

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P. No. 3826 of 2015

Pronounced On : 24.04.2015

Romesh Garg Petitioner

vs.

State of Punjab and others Respondents

Case No. : C. W. P. No. 5215 of 2015

Pronounced On : 24.04.2015

Subhash Chander Petitioner

vs.

State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. R. K. Arora, Advocate
for the petitioner in **C. W. P. No. 3826 of 2015.**

Mr. Kshitij Sharma, Advocate
for the petitioner in **C. W. P. No. 5215 of 2015.**

Mr. Sushant Maini, DAG, Punjab.

Mr. Vijay Kaushal, Advocate
for respondents no. 2 to 4 in **C. W. P. No. 5215 of 2015.**

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DEEPAK SIBAL, J. :

These two petitions being **C. W. P. No. 3826 of 2015** and

C. W. P. No. 5215 of 2015, involving similar questions of fact and law, were taken up for hearing together and are being disposed of by this common judgment.

Shorn of unnecessary details, the facts in brevity, leading to the filing of these petitions, are that Rule 3.26 of the Punjab Civil Services Rules, Volume-I, Part-I (hereinafter referred to as – the Rules) prescribes the age of superannuation of the employees serving the State of Punjab. Through notification dated 08.10.2012, the Government of Punjab amended Rule 3.26 of the Rules as under :-

“3.26 (a) *Except as otherwise provided in this rule, the date of retirement of a Government employee other than a Group D Government employee shall be the date on which he attains the age of 58 years and the date of retirement of a Group D Government employee shall be the date on which he attains the age of 60 years :*

Provided that if the State Government is of the opinion that it is necessary or expedient in public interest to do so, the service of a Government employee or a class of Government employees, may be extended beyond the date of retirement for a period

not exceeding two years, after getting an option from the concerned Government employee or the Government employees, as the case may be.

Provided further that a Government employee must not be retained in service after the period of service extended under the clause, except in exceptional circumstances with the previous sanction of the competent authority in public interest and for reasons to be recorded in writing.

(b) Notwithstanding anything to the contrary contained in these rules or any other rules for the time being in force, during the extended period of service under clause (a) of this rule, a Government employee shall be entitled to pay equal to the pay last drawn by him on the date on which he attains the age of 58 years or 60 years, as the case may be. However, if a promotional post is available, he shall be eligible for consideration for promotion against that post and on promotion his pay

shall be fixed under the relevant rules.”

As per the above reproduced Rule, the prescribed age of superannuation for Government employees, other than Group-D employees, is 58 years but so far as Group-D Government employees are concerned, for them, the age of superannuation is when they attain the age of 60 years, provided that if the State Government is of the opinion that it is necessary or expedient in public interest to do so, the service of a Government employee or a class of Government employees may be extended beyond the date of superannuation for a period not exceeding two years, after getting an option from the concerned Government employee or the Government employees, as the case may be.

Based on the above amendment dated 08.10.2012, the Government of Punjab issued instructions of even date permitting extension of one year in service.

On 22.01.2013, the Government of Punjab, through the Department of Finance, issued certain clarifications and the relevant clarification was to the effect that even if an employee was facing departmental action or any court case, he would be entitled for the grant of extension in service.

As the above instructions pertained to the employees of the Government of Punjab, through specific instructions dated 27.02.2013, the same were made applicable to all local bodies in the State of Punjab and as all the petitioners are employees of different local authorities in the State of

Punjab, the above referred instructions with regard to grant of extension in service also became applicable to them.

Then came the instructions dated 20.09.2013, through which the Government of Punjab decided to grant extension of service for one more year.

Both the petitioners have attained the age of superannuation. The petitioners are claiming extension in service after attaining the age of superannuation for a period of one year. They have not been granted extension in their services after the Government of Punjab re-considered the entire matter and through instructions dated 30.10.2014 read with instructions dated 07.01.2015, clarified that extension in service, as per instructions dated 08.10.2012, as also dated 20.09.2013, was not to be granted to employees, who were facing disciplinary action, which could entail a major penalty. It was decided that the cases of all such employees would be considered by a Committee, the constitution of which was also given in the instructions and if the Committee finds that an employee is facing disciplinary action for major penalty, then such employees are not to be granted extension in service beyond the age of their superannuation. It is above non-grant of extension, which is challenged by the petitioners before this Court.

I have heard learned counsel for the parties and with their able assistance, have also gone through the record of the case.

Learned counsel for the petitioners has argued that the

petitioners had a vested right to be granted extensions in their services as per the instructions dated 08.10.2012/20.09.2013 and the benefit granted under these instructions could not have been taken away through the impugned instructions through retrospective application. It was still further argued that the extension in service could not be denied to the petitioners only because they have been charge-sheeted. On this issue, it was submitted that the issuance of a charge-sheet could not be made the basis for adverse action of the like and the same could have only been done if after the finalization of disciplinary proceedings, the guilt of charge-sheeted employees had been proved.

On the other hand, learned counsel appearing on behalf of the respondents have justified their action by submitting that the petitioners had no right to continue on extension as after the date of superannuation, extension in service is to be granted purely at the discretion of the employer. It is further submitted that the grant of extension was by way of a concession and thus, the same could have been unilaterally withdrawn at any time in public interest. It was still further submitted that instructions impugned by the petitioners have been issued not to grant extension in service to employees, who were facing disciplinary action for major penalty and thus, these instructions had been issued in public interest and by way of a policy decision taken by the Government.

A perusal of the amended Rule 3.26 of the Rules, as amended vide notification dated 08.10.2012, shows that the prescribed age of

superannuation for employees, other than Group-D employees, is 58 years but so far as Group-D employees are concerned, for them, the age of superannuation is when they attain the age of 60 years, provided that extension in service to a superannuated employee may be granted as per the discretion of the Government only if the Government considers the same to be in public interest. It is merely an enabling provision. No employee has a right, much less a legal right to seek or continue in service beyond the age of superannuation. Over the years, through a catena of judgments, this issue has been settled and is no longer res integra.

In the case of **State of Assam and another etc. vs. Basanta Kumar Das etc. etc.** reported as **AIR 1973 SC 1252**, while considering a similar issue, the Apex Court has held as under :-

“A Government servant has no right to continue in service beyond the age of superannuation and if he is retained beyond that age it is only in the exercise of the discretion of the Government.”

In the case of **State Bank of Bikaner and Jaipur and others vs. Jag Mohan Lal** reported as **AIR 1989 SC 75**, the Apex Court, while considering a similar Rule and issue, has held as under :-

“9. What do we have here in this case to distinguish those principles or not to apply those principles? In our opinion,

there is none. In the scheme provided herein the respondent or any other officer of the Bank has a legitimate right to remain in service till he attains the age of superannuation. But beyond that age, he has no such right unless his service is extended by the Bank. The further rights of parties are regulated by the proviso to Regulation 19(1). It reads:

“Provided that the competent authority may at its discretion, extend the period of service of an officer who has attained the age of fifty eight years or has completed thirty years' service as the case may be, should such extension be deemed desirable in the interest of the Bank.”

10. *Look at the language of proviso and the purpose underlying. The Bank may in its discretion extend the service of any officer. On what ground? For what purpose? That has been also made clear in the proviso itself. It states “should such extension be*

deemed desirable in the interest of the Bank".

The sole purpose of giving extension of service is, therefore, to promote the interest of the Bank and not to confer any benefit on the retiring officers. Incidentally the extension may benefit retired officials. But it is incorrect to state that it is a conferment of benefit or privilege on officers. The officers upon attaining the age of superannuation or putting the required number of years of service do not earn that benefit or privilege. The High Court has completely misunderstood the nature of right and purpose of the proviso. The proviso preserves discretion to the Bank. It is a discretion available with every employer, every management, State or otherwise. If the Bank considers that the service of an officer is desirable in the interest of the Bank, it may allow him to continue in service beyond the age of superannuation. If the Bank considers that the service of an officer is not required beyond

superannuation, it is an end of the matter. It is no reflection on the officer. It carries no stigma.”

In the case of **D. C. Aggarwal (Dead) by LRs. vs. State Bank of India and another** reported as **(2006) 5 SCC 153**, the Apex Court, while following the above principle, as laid down in the case of **Jag Mohan Lal** (*supra*), has held as under :-

“25. *The argument for the learned counsel for the appellant proceeded on a misapprehension of the manner in which extension of service is to be granted. In State Bank of Bikaner and Jaipur and others v. Jag Mohan Lal (hereinafter "Jag Mohan Lal") this Court had occasion to point out that a rule under which extension of service can be granted beyond the normal age of retirement, does not invest a legal right in the employee to be granted such an extension. The very same regulation as in this case was interpreted in Jag Mohan Lal (*supra*) and it was pointed out therein that the sole purpose of giving extension of service is to promote the*

interest of the bank and not to confer any benefit or favour on retiring officers. It was pointed out that it was not a conferment of a benefit or privilege on officers. Merely because the officer has put in the requisite number of years of service, that does not earn him/her that benefit or privilege. This Court observed:

"The Bank, however, is required to consider the case of individual officers with due regard to (i) continued utility; (ii) good health; and (iii) integrity beyond reproach of the officer. If the officer lacks one or the other, the Bank is not bound to give him extension of service. In this case, the Bank has shown to the High Court that the case of the respondent was considered and he did not fit in the said guidelines. The High Court does not sit in an appeal against that decision. The High Court under Article 226 cannot review that

decision."

If the bank considers that the continuance of services of an officer is desirable in the interest of the bank, it may allow him to continue beyond the age of superannuation.

If the bank considers that the service of the officer is not required beyond the age of superannuation, that is the end of the matter. Further, non-extension of service is no reflection on the calibre of the officer and it carries no stigma.

26. *It appears to us that these principles were not kept in mind by the learned Single Judge when he interfered with the discretion of the respondent-bank not to grant an extension to the appellant. The Division Bench has, however, rightly applied the legal principle stated in **Jag Mohan Lal** (supra) and found that there was no such right vested in the appellant to demand an extension beyond the age of fifty-eight years. Further, in the facts and circumstances of the case, the Division*

Bench found that the extension had been refused for good reasons and was not liable to be interfered within its writ jurisdiction. We agree with this reasoning of the High Court.”

To the same effect, are the following observations by the Apex Court in the case of **P. Venugopal vs. Union of India** reported as **(2008) 5 SCC 1**, wherein it has been observed as under :-

“8. *It is true that in establishments like AIIMS, there is an age of superannuation governing the length of service of its officers and employees. Such age of superannuation may be suitably altered by way of reducing the age so as to affect even the serving employees under appropriate circumstances and no exception can be taken to such course of action. Similarly under the Service Rules, there may be provision for extension of service after the attainment of the age of superannuation and it is well settled that in the event of refusal by an employer to grant an extension, the employee cannot*

justifiably claim to be deprived of any right or privilege. The view taken is that the employer has a discretion to grant or not to grant such extension having regard to the interest of the employer or the establishment. This view is expressed by this Court in the [Case of State Bank of Bikaner and Jaipur and Ors. vs. Jag Mohan Lal \(AIR 1989 SC 75\)](#). In this case, at AIR para 12, this Court observed as follows :

(SCC p.226, para 13)

“13. *...The Bank has no obligation to extend the services of all officers even if they are found suitable in every respect. The interest of the Bank is the primary consideration for giving extension of service. With due regard to exigencies of service, the Bank in one year may give extension to all suitable retiring officers. In another year, it may give extension to some and not to all. In a subsequent year, it may not give*

extension to any one of the officers.

The Bank may have a lot of fresh recruits in one year. The Bank may not need the services of all retired persons in another year. The Bank may have lesser workload in a succeeding year. The retiring persons cannot in any year demand that "extension to all or none". If we concede that right to retiring persons, then the very purpose of giving extension in the interest of the Bank would be defeated. We are, therefore, of opinion that there is no scope for complaining arbitrariness in the matter of giving extension of service to retiring persons."

In this regard, I may also refer to the decision of the Apex Court in **K. Nagaraj vs. State of Andhra Pradesh and another** reported as **(1985) 1 SCC 523**. In that case, challenge to the decision of the Government of Andhra Pradesh to reduce the age of superannuation from 58 years to 55 years was negated by the Apex Court and while rejecting such challenge, the Apex Court also indicated so as to what should be the

approach of the Courts while dealing with such issues and observed as under :-

“.....Barring a few services in a few parts of the world as, for example, the American Supreme Court, the terms and conditions of every public service provide for an age of retirement. Indeed, the proposition that there ought to be an age of retirement in public services is widely accepted as reasonable and rational. The fact that the stipulation as to the age of retirement is a common feature of all of our public services establishes its necessity, no less than its reasonableness. Public interest demands that there ought to be an age of retirement in public services. The point of the peak level of efficiency is bound to differ from individual to individual but the age of retirement cannot obviously differ from individual to individual for that reason. A common scheme of general application governing superannuation has therefore to be evolved in the light of experience

regarding performance levels of employees, the need to provide employment opportunities to the younger sections of society and the need to open up promotional opportunities to employees at the lower levels early in their career. Inevitably, the public administrator has to counterbalance conflicting claims while determining the age of superannuation. On the one hand, public services cannot be deprived of the benefit of the mature experience of senior employees; on the other hand, a sense of frustration and stagnation cannot be allowed to generate in the minds of the junior members of the services and the younger sections of the society. The balancing of these conflicting claims of the different segments of society involves minute questions of policy which must, as far as possible, be left to the judgment of the executive and the Legislature. These claims involve consideration of varying vigour and applicability. Often, the court has no

satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the circumstances of a given case. We do not suggest that every question of policy is outside the scope of judicial review or that, necessarily, there are no manageable standards for reviewing any and every question of policy. Were it so, this Court would have declined to entertain pricing disputes covering as wide a range as cars to mustard oil. If the age of retirement is fixed at an unreasonably low level so as to make it arbitrary and irrational, the court's interference would be called for, though not for fixing the age of retirement but for mandating a closer consideration of the matter. "Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14. But, while resolving the validity of policy issues like the age of

retirement, it is not proper to put the conflicting claims in a sensitive judicial scale and decide the issue by finding out which way the balance tilts. That is an exercise which the administrator and the Legislature have to undertake. As stated in The Supreme Court and the Judicial Function. “Judicial self-restraint is itself one of the factors to be added to the balancing process, carrying more or less weight as the circumstances seem to require.” [Emphasis supplied]”

In a recent judgment, a Division Bench of this Court in the case of **Lal Chand Goyal vs. Punjab State Agricultural Marketing Board and others** - **C. W. P. No. 11994 of 2013**, decided on 10.02.2014, while considering the same amended Rule 3.26 of the Rules, as in the case in hand and the issue of grant of extension in service, held that no employee could claim extension in service as a matter of right as there was no legal right vested to an employee to seek extension in service beyond the age of superannuation. It was held that granting of extension in service beyond the age of superannuation was a discretion, available to every employer, Management and State, keeping in view the public interest. In that case, as per the amended Rule, no extension of service had been granted by the

employer therein and such non-grant of extension was challenged before this Court. While dismissing the writ petitions, the Division Bench held as under :-

“Plainly no fault can be found with the said decision. The question of grant of extension in service beyond the age of superannuation has been considered by Hon'ble the Supreme Court in various cases. The common thread in all these decisions is that there is no legal right vested in an employee to seek extension in service beyond the age of superannuation. It is a discretion available to every employer, every management and State to exercise discretion keeping in view public interest. It has also been stated that the extension in service is not conferment of benefit or privilege on the Officer.”

The above position of law was also considered and followed by me in a recent judgment in the case of **Tikka Ram vs. State of Punjab and others** - **C. W. P. No. 17038 of 2013**, decided on 31.03.2015, wherein I have held as under :-

“As per the settled law, no

legal right vests in an employee to seek, as a matter of right, extension of service beyond the age of superannuation. The extension in service beyond the age of superannuation is a discretion, which vests in the employer, who is to exercise this discretion keeping in view the public interest. Extension in service is in conferment of benefit of privilege on the employee.”

In view of the above, it can safely be held that the petitioners have no vested right to seek extension in their services beyond the age of superannuation. To grant or not to grant extension is as per the discretion of the employer.

Further, since extension in service beyond the age of superannuation cannot be claimed as a matter of right, it virtually is by way of a concession given by the employer to its employee and once such extension is held to be by way of a concession, then there is no reason in law why the same cannot be unilaterally withdrawn for justifiable reasons and in public interest.

In this regard, the following observations made in a recent decision of this Court in the case of **Baljit Kaur and others vs. State of Haryana and others** reported as **2015 (1) Service Cases Today 647**, can

be usefully referred to :-

“At the highest, it was a concession granted unilaterally by the employer and has thereafter been withdrawn unilaterally.”

In **Baljit Kaur's** case (*supra*), the decision of the Government of Haryana, reducing the age of superannuation from 60 years to 58 years was challenged before this Court and while dismissing the writ petitions, the above observations were made.

The next issue which remains to be considered is whether the action of the respondents, which is impugned by the petitioners, is justified and in public interest ?

As per the impugned instructions dated 30.10.2014 read with instructions dated 07.01.2015, a policy decision has been taken by the State of Punjab to retain only those superannuated employees, who are not facing disciplinary action for serious misconduct on their part, which could lead to the imposition of a major penalty. There is no reason so as to why an employee with taint be forced upon the employer, especially after he has played his entire innings, as permissible under the Rules. Not to grant extension in service to employees beyond their age of retirement, who are facing disciplinary action, which could lead to imposition of a major penalty, is an action on the part of the employer, which I find not only to be justifiable, but also in public interest.

On one hand, are the persons like the petitioners, who have already played their innings and in spite of the fact that they are facing departmental action for alleged acts of omission and commission on their part, which could entail a major penalty and on the other hand, are the unemployed youth, who have recently passed out from Colleges and Universities with a legitimate expectation of entering into a career at the earliest. If the persons like the petitioners are allowed to continue even after the date of their superannuation and in spite of the taint that they carry, it would be at the cost of the category of unemployed youth, as referred above.

There is yet another category of employees, who would suffer if persons like the petitioners are allowed to continue and these are those employees, who are waiting for years altogether to get promoted to the posts, which would be vacated on the retirement of the persons like the petitioners. They would also have been legitimately expecting persons like the petitioners to retire on a particular date giving them hope for consideration of their cases for promotion from that date onwards. I can imagine the heart-burn of such employees, as also the unemployed youth, who would be left high and dry, whereas persons like the petitioners would continue to man the posts even beyond the age of their superannuation and in spite of the blemish that they carry of facing charges for serious acts of misconduct on their part, which could result in the imposition of a major penalty.

In view of the above facts also, I find the policy decision taken by the respondent – State of Punjab to be in overall public interest, requiring no interference on my part.

The Government of Punjab has taken a policy decision not to grant extension to the already superannuated employees, if such employee was facing departmental action on account of serious charges which could lead to imposition of a major penalty. As per settled law, such policy decisions are not to be lightly interfered with, especially when I have found such decisions to be reasonable and in public interest. In this regard, the judgment of the Apex Court in **Sidheshwar Sahakari Sakhar Karkhana Ltd. vs. Union of India and others** reported as **(2005) 3 SCC 369** can usefully be referred to :-

“23. We are also of the view that grant of rebate, exemption or concession is in the nature of policy of the Government. Normally in such policy matters, a court of law will not interfere unless the policy is shown to be contrary to law, inconsistent with the provisions of the Constitution or otherwise arbitrary or unreasonable. Since, the policy decision as reflected in Clause 3 of Notification No. 132/82 cannot be said to be arbitrary, unreasonable or inconsistent

with statutory provisions, a person claiming the protection under the said notification has to comply with the conditions laid down in the notification. As the appellant has been granted benefit of rebate in excise duty as per Clause 3 of the notification, the action cannot be held unlawful and the appellant-society has no reason to make grievance against the action of the Revenue.

[Emphasis supplied]”

Similarly, in **Indian Railway Caterers and Tourism Corporation Limited vs. Indian Railway Major and Minor Caterers Association and other** reported as **2011 (12) SCC 792**, the Apex Court has held as under :-

“2. By the impugned order, the High Court has interfered with the Catering Policy of 2005 in respect of reservations. By now it is a well settled principle of law that policy decisions of the Government should not be interfered in a routine manner unless the policy is contrary to the provisions of statutory rules or of the Constitution. Nothing has been brought to

our notice that the Policy is contrary to the provisions of the statutory rules or the Constitution. For this simple reason, we set aside the order of the High Court impugned herein.”

To the same effect is a recent Division Bench judgment of this Court in **Darshan Kaur and others vs. State of Punjab and others** reported as **2014 (3) RCR (Civil) 968**, in which it has been held as under :-

“18. The policy decision of the Government generally is not to be interfered with unless the same is totally unreasonable, irrational, arbitrary or violative of the Constitution or the Statute. We have not found the said policy to be impinging upon any of these tests, which would enable this Court to interfere with the policy decision of the State challenged herein.”

Counsel for the petitioners has submitted that the petitioners have only been charge-sheeted. There is no final pronouncement of their guilt, and therefore, at this stage, having only been charge-sheeted, they could not be denied extension in service. After having considered this argument, it does not find favour with me. The petitioners are claiming

extension in their service after having attained the age of superannuation. They have already played their entire innings and now, it was time to hang their boots. At that stage, if the employer had decided to grant extension in service to only those of its employees, against whom, there is no charge of serious misconduct, then I find no fault with such decision on the part of the employer, especially in view of the law laid down by the Apex Court that beyond the age of superannuation, an employee has no vested right to continue in service and that such continuance in service can only be at the discretion of the employer. It is true that culmination of inquiry proceedings against an employee could result in him being found guilty or otherwise, but the employer is not required to await the finalization of such proceedings especially for the grant of extension in service. For retaining such employee after he has superannuated, according to me, the employer is well within his rights to only retain those employees, who do not carry the taint of a pending disciplinary proceeding for serious misconduct, which could entail a major penalty.

Before parting with the judgment, the issue of discrimination, as raised by the counsel for the petitioners, is also required to be dealt with. It is submitted that one employee namely Shri Sham Lal Kamboj, working as an Assistant Divisional Fire Officer, Municipal Corporation, SAS Nagar, Mohali, has been granted extension in service, even when disciplinary proceedings for major penalty are pending against him. This plea on the part of the petitioners has come up for the first time in replication, but even

if this fact is correct, two wrongs do not make a right and the issue of discrimination cannot be allowed to be raised qua a wrong. If the respondents have acted against their own policy, it would not clothe the petitioners with a right to pray for directions to the respondents to perpetuate such wrong. Thus, while rejecting the plea of discrimination, as sought to be raised on behalf of the petitioners, I permit them to represent to the respondents qua any wrongful grant of extension in service and if any such representation is made, I direct the respondents to consider the same in accordance with law.

In view of the above, finding no merit in these petitions, I order dismissal of the same, with no order as to costs.

(DEEPAK SIBAL)
JUDGE

Pronounced On : 24.04.2015

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