

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

1)

**CWP No.21069 of 2014
Date of decision : 30.01.2015**

Harbaksh Singh

..... Petitioner

Versus

State of Haryana and others

..... Respondents

2)

CWP No.21074 of 2014

Dharam Pal

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present:- Mr. Satbir Gill, Advocate
for the petitioners.

AMOL RATTAN SINGH, J.(Oral)

The two petitioners in these two petitions (one in each petition), seek a writ of Certiorari quashing the orders impugned in both the writ petitions, by which they have been denied the benefit of continuing in service, as Class-IV employees, till the age of 60 years, in terms of the relevant provisions of the Punjab Civil Services rules.

As per Rule 3.26 of the Punjab Civil Services Volume I, Part-I,

a Class-IV employee superannuates from service at the stage of 60 years, as opposed to all other employees who superannuate at the age of 58 years.

For the sake of convenience, the facts are taken from **CWP No.21069 of 2014.**

2. The petitioner was initially appointed as an Oil Man with the Municipal Council, Ludhiana, on 16.11.1974 and continued in service after the Municipal Council was upgraded to a Municipal Corporation in 1978.

With effect from 01.03.1979, the petitioner began subscribing to the provident fund.

Before 30.07.1997, the qualification prescribed in the Rules, for promotion from Oil Man (Class-IV) to the post of Electric Pump Driver, a Class-III post, was Matriculation, alongwith a diploma from an Industrial Training Institute.

However, vide notifications dated 30.07.1997 and 10.03.1998, the educational conditions for promotion were relaxed and on 12.11.999, after the Municipal Corporation passed a resolution to that effect. Accordingly, the petitioner and others alongwith him, were promoted to the Class-III post of Electric Pump Driver.

Upon such promotion, the petitioner and others like him, were granted a one step increment in their pay, whereby the basic pay was raised from Rs.3900/- to Rs.4020/-.

As per the impugned order, the said benefit continued to enure till the time of the petitioners' retirement from the service, on attaining the age of 58 years, on 31.03.2007.

3. More than 3 years after his retirement, in the year 2010

(20.07.2010), the petitioner filed a representation indicting the XEN and a Clerk in his office for “wrongly” promoting him to the post of Electric Pump Driver in the year 1999, alleging therein that no option was taken from him and as a consequence of such promotion without consent, he retired two years earlier than he would have, had he continued in the post of Oil Man, as a Class IV employee. Similar representations were made by him again in April, 2011, and a legal notice was also served thereafter upon the respondents, with, allegedly, no response to the same.

4. Thereafter, the petitioner filed CWP No.4852 of 2012, in which he sought the same benefit, towards which end he cited the judgment of a co-ordinate Bench in CWP No.7233 of 2010, decided on 25.05.2011 (Bhupinder Singh vs. State of Punjab and others).

CWP No.4852 of 2012, filed by the petitioner, was therefore disposed of, also by a co-ordinate Bench, on 16.11.2012, with a direction to the respondents to consider the claim of the petitioner in the light of the aforesaid judgment.

5. A copy of *Bhupinder Singhs' case* (supra) has been annexed with the petition, which reveals that in that case the petitioner was a handicapped employee, whose arm had to be amputated because of an accident and in view of such handicap, he sought treatment similar to blind employees, in whose case the age of superannuation had been raised to 60 years from 58 years, by the Government, in 1996. That petition (CWP No.7233 of 2010) was allowed and directions were issued that the petitioner therein, whatever as also similarly placed handicapped employees, be granted the benefit of a later retirement age, i.e. 60 years.

6. In the present petitioners' case, pursuant to the directions dated 16.03.2012 issued in CWP No.4852 of 2012, an order was passed by the 2nd respondent herein on 06.09.2012, rejecting the claim of the petitioner that he be deemed to have been in service till 30.03.2009, i.e. till he attained the age of 60 years.

The order (Annexure P-9) states that the petitioner never once objected to his promotion from the post of Oil Man to Electric Pump Driver, ever since 21.12.1999 till the date of his superannuation on 31.03.2007, though, obviously, he knew of the same having also availed an additional increment upon promotion in the year 1999.

As regards *Bhupinder Singhs' case* (supra), it was stated that there was no parity in the two situations (in view of the fact that the said case was that of a handicapped person seeking parity with another category of handicapped persons), whereas in the present case, it was wholly and completely different situation.

7. That order having been passed against the petitioner, he thereafter moved an application (Civil Miscellaneous No.2264 of 2014) in the writ petition earlier filed by him, i.e. CWP No.4852 of 2012, in which he prayed that his case be reconsidered by the respondents, in the light of yet another judgment passed in CWP No.18380 of 1994 (Nand Lal Sharma and others Vs. The State of Punjab and another).

That prayer was accepted and vide order dated 07.03.2014, the respondents were directed to reconsider the case of the petitioner, in accordance with law, in the light of the aforesaid judgment.

8. A copy of that judgment has been supplied by the learned

counsel for the petitioner in Court, which reveals that the 31 petitioners in CWP No.18380 of 1994, were seeking that they be allowed to revise their option for fixation of their pay under the Revised Pay Rules of 1988, after they were granted the benefit of selection grade, pursuant to an earlier litigation.

The said prayer was accepted and it was directed that a general circular be issued by the Government, granting an opportunity to those petitioners, as also all similarly situated persons, to revise their option pursuant to the grant of selection grade in their pay scales.

9. Thus, seeing that the case of the petitioners in CWP No.18380 of 1994 was again completely different to that of the present petitioner, respondent no.2 again rejected his claim vide his order dated 30.07.2014, again citing the same reasons as were given in his earlier order dated 06.09.2012.

In this order, it has also been stated that the petitioner submitted his pension papers voluntarily as an Electric Pump Driver. What is actually meant by the said order is obviously that the petitioner submitted his papers for grant of retiral benefits, before the date of his superannuation on 31.03.2007, voluntarily.

Hence, it is these two orders that have been impugned in the present petition, which the petitioner seeks to have quashed, with a further direction to the respondents, to treat him to be deemed to have been in service till 31.03.2009, i.e. the month and year in which he attained the age of 60 years, as opposed to his date of actual retirement, i.e. 31.03.2007.

10. Having heard learned counsel for the petitioner and having

gone through the pleadings, I find absolutely no ground to interfere with the impugned orders, for the reasons given therein and as discussed in detail hereinabove.

The petitioner having accepted his promotion on 21.12.1999, from the post of Oil Man to the post of Electric Pump Driver, could not have turned around in the year 2010, three years after his retirement and almost 11 years after his promotion from a Class-IV to a Class-III post, to protest the same, raising a grievance that he had been denied higher pension, because he had to superannuate two years prior in time, on account of such promotion.

No doubt, the petitioner was only a Class-IV employee and possibly did not understand the nitty gritty of the Rule and the law. However, that reasoning may have been available to him had he represented against such a promotion within some reasonable time, and in any case before he superannuated. However, he actually superannuated more than six years and three months after his promotion and thereafter, also did not raise grievance for another three years.

Therefore, a grievance raised by him, almost 11 years later, cannot be entertained.

As regards the two judgments relied upon, in CWP Nos.7233 of 2010 and 18380 of 1994, I find absolutely no similarity in circumstance in the petitioners' case, as compared to the aforesaid two cases, as already discussed.

11. Hence, there is no infirmity in the orders impugned in the present petition.

CWP No.21074 of 2014

12. Learned counsel for the petitioner submitted that almost the grievance in this case is identical to grievance of the petitioner in CWP No.21069 of 2014 is only difference that the petitioner in this case was a Helper who was promoted as an Electric Pump Driver, on 21.12.1999 after which he retired on attaining the age of superannuation on 31.03.2004.

The only difference in this case is that the petitioner allegedly made a representation on 18.10.2004, a copy of which is annexed as Annexure P-1 with the petition. Though whether or not such a representation was actually made is doubtful, in the absence of any diary number etc. provided of its receipt, however, de hors that, it is certain that the petitioner did nothing for the next 7 years thereafter, and only moved the next representation on 07.04.2011, after which he also had a legal notice served upon the respondent No.26.09.2011.

Thus, even if the representation dated 18.10.2004, is accepted to have been made, though that is doubtful as already noticed, the fact remains that the petitioner did nothing to have his promotion reversed from December 1999, right up till the date of his retirement, i.e. 31.03.2004.

Again, in this case also, it has been stated in the impugned order dated 30.07.2014, that the petitioner submitted his papers voluntarily, seeking benefits of retirement as an Electric Pump Driver, before his age of superannuation.

He also approached this Court earlier, by filing CWP No.4860 of 2012, which was disposed of in the same manner as the writ petition filed by the petitioner in the connected case, consequent upon which similar

orders were passed by respondent no.2, in the present petitioners' case also, again in two rounds of litigation.

13. Hence, for the reasons already given while discussing CWP No.21069 of 2014 hereinabove, I find no merit in this petition either.

14. Consequently, both these writ petitions are dismissed, with no order as to costs.

30.01.2015
dinesh/vcgarg

(AMOL RATTAN SINGH)
JUDGE