IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.23145 of 2015
Date of decision:31.10.2015

Paramjit Singh … Petitioner

Versus

The State of Punjab & ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Saurabh Arora, Advocate,
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

The petitioner is an orthopedically handicapped person, who retired from the office of Punjab Education Department as a Junior Assistant on May 31, 2013 on reaching the age of superannuation at 58 years. In CWP No.7233 of 2010, titled as 'Bhupinder Singh v. State of Punjab & ors.', decided on 25.5.2011, the question arose for consideration of this Court whether the benefit of extension in service from 58 years to 60 years granted to blind or low vision employees of the State Government should be extended to persons suffering from other disabilities mentioned under the provisions of the Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The view of this Court was in the affirmative. Dissatisfied with the judgment and order of the learned Single Judge holding in the affirmative, the State of Punjab filed an intra Court appeal, which was dismissed on September 25, 2012. Still dissatisfied with the order of the Division Bench, the State of Punjab preferred SLP before the Supreme Court which was converted to Civil Appeal No.8855 of 2014 in cause title State of Punjab & ors. V. Bhupinder Singh. The appeal was dismissed vide order dated September 16, 2014. The view of this Court was upheld thereby, the benefit had to be extended to the employees, like the petitioner, who are orthopedically handicapped. But by that time the declaration of law and during the litigation, the petitioner's case could not be considered on account of an interim stay order passed by the Supreme Court in the SLP. With the dismissal of the SLP, decks have been cleared. The petitioner in the meantime has attained the age of 60 years on May 31, 2015 and has approached this Court for monetary benefits of the policy since he cannot be reinstated in service to get the benefit of extension having crossed the upper employable age. However, on November 19, 2014, when Punjab Government circulated its policy on the subject matter of increasing the age of handicapped employees from 58 years to 60 years in the light of the mandate of Section 33 of the Act in the wake of the decision of the Supreme Court, the petitioner was within employable age as he was by then a little over 59 years of age. Therefore, it is urged by Mr. Arora that mechanism in para.3 of the instructions should have been activated in the case of the petitioner by giving him the option whether he wishes to reap the benefit of the policy formulated by the Government in terms of the affirmative action in the litigation that ended with the declaration in favour of the persons similarly-placed as the petitioner. But the Government failed to act by offering option to the petitioner within reasonable time from November 19, 2014 and as a result it is no longer possible for him to be granted extension in service but the claim presently is for the monetary valiue of the benefits retrospectively in view of the directions issued by the learned Single Judge in Bhupinder Singh's case (supra) issued on May 25, 2011.

The facts in Bhupinder Singh were that the petitioner therein was retired at age of 58 years and had about one year left of service. The learned Single Judge left it to the wisdom of the State to reinduct the petitioner in service for the rest of the period of retirement upto the age of 60 years but directed that "the 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".

With the dismissal of the Letters Patent Appeal and the Civil Appeal in the High Court and the Supreme Court, the direction of the learned Single Judge was not varied, modified or changed. Therefore, the direction holds good for all those persons, who are similarly situated as Bhupinder Singh which would include the petitioner. Taking a cue from this legal position obtaining in his favour and the doubts, if any, having been cleared by the Supreme Court on September 16, 2014, the petitioner made a request to the Government by serving a legal notice dated August 17, 2015 (Annexure P-12) on the competent authority summing up his case elaborately therein referring to the law and judgments covering his case. When relief is granted it would remove all vestiges of unfair discrimination amongst equals under the Act. But no final decision has been taken by the Government or the department except the response received by the petitioner through his counsel, who presently appears before this Court. This letter addressed by the Punjab Government is a directive to the Director Education Department (S.E.), Punjab to take further appropriate action and an action taken report be submitted to the Government within 15 days from the date of letter i.e. August 31, 2015. But the Director Education Department (S.E.), Punjab, remains unmoved by apathy in breach of orders of superiors.

Since nothing new is to be decided in this case and the matter is no longer res integra then in the considered view of this court the petitioner has a case and a just cause to remedy and prolonging the litigation by the process of issuing notice of motion and receiving response from the State may take time, and frustrate the rights of the petitioner which stand matured by stare decisis. Delay will lead to frustration by inaction over wich the petitioner can have no control.

Therefore, let notice of motion be issued.

On the asking of the Court, Mr. Harkesh Manuja, learned Adll.A.G., Punjab, accepts notice on behalf of the respondents and waives service on them. There is no necessity to receive reply from the State since the matter is covered by three successive decisions upto the Supreme Court and the direction of learned Single Judge which is quoted above is the operating mandamus and therefore the respondents are directed to take a final decision on the legal notice in terms of the directions of the Supreme Court and of the learned Single Judge in the operative part of the directions quoted above by assuming that the petitioner is deemed to be in service for the relevant period on account of law having been declared by the learned Single Judge when the petitioner was in service i.e. on May 25, 2011. The petitioner would have a right in rem to claim the rights created by the learned Single judge in Bhupinder Singh's case on parity.

Besides, the petitioner has placed on record notifications issued by the respondent State in favour of a similarly-placed persons in the Animal Husbandry and Fisheries and Dairy Development Department (Animal Husbadry-1 Branch), Government of Punjab, where due financial benefits till the age of 60 years were granted on the legal fiction that Bahadur Singh was deemed to be retired on completion of 60 years instead of 58 years. The order has been passed by the Chief Secretary, Punjab on June 29, 2015.

Still further Mr. Arora points out to the affidavit filed by Dr. Roshan Sunkaria, Principal Secretary to Government of Punjab, Department of Higher Education, Punjab, Chandigarh, in COCP No. 2906 of 2013 in case titled Ravinder Singh alias Rajinder Singh v. Anjali Bhanwra & anr. where the following position has been explained. Para. 8 and 9 are reproduced below:-

> "8. That in accordance with the policy dated 19.11.2014 of the Department of Personnel Punjab and the order of the Hon'ble High Court dated 5.12.2012 the Department of Higher Education has revised the pay of the petitioner vide officer order No.14/30-2007-Services (2)/ 2459-61 dated 27.11.2014 fixing the pay of the petitioner to Rs.71,610/- as on dated 31.10.2013 i.e. the day on which the petitioner has been deemed retired on super annuation at the age of 60 years. Further the revised sanction in relation

to the leave encashment has been issued vide office No.14/30-2007 Services (2)/2462-63 dated 27.11.2014. Based on the revised pay the Department is forwarding the case of the petitioner for the revision of his pension. Copies of the pay fixation order and leave encashment sanction are annexed herewith as Annexure R-II & R-III respectively.

9. That to release the consequential benefits, the Principal, Govt. College, Tanda Urmur, Distt. Hoshiarpur, who is DDO, had sent two separate bills No.84 dated 27.11.2014 amounting to Rs.2,37,345/- (Rs. Two lac thirty seven thousand three hundred forty five only) and bill No.85 dated 27.11.2014 amounting to Rs.29,52,718/- (Rs. Twenty nine lac fifty two thousand seven hundred eighteen only) for the payment of accrued arrears of leave encashment and salary respectively to the Treasury Officer, Tanda Urmur. Hence, now the petitioner has got Rs.2,37,345/- on account of arrears of leave encashment 11,73,854/- on account of arrears of salary after deductions of Rs.17,78,864/- on account of recovery of pension and income tax."

The affidavit is placed at Annexure P-9 with the petition. In these two orders passed by the Government calls upon it to act in similar fashion in the case of the petitioner in proliferation of the principle in administrative order P-10 and an order passed by this Court discharging a rule in contempt proceedings on the ground that the financial benefits have been paid to the petitioner therein which are the financial dues which the petitioner claims.

In view of the settled legal position, this petition is allowed. The respondents are directed to calculate and pay the financial dues as though the petitioner had continued to serve from May 31, 2013 till May 31, 2015. The financial benefits be paid to the petitioner within two months from the date of receipt of certified copy of this order failing which it will become payable with interest @ 12% till realization.

(RAJIV NARAIN RAINA)
JUDGE

31.10.2015
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