

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

Date of Decision: 20.11.2015

CWP No.23811 of 2015

Ajaib Singh & others

...Petitioners

Versus

State of Punjab & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

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

Present: Mr. Dharmender Singh Rawat, Advocate,
for the petitioners.

HEMANT GUPTA, J.

Challenge in the present writ petition is to Rule 2 of the Punjab Civil Services Rules (Second Amendment) Rules, 2015, as notified on 30.10.2015, whereby the employees, whose services have been extended, have been made ineligible for promotion. The impugned Rule reads as under:

“2. In the Punjab Civil Services Rules, Volume I, Part I (hereinafter referred to as the said Rules), in Rule 3.26 for sub-rules (a) and (b), the following sub-rules shall be substituted, namely:-

(a) Except as otherwise provided in this rules, the date of retirement of a Government employee shall be as follows, namely:-

- (i) fifty-eight years in the case of Group ‘A’, ‘B’ and ‘C’ employees; and
- (ii) sixty years in the case of Group ‘D’ employees:

Provided that if the State Government is of the opinion that it is necessary and expedient so to do in public interest, the service of a Government employee or a class of Government employee, may be extended

for a period of two years on yearly basis, subject, however, to giving an opinion within a period of three months before the date of retirement by the Government employee, who seeks extension:

Provided further that a Government employee, who is already on extension, shall also give fresh option within a period of one month from the date of publication of these rules:

Provided further that no Government employee shall be retained in service, after the completion of his extended period of service. However, under exceptional circumstances, if the State Government consider it necessary and expedient so to do in public interest, it may extend the service of a Government employee beyond the aforesaid limit, for the reasons to be recorded, in writing.

(b) Notwithstanding anything contained contrary in these rules or any other rules for the time being in force, during the extended period of service under clause (a), the Government employee shall be entitled to pay equal to the pay last drawn by him, on attaining the age of fifty-eight years or sixty years including an employee, who is already on extension, as the case may be:

Provided that the Government employee, whose service is extended, shall not be entitled to:

- (i) Promotion;
- (ii) the benefit of Assured Career Progression;
- (iii) an annual increment; and
- (iv) any revision of pay made by the State Government;

Provided further that the pay of the Government employee already on extension, who has been given promotion or the benefit of Assured Career Progression during the extended period till the issue of this notification, shall be protected and he shall be given the retiral benefits on the basis of his protected pay.”

The petitioners are the Sub Divisional Engineers. The promotional post of Executive Engineer is required to be filled according to the 'Punjab Water Supply and Sanitation (Engineering Wing) Group 'A' Service Rules, 2007. As per the said Rules, a Sub Divisional Engineer having 8 years experience is eligible for promotion.

Initially, on 08.10.2012, the Government of Punjab issued instructions granting sanction for extension of service for all Government employees of Group 'A', 'B' & 'C' for one year including providing for promotion against the available vacancies during the period of extension. One of the petitioners i.e. petitioner No.1 attained the age of 59 years on 30.04.2015 and was granted extension of one year from 01.05.2015 to 30.04.2016.

The petitioners attained the age of superannuation i.e. 58 years between the years 2014-15 and have completed 8 years of service on 10.10.2015 and, thus, the Petitioners claim to be eligible for promotion. It is contended that the Departmental Promotion Committee (DPC) for promotion to the post of Executive Engineer was fixed for 09.11.2015, wherein six employees on extension i.e. the petitioners and two regular employees including one junior of the petitioners were available having 8 years of experience. However, the petitioners have been declared ineligible on account of impugned notification dated 30.10.2015.

The grievance of the petitioners is that on account of the impugned notification, a junior will be promoted as Executive Engineer and the petitioners will have to work under their junior-most employee at the fag end of their carrier. The petitioners have asserted that after extension in service, the Petitioners cannot be treated differently from the other regular

employees. It is pointed out that none of their retiral benefits have been released by the respondents during the extended period, therefore, they are entitled to be considered for the promotion to the post of Executive Engineer. The petitioners rely upon a Division Bench judgment of this Court in Manjit Walia Vs. State of Punjab 22003 (2) RSJ 310 as well as the judgments of Hon'ble Supreme Court reported as A. Satyanarayana & others Vs. S. Purushotham & others (2008) 5 SCC 416 and Panchraj Tiwari Vs. M.P.State Electricity Board & others 2014 (2) SCT 332 in support of the contention that an employee, whose services have been extended, cannot be treated differently.

Earlier an option was given to the employees on 08.10.2012 vide Annexure P-1 that the employees who were attaining the age of superannuation i.e. 58/60 years on or after 31.10.2012, can seek extension in service. The concerned employee was to draw his pay during the period of extension equal to his pay on the last day of his retirement/superannuation along with other allowances. Another conditions in the said letter was that in the eventuality of availability of post of promotion, the concerned employee will be eligible to be considered for promotion against such post as per Rules. It was in pursuance of such notification, the DPC was convened for considering the claim of eligible Sub Divisional Engineers for promotion including the petitioners. However, before the DPC could meet, the Punjab Civil Services Rules were amended on 30.10.2015, which is subject matter of challenge in the present writ petition.

A perusal of the impugned notification shows that age of superannuation is 58 years in the case of Group 'A', 'B' and 'C' employees, which is 60 years in the case of Group 'D' employees. The petitioners are not

falling in Group 'D', therefore, their age of superannuation is 58 years. It is only by virtue of a proviso, the service of a Government employee can be extended for a period of two years on yearly basis, subject to an option to be submitted within three months from the date of retirement. Still further, an employee, who is already on extension, is also required to give fresh option within a period of one month from the publication of these Rules to seek extension in service. The Rule further contemplates that no employee shall be retained in service after completion of extended period of service. Sub-clause (b), as inserted, contemplates that an employee shall be entitled to pay equal to the pay last drawn by him on attaining the age of 58 years in the case of Group 'A', 'B' and 'C', but employee shall not be entitled to the benefits of promotion, Assured Career Progression, annual increment and any revision of pay made by the State Government.

The argument of the petitioners is that once their services were extended, the amended Rule as on 30.10.2015 will not be applicable. We do not find any merit in such argument. The normal date of age of retirement is 58 years in the case of Group 'A', 'B' and 'C' employees. It is only as per the proviso, the services of a Government employee can be extended to two years on yearly basis that too on submission of an option by the concerned employee. The Rule prescribes the age of superannuation and also the condition of extension specifically provide that extension in service will not entitle to the benefit of promotion, Assured Career Progression, annual increment and any revision of pay made by the State Government. Therefore, the petitioners, who have opted for extension cannot claim such benefits. Once the petitioners have opted for extension in terms of the amended Rule, they have to accept all the conditions contained therein as well. The

extension in service is neither automatic nor compulsory. It is an option of the employee. Therefore, if extension has been claimed by the petitioners, they have to accept all the conditions of extension as well.

In Manjit Walia's case (supra), the petitioner was given 'National Award' for being a 'teacher of outstanding merit'. As a National Award winner, the petitioner was given extension in service. The Division Bench noticed the distinction between extension in service and re-employment. The 'extension' was observed to be mean 'an increase in length of time, increased or continued duration', whereas 're-employment' means 'to hire back'. An employee is re-employed 'after the lay off'. Thus, extension was not found to be same as re-employment.

We find that the said judgment does not support the argument raised. In the said case, a teacher, who was National Award winner, was given extension in service. Such extension in service is not circumscribed by any condition. The age of superannuation in such case stands extended. But in the present case, the age of superannuation is 58 years. However, by virtue of a proviso, an employee is permitted to work for another two years as per his own option. Therefore, mere use of word 'extension' will not mean that the petitioners will have to be treated similar in all respects, as the employees, who are less than 58 years.

In A. Satyanarayana's case (supra), the issue pertains to the chances of promotion. It has been held that a policy decision as a result whereof an employee's chance of promotion is diminished cannot be a subject matter of judicial review as no legal right is infringed thereby. It was not a case of promotion after attaining the age of superannuation. The power of

judicial review in respect of statutory rules is limited. In the said case, the Hon'ble Supreme Court said to the following effect:

“23. We, however, are of the opinion that the validity or otherwise of a quota rule cannot be determined on surmises and conjectures. Whereas the power of the State to fix the quota keeping in view the fact situation obtaining in a given case must be conceded, the same, however, cannot be violative of the constitutional scheme of equality as contemplated under Articles 14 and 16 of the Constitution of India. There cannot be any doubt whatsoever that a policy decision and, in particular, legislative policy should not ordinarily be interfered with and the Superior Courts, while exercising its power of judicial review, shall not consider as to whether such policy decision has been taken mala fide or not. But where a policy decision as reflected in a statutory rule pertains to the field of subordinate legislation, indisputably, the same would be amenable to judicial review, inter alia, on the ground of being violative of Article 14 of the Constitution of India. {See Vasu Dev Singh & Ors. v. Union of India & Ors. [2006 (1) SCALE 108] and State of Kerala & Ors. v. Unni & Anr. [(2007) 2 SCC 365].

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25. While saying so, we are not unmindful of the legal principle that nobody has a right to be promoted, his right being confined to right to be considered therefor.

26. Similarly, the power of the State to take a policy decision as a result whereof an employee's chance of promotion is diminished cannot be a subject matter of judicial review as no legal right is infringed thereby.”

In Panchraj Tiwari's case (supra), the Hon'ble Supreme Court has held that no employee has a right to particular position in the seniority list, but all employees have a right to seniority since the same forms the basis of promotion and that chances of promotion are not conditions of service, but negation of even the chance of promotion certainly amounts to variation in the conditions of service. The said judgment is again distinguishable and not

applicable in the case of an employee, who has attained the age of

superannuation. The statutory rules provide extension in service at the option of employee and that too subject to the conditions. There is no compulsion attached to extension. Since the petitioners have opted for extension, they have to accept all the conditions of extension as well.

In view of the above discussion, we do not find any merit in the present writ petition. The same is accordingly dismissed.

(HEMANT GUPTA)
JUDGE

20.11.2015
Vimal

(RAJ RAHUL GARG)
JUDGE