

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

CWP No.13267 of 2013

Date of Decision: 16.01.2015

Kharaiti Lal

....Petitioner

Vs.

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Ms. Anu Chatrath, Senior Advocate with
Mr. Rakesh Sobti, Advocate
for the petitioner.

Dr. Sushil Gautam, DAG, Haryana

Mr. Arvind Seth, Advocate
for respondents No.3 to 5.

Amol Rattan Singh, J (Oral)

Civil Misc. No.11546 of 2014

Notice in this application was issued on 19.09.2014, returnable on 07.10.2014; however, no reply has been filed thereto.

Since only additional information/document is sought to be placed on record as Annexure P-8, which in any case are instructions issued by the Government, the instructions dated 31.01.2006 are taken on record as Annexure P-8.

CWP No.13267 of 2013

The sole issue in this case is whether the petitioner, who is admittedly disabled to the extent of 75%, as certified by the Medical Board constituted in the PGIMS, Rohtak on 05.04.2013 (Annexure P-7), is entitled

to remain in service of the respondents up to the age of 60 years, in terms of the instructions dated 31.01.2006 and subsequent instructions dated 21.04.2008, or has to be retired at the normal age of superannuation, i.e. 58 years.

Vide instructions dated 31.01.2006, it was stated as under:-

“2. With a view to maintaining uniformity in the matter of retirement age in respect of Handicapped employees, the Government, on further consideration of the matter, has decided to raise the normal retirement age of such disable Group 'A' to Group 'D' employees who possess the minimum degree of disability of 70%, from 58 to 60 years.

3. This decision shall come into force at once.”

Thereafter, the instructions dated 21.04.2008 state as under:-

“I am directed to invite your attention to Haryana Government instructions issued vide letters No.34/7/2006-4GSI, dated 31st January, 2006 on the subject noted above by which the retirement age of the physically disabled Government employees, who possess the minimum degree of disability to the extent of 70% or above, has been raised from 58 to 60 years. Further, it was decided by the Government vide letter No.34/1/2006-4GSI, dated 28th March, 2006 that the Medical Board constituted under the Chairmanship of CMO of the district will be competent to issue medical certificate for the purposes of disability for extension in service beyond 58 years to the physically disabled employees.

2. The matter has been reconsidered by the State Government and it has been decided that for the purpose of giving extension beyond 58 years in the case of physically disabled employees, the Medical Board of the PGIMS, Rohtak shall be designated as the Medical Board for the State and its Director shall personally head the said Board. Accordingly, all such cases, where extension in service beyond the age of 58 years is sought on the grounds of physical disability, be referred to the said Board for the issue of Medical Certificate of disability to the such employees. However, on receipt of the medical report from the

Board, the Competent Authority shall take a decision to grant or not to grant the extension in service to such physically disabled employees.

3. These instructions shall come into force immediately. This decision may please be brought to the notice of all concerned for strict compliance.”

It is also not in dispute that these instructions are applicable to the respondent-Federation (HAFED). Mr. Arvind Seth, learned counsel appearing for respondents No.3 to 5, however, submits that as is stated at the last part of paragraph 2 of the aforesaid instructions, to the effect that after the receipt of the medical report from the Medical Board, the competent authority shall take a decision to grant or not to grant the extension in service to such physically disabled employees, it would mean that it is the subjective satisfaction of the competent authority to take a decision, even after the Medical Board has certified an employee to be more than 70% physically disabled.

In my opinion, reading both the instructions together, i.e. those of 31.01.2006 and 21.04.2008, such an inference does not flow therefrom, as all that was clarified by the subsequent instructions of 2008, was that the extension beyond 58 years should be given only to such persons as are certified by the Medical Board headed by the Director of the PGIMS, Rohtak, himself, to the effect that they are actually physically disabled to the extent of 70% and above.

The said inference is obvious from the opening lines of paragraph 2 of the 2008 instructions, which state that the matter has been

reconsidered and that for the purpose of “giving extension beyond 58 years in the case of physically disabled employees, the Medical Board of the PGIMS, Rohtak shall be designated as the Medical Board for the State.....”. ;

The reasoning being that, a fully competent Board at a centralized level, takes a decision on the aforesaid and it is not left to the decision of non-specialized doctors at a local district level.

Thus, the decision to be taken by the competent authority, to continue a person in service till the age of 60 years, or to retire him at the age of 58 years, would only be dependent upon as to whether the Medical Board headed by the Director, PGIMS, Rohtak, certifies to the effect that the employee is 70% or more physically disabled or not. Beyond that, the competent authority has no jurisdiction to refuse to continue an employee up to the age of 60 years, if he has been certified to be physically disabled to the extent of 70% or more.

It needs to be noted that no disciplinary proceedings, or reasons for pre-mature retirement, are given in the impugned order. Obviously, when the petitioners' age for superannuation is 60 years in terms of the above said instructions, he cannot be ordered to be retired from service at the age of 58 years.

Consequently, this petition is allowed. The petitioner, who is stated to be completing the age of 60 years sometime in the month of April,

2015, thereby taking his date of superannuation to 30.04.2015, (in terms of the aforesaid instructions), is ordered to be reinstated immediately. He would be given consequential benefits within a period of two months from the date of receipt of a certified copy of this order.

January 16, 2015
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(Amol Rattan Singh)
Judge