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 ) 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.

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

PLACE: CHANDIGARH SURESH AHLAWAT

ADVOCATE

DATED. .3.2017 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-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***

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**,

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.**

1. **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. .
2. **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 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 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 o**n 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. 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 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 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.**

1. **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**

1. 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;
2. To create barrier free environment for persons with disabilities;
3. To remove any discrimination against persons with disabilities in the sharing of development benefits, vis-vis non-disabled persons:
4. To counteract any situation of the abuse and the exploitation of persons with disabilities;
5. To lay down a strategies for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities ; and
6. 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 declared that the petitioner is completely unfit for further service , So the respondents are bound to kept the petitioner on supernumerary post till he attains the superannuation age i.e. 31.5.2024.

**10..** **That d**ate 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 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 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 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 SERVICE RULE IS THE GENRAL RULE . IT IS STELLED 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.**

**vi. THAT IT WAS THE DUTY OF THE SUPRIOR 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.

13 **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. 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 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)**

**“ ……..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.**

**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:-

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”.

**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 of India for seeking the same relief against the impugned action 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**

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

CHANDIGARH Through:

DATED: **(SURESH AHLAWAT)**

**ADVOCATE**

**Counsel for the 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:-

**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 .

1. 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.
2. In the course of exparte evidence , petitioner herself appeared in the witness –box as PW-1, has examined Ram Kishan as PW-2 and Jagdish Rai as PW-3.
3. I have heard Ld. Counsel for the petitioner and gone through the file carefully.
4. 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.
5. 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

**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-

Sub Divisional Education Office

Jind.

Letter no. same dated same---

One copy of this ,sent for information following-

1. Concerned employee
2. EI ( total) Sd-

Sub Divisional Education Office

Jind. .14.6.2004

IN THE HIGH COURT FOR THE PANJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 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 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 . 3.2017

*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 Dated : 3.2017

**THE HIGH COURT OF PUNJAB AND HARYANA**

**AT CHANDIGARH**

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

**Gopi Ram through his wife Smt. Meena Devi ….. …. …Petitioner**

**Versus**

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

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**Total Court Fee Rs.**

***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 reported in 2003 SCC (L&S) 482 and Bhagwan Dass Case (Civil Appeal no.8 of 2008 ) 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 : .3.2017 ADVOCATE**

**COUNSEL FOR THE PETITIONER**

**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.*

***.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**

iv. **THAT PROVISION OF SECTION 47 OF THE “Persons with 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 Relieving from Service ) IS ON THE FACE OF IT ILLEGAL AND 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)**

**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 : .3.2017 ADVOCATE

COUNSEL FOR THE PETITIONER