

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 26001 of 2014 (O&M)

Date of Decision : May 26, 2015

Amrik Singh Petitioner

Vs.

Punjab State Cooperative Agricultural
Development Bank Ltd. and another Respondents

Case No. : C. W. P.No. 6527 of 2015 (O&M)

Date of Decision : May 26, 2015

Ram Pal Singh Petitioner

Vs.

Punjab State Cooperative Agricultural
Development Bank Ltd. and another Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Manjit Singh Sarao, Advocate
for the petitioner (in both cases).

Mr. Nitin Kaushal, Advocate
for the respondents (in both cases).

* * *

DEEPAK SIBAL, J. :

C. M. No. 6889 of 2015 in C. W. P.No. 26001 of 2014 :

Through this application, replication along with documents Annexures P-7 and P-8, is sought to be placed on record.

Allowed as prayed for. CM stands disposed of.

C. M. No. 6893 of 2015 in C. W. P.No. 6527 of 2015 :

Through this application, replication along with documents Annexures P-6 to P-10, is sought to be placed on record.

Allowed as prayed for. CM stands disposed of.

Main Case :

These two petitions being **C. W. P. No. 26001 of 2014** and **C. W. P. No. 6527 of 2015**, involving similar questions of fact and law, were taken up for hearing together and are being disposed of by this common judgment. For the sake of convenience, facts are being taken from **C. W. P. No. 6527 of 2015**.

The petitioner, while serving the respondent - Punjab State Cooperative Agricultural Development Bank Ltd. (hereinafter referred to as – the respondent Bank) as a Manager, was to superannuate on 30.06.2014, but relying on the instructions of the Government of Punjab dated 08.10.2012, duly adopted by the respondent Bank, he applied for extension of his service for one year, which was granted. As per the extension in service granted to him, he was now to continue in service till 30.06.2015, but through order dated 31.03.2015, his services were curtailed on the ground that he, in the recent past, had been inflicted with a major

punishment on account of proven misconduct of showing bogus recovery and false recovery in the books of accounts. It is the order dated 31.03.2015, which has been challenged by the petitioner through the present writ petition.

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 petitioner has argued that the petitioner's appeal against the order of punishment is pending and before any decision could be taken on the appeal, his extended service could have not been curtailed through the impugned order. It has further been submitted that as per the instructions of the Government, on the basis of which the impugned order had been passed, only the extended service of an employee, who was facing departmental action, could be curtailed. It was submitted that the petitioner was not facing any departmental action, and therefore, his case was not covered by the instructions. It was further submitted that the major penalty inflicted upon the petitioner was stoppage of increments with cumulative effect, but while relying upon the order dated 28.03.2014 (Annexure P-10), it was submitted that all the increments in the case of the petitioner had been released, and therefore, since he was suffering no penalty, his extended service could not be curtailed.

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.

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

It is the undisputed position that the above referred instructions have been adopted by the respondent Bank.

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

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.”

This issue was recently considered by me in **C. W. P. No. 3826 of 2015 – Romesh Garg vs. State of Punjab and others**, decided on 24.04.2015, wherein after following the law as laid down by the Apex Court, as also this Court, I have held that no employee has a right to continue in service after the date of his superannuation and thus, cannot seek a mandate for the same. The relevant portion of the judgment is reproduced below :-

“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.”

From the above settled position of law, it is clear that an employee has no right, much less a legal right, to seek a mandate to continue in service beyond the age of superannuation and thus, it can safely be held that the petitioner has no vested right to seek extension in his 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 is virtually 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.

The next issue, which remains to be considered is whether the action of the respondents in curtailing the extension in service granted to the petitioner is justified and in public interest ?

In the case in hand, the petitioner has been inflicted a major punishment for fudging accounts. In addition to the major penalty, he has also been inflicted a minor penalty. A person suffering a major penalty for fudging accounts cannot be thrust upon the employer, especially after he has played his entire innings. An employee with a taint cannot and should not be forced upon an employer, especially in view of the settled position of law, as referred to above. If tainted employees like the petitioner are allowed to continue in service even after having attained the age of superannuation, then such continuance would be against public interest. Further, on their continuance after the date of their superannuation, they would continue to occupy the posts, which otherwise would have been filled up by way of promotion from amongst the employees, who have unblemished records and who have been legitimately expecting such promotions on the retirement of their seniors on attaining the age of superannuation. Further, unemployed youth, who have recently passed out from Colleges and Universities, legitimately expect to enter into a career at the earliest, would have to wait for tainted persons like the petitioner to end their extended innings.

Learned counsel for the petitioner submitted that the appeal of the petitioner against the punishment meted out to him is pending and on

this ground, the impugned order is liable to be set aside. A perusal of the original record, which was summoned and perused by me, shows that the appeal of the petitioner was dismissed on 12.09.2014 and the same was conveyed to the petitioner through registered post on 13.11.2014. This fact has been withheld by the petitioner from this Court.

The plea of the petitioner, that he is not suffering any penalty because all increments have been released to him, is also to be considered to be rejected. The punishment order in the case of the petitioner was to apply with effect from the year 2014. A perusal of the order dated 28.03.2014 (Annexure P-10), relied upon by the petitioner, shows that the increments released in favour of the petitioner are before and not after the date of punishment. Thus, it is wrong to say that the petitioner is not suffering the awarded punishment.

Further, through instructions dated 30.04.2015, the State of Punjab has clarified its earlier instructions dated 08.10.2012 pertaining to the grant of extension of service to the employees. In these instructions, it has specifically been provided that all employees, who are undergoing a major punishment, their cases for extension, even if granted, need to be reviewed and if it is found that they have been inflicted major punishment in the past, the extension in their service so granted be curtailed. As these instructions are clarificatory in nature, as per settled position of law, they would relate back to the date of issuance of the original instructions. Even otherwise, the petitioner has not challenged these instructions.

In view of the above, finding no merit in both the writ petitions
i.e. **C. W. P. No. 26001 of 2014** and **C. W. P. No. 6527 of 2015**, both these
petitions are ordered to be dismissed.

No costs.

(DEEPAK SIBAL)
JUDGE

May 26, 2015
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