

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

CWP No. 3974 of 2012 (O & M)

Date of decision: 18.09.2015

Harbhajan Singh

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Manish Prabhakar, Advocate,
for the applicant-petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 12062 of 2015

Application has been filed for pre-ponement of the main writ petition from 19.09.2015 to today.

Notice in the application.

Mr. Pankaj Mulwani, DAG, Punjab accepts notice of the application.

Due to reasons given in the application, the same is allowed.

Hearing of the main case is preponed from 19.09.2015 to today.

CWP No. 3974 of 2012 (O & M)

Prayer made in the present writ petition is for directing the respondents to extend the age of superannuation of the petitioner by two years in view of the order passed by this Court in CWP No. 7233 of 2010, Bhupinder Singh vs. State of Punjab and others decided on 25.05.2011 and for quashing the circulars dated 16.02.1996 and 17.01.2001 (Annexures P-2

and P-3). The petitioner claims that he is handicapped employee on account of having suffered an injury on his left leg in an accident and, therefore, entitled for the benefits of The Disability (Equal Opportunities Protection of Rights and Full Participation) Act, 1955. On account of that he is entitled for extension of service for two years as his date of superannuation otherwise is 30.04.2012 and thus, he claims all financial benefits till 30.04.2014.

The said relief has been denied to him by an order dated 21.07.2015 (Annexure R-1) passed by the DPI-respondent no. 2 during the pendency of the writ petition. He has only been granted notional benefits for the purpose of revision of his pension. The reasoning given is that since the matter was pending before the Apex Court, it was not feasible to take the petitioner back in service.

The facts go on to show that this Court in *Bhupinder Singh's case (supra)* on 25.05.2011 allowed the writ petition and directed the State to suitably modify the circulars and extend benefits to all categories of disabled employees and further the petitioner was held entitled to emoluments for the extended period of retirement and all consequential benefits. The relevant portion reads thus:-

“In view of the above, this petition is allowed. Respondent State is directed to suitably modify the Circular (Annexures P-2 & P-3) and extend the benefit of enhancement of age to all categories of disabled Govt. employees as specified under Section 2 (i) of the Disability Act in tune and spirit of the Act. The petitioner has been retired at the age of 58 years. It is more than one year that the petitioner has retired. I leave it to the wisdom of the State to re-induct the

petitioner into service for the rest of period of retirement up to age of 60 years, however, petitioner shall be entitled to emoluments for extended period of retirement. He shall be deemed to have retired at the age of 60 years and will be entitled to all consequential benefits.”

In the meantime, the petitioner had approached this Court on 02.03.2012. The State filed LPA No. 1719 of 2011, which was dismissed on 25.09.2012. Initially, the Apex Court stayed the operation of the judgment of the Division Bench on 05.04.2013 and eventually SLP No. 10610 of 2013 was dismissed on 16.09.2014. As noticed, the petitioner's claim for the financial benefits was rejected vide the order dated 21.07.2015 and only notional pay was given for the purpose of the benefit of revision of pension.

Counsel for the petitioner has placed on record the order dated 18.03.2015 (Annexure P-13) whereby, Principal Secretary, Government of Punjab, Department of Education and School, in view of the case of Kailash Chander Sharma, has granted all financial benefits to a similarly situated employee by noticing that the Department of Finance had recommended that all financial benefits have to be given. The relevant portion reads thus:-

“3. That after dismissal of SLP filed by Govt. of Punjab in the Hon'ble Supreme Court of India the personnel department issued the directions through letter no. 17/20/2010-2PP2/132 dated 18.11.2014. According to those directions the age of superannuation of all the categories of handicapped persons is enhanced from 58 years to 60 years. This petitioner had been retired on 30.04.2012 after attaining the age of 58 years. Therefore the advice was

sought from Department of Finance that after the completing the age of 58 years whether all the financial benefits are to be given to the petitioner upto the age of 60 years or only notional benefits are to be given. The Department of Finance informed through letter no. 10/12/2015-3 XX (written in Punjabi) 2/432712/1 dated 10.03.2015 that in view of the order dated 16.09.2014 passed by the Hon'ble Supreme Court of India in SLP no. 10610 of 2013 the petitioner may be given all the financial benefits from 01.05.2012 to 30.04.2014 on attaining the age of 60 years instead of 58 years.

4. *In view of aforesaid facts came on record myself C. Roul, Principal Secretary, Department of Education, Govt. of Punjab being a competent officer reached on the conclusion that as per the instructions vide dated 19.11.2014 of personnel department the age of the superannuation of Sh. Kailash Chander Sharma District Science Supervisor, Amritsar is fixed 60 years instead of 58 years. He would be entitled to all the financial benefits since 01.05.2012 to 30.04.2014 after attaining the age of 58 years meaning thereby that till he attains the age of 60 years he is entitled to all the financial benefits.”*

Counsel for the petitioner has further brought to the notice of this Court that in similarly situated cases, the Principal Secretary has also recalled his earlier order dated 15.04.2013 and granted all financial benefits to one Jarnail Singh and Kulwant Kaur, who retired on 31.03.2012 and 31.08.2012 on attaining the age of superannuation of 58 years vide order dated 13.03.2015. The issue was discussed threadbare and the said benefit was given. Similarly, one Surinder Kaur was granted the similar benefit by the Director, Public Instructions (S.E.) on 13.07.2015.

Thus, it is apparent that the State is taking two different stands and denying the relief in one case and while granting the benefit in another, which is not permissible and is violative of Article 14 of the Constitution of India.

Resultantly, the present writ petition is allowed and order dated 21.07.2015 (Annexure R-1) is quashed and the respondents are directed to grant the petitioner all financial benefits from 01.05.2012 to 30.04.2014. Since the petitioner has already been granted pension, the necessary adjustments will be made for the amounts which the petitioner has already received during this period. The State shall ensure that in similarly situated cases, benefits are not denied to such handicapped employees as the issue stands conclusively decided.

18.09.2015
shivani

(G.S. SANDHAWALIA)
JUDGE