioner Sh. Gopi Ram through his legal guardian –wife “Hon,ble Court directed to the petitioner to fill amended memo of parties instead by his wife . Hence for the correct adjudication of the case, the applicant name the present application to amend the memo of parties accordingly. Amended memo of parties is attached herewith. It is, therefore, respectfully prayed that petitioner may kindly be permitted to amend the memo of parties and be permitted to placing on record the amended memo of parties in the interest of justice.

CHANDIGARH

DATED:- .2017 SURESH AHLAWAT

ADVOCATE

COUNSEL FOR THE PETITIONER

IN THE HIGH COURT FOR THE PANJAB AND HARYANA AT CHANDIGARH

C.W.P. No. of 2017

Gopi Ram s/o Sh. Jai Karan (retd.. Science Master) through his legal Guadian /representative Smt. Meena Devi w/o Sh. Gopi Ram resident of Village & P.O. Garhwali Block, Julana Distt. Jind

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.

5. Accountant –General ( A&E) Haryana Sector -33-B, Chandigarh

……… Respondents

PLACE: CHANDIGARH SURESH AHLAWAT

ADVOCATE

DATED. COUNSEL FOR PETITIONER

HON’BLE HIGH COURT OF PUNJAB & HARYANA,

C.M No. of 2017

IN CWP. NO 1024 OF 2017

Meena Devi ------------ Petitioner

VERSUS

State of Haryana and another -------Respondents

I N D E X

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| S.  No. | Particulars | Date | Pages |
| 1. | Application u/s 151 C.P.C for placing on record memo of parties | 20.2.2017 | 1 |

2. Power of Attorney already on record

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CHANDIGARH

DATED:- .2017 SURESH AHLAWAT

ADVOCATE

COUNSEL FOR THE PETITIONER

IN THE HIGH COURT OF PUNJAB AND PUNJAB AT

CHANDIGARH

CRM No. of 2017

IN CRR(F) NO 280 of 2015

Neha Verma ------------ Petitioner

VERSUS

Gaurav ----- ------- Respondent

Application under section 482 Cr.P.C praying for placing on record Statement of Account of the respondent

RESPECTFULLY SHOWETH:-

1. That petitioner is filing accompanying petition before this Hon'ble Court which is fixed for 28.2.2017 and is sanguine for acceptance of the same.
2. That petitioner wants to place on record the monthly salary slip of the respondent for the month of MAY-2015 for proper adjudication of the matter .

It is, therefore, respectfully prayed that petitioner may kindly be permitted for placing on record the statement of account, in the interest of justice.

CHANDIGARH

DATED:- .2017 SURESH AHLAWAT

ADVOCATE

COUNSEL FOR THE PETITIONER