

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

**CWP No.26913 of 2015
Date of Decision: 23.12.2015**

Dharam Pal

---Petitioner

Vs.

State of Haryana and others

---Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

--

Present: Mr. Ashwani Bakshi, Advocate
for the petitioner.

HARINDER SINGH SIDHU, J.

The petitioner was working as Daftri in respondent No.2-Corporation. He was retired at the age of 58 years by respondent No.4 vide order dated 30.05.2012 (Annexure P-5).

Aggrieved against the aforesaid, the petitioner preferred a statutory appeal before the Chairman of the Corporation (respondent No. 3), which came to be dismissed vide order dated 08.01.2015. Against the aforesaid orders, the petitioner has filed the present writ petition.

The grievance of the petitioner is that the post of Daftri is Class-IV post and as per bye-law 3.5 of the Corporation, the age of retirement for Class-IV employee is 60 years. It is contended that the petitioner was wrongly retired at the age of 58 years.

The appeal of the petitioner was dismissed by

respondent No. 3 on the ground of limitation as well as on merits.

It was stated that as per Rule 6.4 of Service Bye-laws of the Corporation, an appeal could be filed within six months from the date of service of the order by the Managing Director of the Corporation. The order of retirement was issued on 30.05.2012 and the six months period for filing the appeal expired on 30.11.2012 but the appeal was filed on 03.05.2013. Accordingly, it was held that there was delay of 154 days in filing the appeal. The explanation of the petitioner that he could not file the appeal as he remained admitted in PGI was noticed and rejected by the Chairman by observing that the petitioner remained admitted in PGI between 16.01.2013 and 19.01.2013 i.e. only four days, thus this admission did not justify the long delay in filing the appeal.

The petitioner had placed reliance on the case of one Patu Ram, Daftri, who was permitted to retire at the age of 60 years. The Chairman in his order, after perusing the record, wherein, the case of Sh.Patu Ram for retirement at the age of 60 years was processed, came to the conclusion that Sh.Patu Ram had got the extension of two years by misleading the officials of the Corporation. He noticed that in the noting there is an observation that the post of Daftri is group-D post and hence Sh.Patu Ram be given two years extension in service. The Chairman reasoned that the grant of extension in service for two years beyond the age of 58 years clearly belies the claim of the petitioner that the age of retirement of Daftri is sixty years, for if the age of retirement of Daftri was to be considered

to be sixty years, it should have been clearly said so and in that event there was no question of grant of extension in service. It is further stated that before the retirement of the petitioner, respondent No.2-Corporation had sought the advice of Haryana Bureau of Public Enterprise (HBPE) as to in which category the post of Daftri should be considered in the Corporation. Haryana Bureau of Public Enterprise vide letter dated 28.05.2012 had given the following advice:

“The post of Daftri in Haryana Scheduled Castes Finance and Development Corporation should be treated as Class-III keeping in view the pay scale of the post and the status of such posts in other departments.”

In the light of this advice, the petitioner was retired on attaining the age of 58 years.

The Chairman has further elaborately dealt with the contention that the post of Daftri is liable to be treated as Group D post as in the Haryana Civil Secretariat it is considered as Group- D post. Regarding this, it has been noted that in the Secretariat the pay scale of Daftri is Rs.4440-7440+1650+30/- Special Pay, whereas, in the respondent No.2-Corporation, the Daftri is in pay scale of Rs.5200-20200+1800 GP. It has been noted that the scale of Rs.5200-20200+1800 GP is the pay scale and pay band of the post of Group-C category in the Corporation and is the same as applicable in the case of the post of Binder, which is also a Group-C post. It has been held that it is thus clear that the post carrying grade pay of Rs.1800 falls in the Group-C and not in Group-D in the

Corporation.

For all these reasons, the claim of the petitioner to be retired at the age of 60 years treating him to be in Group-D has been rejected.

Learned counsel for the petitioner contends that the observation of the Chairman that as Sh.Patu Ram was given extension of two years and hence the post of Daftri is not to be treated as Group D post is clearly erroneous in view of the clear observation in the noting that the post of Daftri is Group D post. He further states that the Chairman has wrongly rejected his appeal on the ground of delay, by not considering the circumstances because of which he was unable to file the appeal within the stipulated time. He has further referred to revised pay scales in the Corporation (Annexure P-6) and states that the pay scales of Daftri is closer to that of Peon which admittedly is a Group D post than that of Clerk which is a Group D post.

Having heard Ld. Counsel for the petitioner, I do not find any merit in the points raised by him.

Even if the delay in filing the appeal is to be condoned, the petitioner does not have any case on merits.

No doubt in the file noting relating to the processing of the case of Sh.Patu Ram which the petitioner has obtained under the Right to Information Act, there are observations that the the post of Daftri falls in Class IV as at the time of fixation of pay scale in the year 1986, the scale of Daftri was fixed in Group D. But these file

notings are of the year 2003 and are not determinative of status of the post in the year 2012 when the petitioner was retired. There is nothing immutable about the classification or status of a post. It is possible for a post which was earlier Class IV to be subsequently classified as Class III based on pay scales or any other relevant factor.

Before the retirement of the petitioner the respondents sought opinion of the Haryana Bureau of Public Enterprises which stated that the post of Daftri in the respondent Corporation should be treated as Class-III post keeping in view the pay scale of the post and the status of such posts in other departments. Further as mentioned in the letter dated 02.07.2013 of SPIO-cum-Deputy Secretary, Finance (HBPE), (which has been referred to by the Chairman respondent No. 3 in his order) the post of Daftri falls in different groups in different Departments depending on the pay scale of the post. In the respondent-Corporation, the post of Daftri is in the scale of Rs.5200-20200+1800 GP which is the scale of pay of a Group C post. This scale is higher than the pay scale of the post of Daftri in the Haryana Civil Secretariat, which is Rs.4440-7440+1650+30 special pay, which is considered a Group -D post.

Nothing has been pointed out as to how the aforesaid opinion of the Haryana Bureau of Public Enterprises can be held to be wrong or unsustainable.

The fact that in the revised pay scales the pay scale of (Annexure P-6), the pay scale of the post of Daftri is closer to that of

peon, which is a Group D post than that of clerk which is a Group D post also does not further the case of the petitioner in the absence of any specific rule or regulation regarding classification of posts.

Moreover, the petitioner was retired on 28.05.2012. Now, he is more than 61 years of age. It was rightly held by respondent No. 2 that at this stage, no effective relief can be granted to the petitioner.

Accordingly, there is no merit in this petition and the same is dismissed.

23.12.2015

gian

**(HARINDER SINGH SIDHU)
JUDGE**