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

1. CWP No.5482 of 2014 (O&M)

Som Dutt and another ...Petitioners

Versus

The State of Punjab and others ...Respondents

2. CWP No.9797 of 2014 (O&M)

Suresh Kumar Bhalla ...Petitioner

Versus

The State of Punjab and others ...Respondents

3. CWP No.24490 of 2014 (O&M)

Madan Lal and others ...Petitioners

Versus

The State of Punjab and others ...Respondents

and

4. CWP No.25016 of 2014 (O&M)

Krishan Mohan Singh and others ...Petitioners

Versus

The State of Punjab and others ...Respondents

Date of Decision: **April 23, 2015**

CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Sanjay Tangri, Mr.Sandeep Arora and
Mr.K.S.Boparai, Advocates for the petitioners.

Mr.Gaurav Garg Dhuriwala, Dy. Adv.General
Punjab for the respondent – State.

Mr.Rahul Sharma, Advocate for
respondent – Sugarfed.

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HARINDER SINGH SIDHU, J.

This judgment shall dispose of four Civil Writ Petitions, bearing Nos.5482, 9797, 25016 and 24490 of 2014 as common questions have been raised in all these petitions.

However, for adjudicating upon the issue, the facts are being taken from CWP No.5482 of 2014.

Prayer made in this petition is for quashing the order dated 28.6.2013 (Annexure P-10) passed by the respondent - State, vide which, it has been conveyed that service period of the officers/officials working in Sugarfed/Sugar Mills cannot be extended. Petitioners have also prayed to quash the orders dated 14.3.2014 and 18.3.2014 (Annexures P-12 and 13), vide which they have been retired on attaining the age of 58 years.

The petitioners are the employees in the Common Cadre of the Co-operative Sugar Mills. Their services are governed by the Punjab State Co-operative Sugar Mills (Comon Cadre) Service Rules, 1981 (for short "the 1981 Rules"). In the year 1995, the 1981 Rules were amended and as per amended Rule 2.95, the retirement age, which earlier was 60 years, has been fixed as 58 years.

The Government of Punjab had issued notification dated 08.10.2012 and amended the Punjab Civil Services Rules vide Punjab Civil Services (1st Amendment) Rules, 2012, whereby, the State Government was enabled to grant benefit of extension of service to its employee or a class of government employees for a period not exceeding two years beyond their date of retirement subject to certain conditions. This benefit, however, was not given to the employees of Boards/ Corporations and Cooperative Institutions. Later, the Government issued instructions dated 27.02.2013 (Annexure P-9) extending the said benefit to Public Sector Undertakings, Autonomous Bodies and Cooperative Institutions.

It is the case of the petitioners that contrary to its own instructions, the Government issued order dated 28.6.2013 (Annexure P-10) directing that the service period of the officers working in Sugarfed/ Sugar Mills cannot be extended on the basis of instructions dated 27.02.2013.

Thereafter, the petitioners were issued office orders dated 14.3.2014 and 18.3.2014 (Annexures P-12 and P-13) retiring them from service on completion of 58 years of age. It is the aforesaid order Annexure P-10 and the orders retiring the petitioners on their completing the age of 58 years that have been impugned before this Court.

In the short reply filed on behalf of respondents No.1 and 3 it has been stated that, while clarifying the initial instructions dated 27.2.2013 (Annexure P-9) regarding granting extension of service beyond 58 years, the Government of Punjab (Department of Cooperation) issued orders dated 28.3.2014 (Annexure R-1), wherein, in para 4 it has been made clear that extension would not be granted to the employees of those institutions which are receiving grant-in-aid from the Government of Punjab. It is pointed out that Sugarfed is an Apex Cooperative Institution which is receiving substantial grant-in-aid from the Government of Punjab from time to time.

Learned counsel for the petitioners has contended that as per the instructions dated 27.2.2013 (Annexure P-9), the petitioners should have been granted the extension of service period upto the age of 60 years and the order dated 28.6.2013 (Annexure P-10) is contrary to the said instructions.

Controverting the argument, Learned counsel for the respondent – State has drawn the attention of this Court to the following part of the instructions (Annexure P-9), which reads as under:-

> *"3. Now cases have been received by the Finance Department from many Boards/Corporations in which, instructions/ directions have been sought by the Boards/ Corporations from the government and some Boards / Corporations have sought approval for giving one year extension in the services of their employees.*
>
> *4. So, the decision is hereby taken regarding this matter, as per the following:-*
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> > *A) This decision would be applicable to those Boards/ Corporations who have made provision in their bye laws/ services rules for implementing the Punjab Civil Service Rules or the age of retirement of the employees of these bodies are similar to the employees of Punjab Government.*
> >
> > *B) The Board/ Corporation can give one year extension to their employee with the approval of its Administrative Department.*
> >
> > *C) The following points would also be kept in mind before giving one year extension by the Board/Corporations to its employees:*
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> > > *(i) This one year extension would be applicable to all the employees of the Boards/ Corporations and any pick and choose policy would not be*

> *adopted as this extension has been given to all the employees by the government.*
>
> *(ii) In case, service cadre of any specific category has been declared as diminishing cadre in the bodies/ organisations or staff is surplus in any category, then the service period of the employees of that category would not be extended.*
>
> *(iii) In case, by giving one year extension in the service period of the employee of any organisation, adversely effect on the financial condition of that organisation, then in that eventuality, one year extension would not be given to the employees by that Body/ Organisation.*
>
> *(iv) In case, any Body/organisation take grant-in-aid from the Punjab government then one year extension would not be given to the employees by that Body/ organisation."*

Thus, as per the instructions dated 27.2.2013, the extension of service after the age of superannuation in the case of officers of Public Sector Enterprises/ Autonomous Bodies/ Apex Cooperative Institutions is to be given keeping in mind certain conditions specified in the said instructions, one of which was that one year extension would not be given if any Body / Organization takes grant-in-aid from the Punjab Government. In the letter dated 28.3.2014 (Annexure R-1), sent by the Special Secretary (Cooperation), Government of Punjab to the Registrar, Cooperative Societies, it is specifically mentioned that Sugarfed has drawn the loan amount of Rs.190.00 crores towards payments of sugarcane arrears from Punjab Rural Development Board during the year 1992 to 2001 which was subsequently converted into grant in the year 2002 by the Punjab Rural

Development Board vide letter No.1625 dated 31.12.2002. Similarly, Punjab Rural Development Board provided Rs.18.77 crores for the payment of sugarcane arrears in the year 2007-08 vide letter No.1032 dated 2.7.2007 and again Rs.18.77 vide letter No.2384 dated 31.10.2007 as a grant. Thus, as per condition No.(C)(iv) of the instructions dated 27.2.2013 extension in service could not be granted.

It is noteworthy that the instructions dated 27.2.2013 have not been challenged in these petitions, rather, the same are being relied upon to seek extension in service. But as is clear from the above narration, the claim of the petitioners cannot sustain in view of the express condition in the instructions that the extension cannot be granted to employees of those institutions which receive grant-in-aid from the Government.

Moreover, it is settled legal position that the employees do not have a legal right for extension in service. It is in the discretion of the employer, as was held by the Hon'ble Supreme Court in **State of Assam v. Basanta Kumar Das***, (1973) 1 SCC 461 :*

> ***16.*** *This was a case where the rule was statutory. It need hardly be emphasised that what applies to a statutory rule applies with greater force to mere executive instructions. This is a complete answer to the claim of the respondents in this case that as a result of the memorandum of March 21, 1963, they got a right to continue in service beyond the age of 55 years. 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 exercise of the*

discretion of the Government.

17. *In* ***B.N. Mishra v. State*** *it was held that:*

> *"Government was not obliged to retain the services of every public servant for the same length of time. The retention of public servants after the period of retirement depended upon their efficiency and the exigencies of public service. It cannot be urged that if Government decides to retain the services of some government servants after the age of retirement it must retain every government servant for the same length of time. The retention of public servants after the period of retirement depends upon their efficiency and the exigencies of public service."*

The above legal preposition was once again reiterated in **State Bank of Bikaner & Jaipur v. Jag Mohan Lal**, ***1989 Supp (1) SCC 221*** **:**

> ***"9.*** *It seems to us that the High Court has misconstrued the legal right claimed by the respondent. The right to get extension of service beyond the age of superannuation has received consideration of this Court in several cases. In State of Assam v. Basanta Kumar Das after reviewing almost all the earlier decisions [Kailash Chandra v. Union of India; B.N. Mishra v. State of U. P. and State of Assam v. Premadhar], this Court said: (SCR .p. 165 : SCC p. 467,*

paras 16 and 18)

> *"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 exercise of the discretion of the Government....*
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> *The fact that certain persons were found fit to be continued in service does not mean that others who were not so found fit had been discriminated against. Otherwise the whole idea of continuing only efficient people in service even after they had completed 55 years becomes only meaningless."*

In view of the above, these petitions being devoid of merits, are dismissed.

(SATISH KUMAR MITTAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

April 23, 2015

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