

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 24807 of 2012 (O&M)

Date of decision : 17.8.2015

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Jasmer Ram

.....Petitioner

vs.

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. P.K. Sachdev, Advocate for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General,
Haryana

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| 1. <i>Whether Reporters of local papers may be allowed to see the judgment?</i> | yes |
| 2. <i>To be referred to the Reporters or not?</i> | yes |
| 3. <i>Whether the judgment should be reported in the Digest?</i> | yes |

P.B. Bajanthri, J.

The petitioner has questioned the order dated 13.1.2012 by which he has been retired from service w.e.f. 31.1.2012 from the post of Mechanic, on attaining the age of 58 years vide Annexure P-1 and further sought directions to the respondents to reinstate him with continuity of service with all consequential service benefits as per the Government Policy dated 31.1.2006 vide Annexure P-5.

(2) The petitioner was selected and appointed to the post of Helper in the Haryana Roadways, Ambala. It is learnt that he was

promoted to the post of Mechanic. He has attained 58 years on 31.1.2012. Thus a retirement order was issued on 13.1.2012 that the petitioner would be retiring on 31.1.2102 on attaining the age of 58 years under Rule 3.26 of Punjab Civil Service Rules, Volume I, Part I.

(3) The grievance of the petitioner is that he is entitled for extension of two years of service, namely, from 58 years to 60 years, as per the policy dated 31.1.2006. An extract of the policy is reproduced hereunder:-

“(Copy of C.S.Hr.No. 34/I/2006-4GSI dt. 31.1.2006)

“9.8 Raising the age of retirement of the physical Handicapped Government employees from 58 to 60 years.

I am directed to invite your attention to rule 3.26 (a) of the Punjab Civil Service Rules Volume-I, Part I, which inter alia provides for the age of superannuation of Haryana Government Employees as 58 years except in case of Judicial Officers, Group IV and Blind Employees in whose case such age has been prescribed as 60 years.

2. With a view to maintain 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 disabled 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 in to force at once.

This decision may be brought to the notice of all concerned for compliance.”

(4) Subsequently, policy was modified on 12.6.2007 to the extent of degree of disability from 70% to 75%. On 28.3.2006, certain clarifications were issued in respect of policy relating to raising the age of retirement of physically handicapped Government employees from 58 to 60 years, certificate thereof. Clarification is to the extent that who is competent authority for issue of medical certificate, time limit upto which the disability certificate would require to be submitted etc.

(5) In this background on 18.1.2012, the petitioner himself was subjected to Medical Board consisting of Principal Medical Officer, Civil Surgeon and Orthopedic Surgeon, Ambala, wherein a certificate has been issued that petitioner's disability is to the extent of 40%. As per policy of the Government, the concerned department/authority should have subjected the petitioner for medical examination, namely, Office of Medical Superintendent, PGIMS Rohtak. However, due to negligence of concerned officer/department, the petitioner was not subjected to medical examination before the aforesaid authority. On 7.8.2015, the petitioner was subjected to medical examination before the medical Board, PGIMS, Rohtak, on

the directions of this Court. On 7.8.2015, Medical Board after examining the petitioner, made a communication to the General Manager, Haryana Roadways, Ambala, stating that the petitioner's disability is 75%, as he is suffering from “degenerative cervical spine with operated case of lumbar spine with quadriparesis with hesitancy of bowel”. Thus the petitioner is aggrieved by the order retiring him at the age of 58 years whereas, he is entitled to continue in service till he attained 60 years, has been deprived by the concerned respondent. Hence the petition.

(6) Learned counsel for the petitioner submitted that he is entitled to the benefit of extension of service from 58 years to 60 years as per the policy earmarked for the physically handicapped employees. He has been discriminated in not extending the policy decision of the Government in respect of raising the age of retirement to the physically handicapped Government employees from 58 to 60 years. He also contended that it was bound down duty of the official respondent/concerned respondent to subject petitioner before the appropriate Medical Board as per the policy decision. Due to inaction on the part of the concerned respondent, petitioner has been denied to serve two more years from 31.1.2012 till 31.1.2014.

(7) Per contra, learned counsel for respondents No. 3 and 4 submitted that as per the policy, the petitioner had not submitted disability certificate within the time and he has also not obtained medical certificate from the competent authority. 75% disability has been made known belatedly. Consequently, the petitioner's claim

seeking extension for service from 58 years to 60 years is impermissible under the policy. He has also referred to the policy dated 21.4.2008 relating to extension in service to the physically disabled employees beyond the age of 58 years and competent authority to issue medical certificate to concerned employees is the Medical Board of PGIMS, Rohtak, who has been designated as a Medical Board for the State and its Director shall personally head the said Board. The petitioner has failed to comply the conditions stipulated in the policy relating to raising the age of retirement of Physically Handicapped Government employees from 58 years to 60 years. Thus the writ petition is liable to be rejected.

(8) The petitioner has filed replication to the written statement filed on behalf of respondents No. 3 and 4. Regarding furnishing of medical certificate by the designated authority, was not made known to the petitioner despite notice issued by his counsel on 2.9.2012 by respondents No. 3 and 4. Had they made known to the petitioner that the policy is to obtain disability certificate issued by the aforesaid designated authority, the petitioner would have subjected himself to such designated medical board authority and obtained disability certificate. Thus, there is a serious lapse on the part of respondents No. 3 and 4. In fact respondents No. 3 and 4 should have shown sympathy towards the physically challenged persons, like the petitioner.

(9) Heard learned counsel for the parties.

(10) The matter pertains to service condition of an employee

who is person with disability. Therefore, it is necessary to look into the provisions relating to **The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995** (In short, 'the Act, 1995'). The Act, 1995, was passed by Parliament in the wake of the Proclamation that came to be adopted by the Economic and Social Commission for Asian and Pacific Region, the endeavor and expectation of which was the attainment of full participation and equality to persons with disabilities in the matter of protection of their rights, provision of medical care, education, training, employment and rehabilitation. Keeping in perspective that India was a signatory to the said proclamation, necessitating its wholesome and holistic implementation, the Disabilities Act was introduced in the Lok Sabha on 26th August, 1995 and came into force on 7th February, 1996. The enactment is with the following statement of objects and reasons:-

(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;

(ii) to create barrier free environment for persons with disabilities;

(iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis non-disabled persons;

(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) to lay down a strategy for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and

(vi) to make special provision of the integration of persons with disabilities into the social mainstream.”

(11) Section 2 (i) of the Act, 1995 which relates to 'disability', is also reproduced hereunder :-

“ (i) “*disability*” means-

(i) blindness;

(ii) low vision;

(iii) leprosy-cured;

(iv) hearing impairment;

(v) locomotor disability;

(vi) mental retardation;

(vii) mental illness;”

(12) There is a restriction/prohibition imposed under Section 47 of the Act, 1995 to dispense with or reduce in rank, an employee who acquires a disability during his service, which reads as follows:-

“47. Non-discrimination in Government employments.-(1) No establishment shall dispense with, or reduce in rank, an employee who acquires

a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits;

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability;

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

(13) The petitioner was appointed as a Helper and he was promoted as a Mechanic and he had been retired on attaining the age of 58 years on 31.1.2012. The retirement age scheme provides for extension of two years of service to the employees from 58 years to 60 years, even for those physically handicapped employees, as per the policy of the Government. The petitioner's grievance was not considered on the ground that initially he himself was subjected to

medical board, where the disability was 40%. The same was not taken into consideration. Further, it was contended by respondents No. 3 and 4 that the petitioner's request for extension of service from 58 years to 60 years was a belated one and contrary to policy. In fact when the petitioner got a legal notice to respondents No. 2 and 3 on 2.9.2012, the said respondents could have pointed out to the petitioner the infirmities in seeking extension of service, namely, disability certificate issued on 18.1.2012 is not by designated authority and it was 40% disability. Had respondents No. 3 and 4 answered to the notice dated 2.9.2012 issued on behalf of the petitioner, the petitioner could have subjected to medical board authorities/designated medical board, namely Medical Superintendent, PGIMS, Rohtak. It was for the first time pointed out during pendency of this petition. This Court observed that the petitioner is to be subjected to medical examination through the Director, PGIMS, Rohtak. Therefore, on 7.8.2015, the petitioner was subjected to medical examination, in which the medical board/designated authority certified that the petitioner's disability is 75%. In view of these facts and circumstances, the petitioner should not be blamed for not getting medically examined before the designated authority as contended by respondents No. 3 and 4. That apart, as per the 1st and 2nd proviso to Section 47 of the Act, 1995, the petitioner's grievance could have been considered. Moreover, while preparing policy relating to raising the age of retirement of the physically handicapped government employees from 58 years to 60

years on par with others, the government has not noticed Section 47 of the Act, 1995. In so far as delay in the process of request for extending the petitioner's service from 58 years to 60 years, as contended by respondents No. 3 and 4 is concerned, as and when the petitioner requested for continuation of his service in the month of September 2012, respondent No. 3 or 4 could have issued necessary instructions to furnish disability certificate and also such certificate should be obtained from the designated authority, namely, Medical Board of PGIMS, Rohtak. Instead of guiding the petitioner, the respondents No. 3 and 4 slept over the matter and for the first time in the year 2014, they have pointed out in this petition that the petitioner is to be examined by the designated medical board. Therefore, the petitioner should not be blamed.

(14) At this juncture, it is to be noted that the petitioner's claim was to continue his service till 31.2.2014. Therefore, question of continuing his service at this hour is impracticable. In other words, the petitioner has already been superannuated as on 31.1.2012 if 58 years is taken and on 31.1.2014, if 60 years is taken. Therefore, it is necessary to quash order Annexure P-1 dated 13.1.2012 for the reasons that the petitioner should have been guided by respondents No. 3 and 4 appropriately as per the policy, read with Section 47 of the Act, 1995, read with disability of the petitioner, because -

(i) the Act being a special enactment doctrine of *generalia specialibus non derogant* would apply.

(ii)the Act is in addition to and not in derogation of any other law.

It was statutory obligation on the employer to protect an employee acquiring disability during service. Therefore, the petitioner shall be provided with full salary from the date of retirement i.e. 31.1.2012 till the date of 31.1.2014, having regard to the 1st and 2nd proviso to Section 47 of the Act, 1995. He shall also be entitled to full retirement benefits giving the total period in service including for the period 31.1.2012 to 31.1.2014. Such benefits shall be paid to the petitioner within three months.

(15) The writ petition is allowed, Annexure P-1 is quashed with the aforesaid directions.

(16) There shall be no order as to costs.

(P.B. Bajanthri)
Judge

August 17th, 2015.
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