

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 233

Case No. : C. W. P.No. 9654 of 2015

Date of Decision : May 28, 2015

Nek Chand 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. Munish Jolly, Advocate
for the petitioner.

Ms. Monica Chhibbar Sharma, DAG, Punjab.

Mr. Rajiv Malhotra, Advocate
for respondents no. 2 to 4.

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DEEPAK SIBAL, J. :

Written Statement on behalf of respondents no. 2 to 4, filed today in Court, is taken on record. Copy supplied to the counsel opposite.

Through this writ petition, the petitioner seeks quashing of order dated 17.03.2015 (Annexure P-14), whereby he has been ordered to be retired w.e.f. 30.06.2015, on attaining the age of 58 years. The petitioner further prays for the issuance of a direction to the respondents to permit

him to continue in service till he attains the age of 60 years i.e. up to 30.06.2017.

From the arguments raised at the bar and perusal of the record of the case, the undisputed facts, which have emerged, are that the petitioner is a physically disabled man suffering from locomotor disability and the extent of his disability, as certified by the Medical Board, is 60%. Vide the instructions of Government of Punjab dated 16.03.1995, later clarified through instructions dated 16.02.1996, the age of retirement of only blind persons was increased from 58 years to 60 years. The main circular dated 16.03.1995 was admittedly adopted by the respondent Punjab State Electricity Board (now Punjab State Power Corporation Limited – hereinafter referred to as 'the Corporation') through its circular No. 33/95.

In view of the above, the age of retirement of only blind persons to the exclusion of other handicapped persons was increased to 60 years. The above discrimination was challenged before this Court through **C. W. P. No. 7233 of 2010 – Bhupinder Singh vs. State of Punjab and others**. After considering the entire matter, a Single Judge of this Court, through order dated 25.05.2011, held that the benefit of the instructions was required to be given to all handicapped persons and not just to employees, who are blind.

The above referred judgment of the learned Single Judge was taken up in appeal before a Division Bench through **L. P. A. No. 1719 of**

2011 – State of Punjab and others vs. Bhupinder Singh. The Division Bench, dismissed the appeal by holding as under :-

“Thus, with the enactment of the Disability Act, all such disabled persons, irrespective of the nature of their disabilities, are to be treated equally and at par. The Disability Act places responsibility on the society to make adjustments for disabled people so that they overcome various practical, psychological and social hurdles created by their disability. The Act places disabled people at par with other citizens of India in respect of education, vocational training and employment. The Act seeks to establish a coherent and comprehensive framework for the promotion of just and fair policies and their effective implementation. It creates formal procedures, which hasten the process of full and total integration of the disabled in the society. It also aims at facilitating efficient enforcement of policies and permits strong measures against the law-breakers. The

main aim of PWD Act is also to define the responsibilities of the Central and State Governments with regard to the services for disabled persons. The Act aims to ensure full life to a disabled individual so as to enable him to make full contribution in accordance with his disability condition.

The aforesaid discussion would amply demonstrate that it is not only the statutory but constitutional right of persons suffering from disabilities to get special treatment recognized by law. In this process, persons suffering from one disability cannot be treated differently from other kind of disability. All disabled persons falling within the definition of Section 2(I) of the Disability Act form one class. There cannot be sub-classification within this same class.”

The State of Punjab challenged the above said judgment by the Division Bench before the Apex Court through **Civil Appeal No. 8855 of 2014 – State of Punjab and others vs. Bhupinder Singh**. The Apex

Court, while affirming the decision of the Division Bench, held as under :-

“The aforesaid issue has been answered by a Division Bench of the Punjab and Haryana High Court in the affirmative. We fully endorse the aforesaid determination rendered by the High Court, and also affirm the reasons recorded in arriving at the aforesaid determination. All the same, we would record our restriction/ limitation to the determination rendered by the High Court. On the issue of employment, the Disabilities Act contemplates reservation through Section 33 for three types of disabilities. Firstly, persons suffering from blindness or low vision. Secondly, persons suffering from hearing impairment. And thirdly, persons suffering from locomotor disability or cerebral palsy. For equal opportunity and protection of rights in employment, only the above three categories of disabilities have been recognised by the Disabilities Act. On a reference to the provisions of the

Disabilities Act, therefore, equality is sustainable only in respect of the three categories specified in Section 33 of the Disabilities Act. In fact, learned counsel for the respondents also endorse the above position.

In order to dissuade this Court from accepting the reasoning expressed in the impugned orders, learned counsel for the appellants invited our attention to a decision rendered by this Court in Union of India vs. Devendra Kumar Pant and others, (2009) 14 SCC 546. The question that arose for consideration in the aforesaid judgment pertains to promotion. That is not the case here. The benefit granted by the High Court pertains to the respective employment in which a disabled employee has been engaged. In that view of the matter, the judgment relied upon by the learned counsel for the appellants is not applicable to the facts and circumstances of this case. Our above view is based on the

fact, that the issue of discrimination adjudicated upon by the High Court, relates to employees who were already engaged in government service. There is no dispute about their ability to discharge their duties, against the posts on which they were employed. The benefit if extended to the categories of disabilities for which reservation in employment has been contemplated under the Disabilities Act would not cause any administrative inconvenience to the appellants.

For the reasons recorded hereinabove, the instant appeals are disposed of in the above terms, with no order as to costs.”

The position of law was thus settled that the benefit of the increase in the date of age of retirement from 58 years to 60 years was to be granted to all handicapped employees, who incur the prescribed percentage of disability, irrespective of the fact whether they are blind, orthopedically handicapped etc.

It is the admitted position that the respondent Corporation has adopted the instructions of the Government of Punjab, wherein the benefit

of increase in retirement age was only given to employees, who were blind. That being so, as per the above settled position of law, the age of retirement of the petitioner, who suffers from locomotor disability to the extent of 60% against the prescribed disability of 40%, has also to be treated as 60 years.

There is yet another feature of this case, which goes in favour of the petitioner. On one hand, the plea of the petitioner for treating his age of retirement as 60 years has been rejected by the respondent Corporation, while on the other hand, identically placed employees namely Naurang Singh and Gurdev Singh have been allowed to continue beyond the age of 58 years after giving them the benefit of **Bhupinder Singh's** case (*supra*) by the respondent Corporation, through order dated 10.12.2014 (Annexure P-7) and 18.03.2015 (Annexure P-8). On being questioned with regard to the cause of such discrimination, learned counsel appearing on behalf of respondent Corporation drew a complete blank.

In view of the above, the impugned order dated 17.03.2015 (Annexure P-14) is quashed and respondents are directed to treat the age of retirement of the petitioner as 60 years.

The writ petition stands allowed in the above terms.

No costs.

(DEEPAK SIBAL)
JUDGE

May 28, 2015
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