

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

**CWP No.12331 of 2014
Date of decision: 17.08.2016**

Ramesh Chander

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Kapil Kakkar, Advocate
for the petitioner.

Mr. L.S. Virk, Addl. AG, Punjab
for the respondents-State.

Daya Chaudhary, J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned order dated 16.05.2014 (Annexure P-13), whereby, the Government has decided to grant extension of 1-2 years of service to Chief Pharmacists as per instructions dated 08.10.2012 and 20.09.2013 in view of law laid down by this Court in CWP No.22757 of 2012 titled as 'Shashi Kant and others vs. State of Punjab and others' decided on 21.03.2014 (Annexure P-9) but the same has not been granted to the petitioner. A further prayer has also been made for issuance of direction to the respondents to grant extension in service to the petitioner forthwith as has been done in the cases of all Group A, B, C and D employees working in the State of Punjab and also the similarly situated Chief Pharmacists.

Briefly, the facts of the case as made out in the present writ petition are that the petitioner was appointed as Pharmacist in the Department of Health and Family Welfare, Punjab on 12.02.1974 and thereafter, he was promoted to the post of Chief Pharmacist in Grade II on

03.09.2012. As per notification dated 08.10.2012, the Government of Punjab amended Rule 3.26 of the Punjab Civil Services Rules, Volume-I, Part-I and substituted the new clauses (a) and (b), which provided that in case, the State Government is of the opinion that it is necessary or expedient in public interest, the services of a Government employee or a class of Government employee, may be extended beyond the date of retirement for a period not exceeding two years, after getting an option from the concerned Government employee. Vide aforesaid instructions, all Group A, B, C and D employees were given extension of one year subject to submission of option with the direction that the said instructions would be applicable in the case of only those employees whose date of retirement is 31.10.2012 or thereafter. The petitioner was to retire on 31.10.2012 and he submitted his option in this regard. The case of the petitioner for extension in service was rejected vide order dated 31.10.2012 on the ground that the Pharmacists working in the rural dispensaries are not entitled for extension of one year on account of their diminishing cadre, which is subject matter of challenge in the present writ petition.

Learned counsel for the petitioner submits that some of the similarly situated employees approached this Court by way of filing CWP No.22757 of 2012 alleging therein that they were entitled for extension in service as per policy of the State Government, which was allowed along with other writ petitions on 21.03.2014. Learned counsel further submits that in view of the decision passed in the aforesaid petition, the petitioner was entitled to continue in service upto 31.10.2014 at par with the other Chief Pharmacists. After decision in CWP No.22757 of 2012, the petitioner contacted the officials of the Department but he was informed that the

Government has decided to give extension of 1-2 years to the Chief Pharmacists but vide letter dated 16.05.2014, it has been decided that those employees who had already retired before 21.03.2014 or in whose cases, the status quo was not granted by this Court, no right was given for consideration. Learned counsel also submits that the action of the respondents is not only malafide but arbitrary and discriminatory also. It is also the argument of learned counsel for the petitioner that the issue of declaring diminishing cadre has already been declared illegal by the respondents-State and subsequently, not to grant any extension is absolutely illegal and arbitrary and the same is not sustainable in the eyes of law. Learned counsel also submits that as per settled position of law, once the policy decision has been taken by the State Government then, the same cannot be denied except the sufficient reasons to be recorded in the public interest.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and has raised a preliminary objection that petitioners No.1 to 7 in CWP No.22757 of 2012 were granted status-quo order but no interim order was passed in favour of petitioner No.8 as he had already superannuated and relieved from service on 31.10.2012. As per decision in aforesaid petition, the benefit of extension would not be given to those employees, who did not have concession of interim order of status quo. Learned State counsel further submits that the same and similar issue was there in CWP No.11350 of 2014, as the benefits were not given to the employee working as Chief Pharmacist and superannuated on 31.10.2012. The said decision was not challenged. Learned State counsel also submits

decision rendered in CWP No.11350 of 2014. The petitioner is also having no interim order of status quo as he had already been relieved from service on 31.10.2012.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the impugned order as well as other documents available on the file.

The facts with regard to date of retirement and the instructions applicable to the case of the petitioner as well as orders passed in CWP No.22757 of 2012 and CWP No.11350 of 2014 are not disputed.

One similarly situated employee, namely, Surinder Pal Verma, working as Chief Pharmacist, approached this Court by way of filing CWP No.11350 of 2014 as no extension was granted to him on the ground that his cadre was diminishing and the action of the respondents was challenged in that petition on the ground that the issue of diminishing cadre was subject matter of challenge in CWP No.22757 of 2012. The aforesaid petition was dismissed on 30.05.2014 by this Court and claim of the petitioner in that case for extension was rejected on the ground that he was relieved from service on 31.10.2012. The relevant portion of judgment dated 30.05.2014 is reproduced as under: -

“The petitioner retired from service on attaining the age of 58 years on 31.10.2012, as his request for grant of extension in service was rejected. Some of the employees aggrieved against the rejection of their claim, approached this Court and they were granted interim relief as well. This Court in Shashi Kant's case (supra) held that the cadre of Chief

Pharmacist was not diminishing, hence, they are entitled to extension in service. But the fact remains that the petitioner never felt aggrieved against non granting of extension in service. Vide communication dated 5.11.2012 (Annexure P-7), the petitioner had in fact been relieved from duties w.e.f 31.10.2012. He felt satisfied. Merely because subsequently in a judgment in the petitions filed by some of the Chief Pharmacists, this Court found that the reason assigned by the State for not granting extension in service to the Chief Pharmacists, was erroneous, the petitioner cannot be now permitted to impugn the action of the State when the period of one year of extension in service if granted to the petitioner initially sought, expired on 31.10.2013, and admittedly thereafter the petitioner never sought extension in service.”

The issue in the present case is also squared by the decision passed in CWP No.11350 of 2014 decided on 30.05.2014 and no appeal against said judgment was filed and the same has attained finality.

Accordingly, the present writ petition is dismissed in view of decision passed in CWP No.11350 of 2014.

17.08.2016
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No