

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

**CWP No.3919 of 2015
Date of Decision: 04.03.2015**

Hardev Kaur

...Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr. Naresh Kaushik, Advocate
for the petitioner.

AMIT RAWAL, J. (ORAL)

The petitioner is stated to be handicapped. Prayer in the present petition by invoking extraordinary writ jurisdiction under Article 226/227 of the Constitution of India is for issuance of a writ in the nature of mandamus entitling petitioner the benefit of two years extension in retirement age from 58 years to 60 years being more than 40% physically handicap as per provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short-"Act 1995") on the ground that the conditions of minimum degree of disability or 70% more in Government notifications dated 31.01.2006 (Annexure P-3) and 28.03.2006 (Annexure P-4) being illegal and contrary to the Act 1995 as well as the settled law laid down by Hon'ble Supreme Court of India.

Notice of motion.

On asking of the Court, Mr.Ravi Pratap Singh, AAG, Haryana, accepts notice on behalf of the State.

As per the contentions made in the representation, the petitioner is to retire/superannuate by 31.03.2015. The petitioner is stated to have made a representation on 11.01.2015 for consideration of extension of service. In view of the provisions of Act, 1995 as well as the law laid down by the Hon'ble Supreme Court and this Hon'ble Court that the disability of a person suffering not less than 40% is entitled to all the claims and benefits provided by the Government and there can be no further discrimination amongst the persons with varied or different types of disabilities. It is a matter of record that the petitioner is physically handicapped to the extent of 60% and was appointed initially as Art and Craft Mistress. The imposition of condition in the notification (Annexure P-3) to the extent that the persons, who are having minimum degree of disability 70%, are entitled to extension from 58 years to 60 years is not in consonance with the provisions of Section 2(i) and 2(t) of the Act, 1995. The provisions of Section 2(i) and 2(t) have extensively been dealt with by the Hon'ble Supreme Court in **“Deaf Employees Welfare Association and another Vs. Union of India and others, 2014(1) RCR (Civil) 377.** The aforementioned disability of 60% is not disputed by the learned State counsel. Since the petitioner has already submitted a representation dated 11.01.2015 claiming the extension in service from 58 to 60 years and the same is stated to be

pending adjudication. Be that as it may, the facts remain that the petitioner is having more than 60% of disability and the condition of minimum degree of disability of 70% imposed in the notification is not in consonance with the provisions of the Act, 1995, is, therefore held to be illegal and is set aside. A direction is issued to respondent No.2-the Principal Secretary/Director (School Education), Directorate of School Education, Haryana to consider the representation uninfluenced with the condition imposed in the notification but keep in view the observations made by this Court and provision of the Section 2(i) and 2(t) of the Act, 1995 and decide the case of the petitioner for extension of service within a period of two weeks from the receipt of certified copy of this order. In case the petitioner is found eligible, he be granted extension of service.

Keeping in view the observations referred to above if the respondents do not grant any relief to him, then a well reasoned and speaking order be passed and conveyed to the petitioner to vindicate his grievance.

The writ petition is disposed of accordingly.

(AMIT RAWAL)
JUDGE

March 04, 2015

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