

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 19904 of 2012 (O & M)

Date of decision: 12.02.2016

Tilak Raj

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Vinod Kumar, Advocate,
Mr. Padamkant Dwivedi, Advocate,
Mr. Narinder Pal Sharma, Advocate,
for the petitioner.

Mr. L.S. Virk, Addl. A.G., Punjab.

G.S.SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 8 writ petitions i.e. CWP Nos. 15195 of 2011, 19904, 20169 of 2012, 8400, 8466, 8680, 17098 and 9139 of 2013 as common questions of law and facts are involved in all the writ petitions. Facts are being taken from ***CWP No. 19904 of 2012, Tilak Raj vs. State of Punjab and others.***

The petitioner seeks the relief of the enhancement of retirement age from 58 to 60 years by extending the benefits of circulars dated 16.02.1996 and 17.01.2001 (Annexures P-2 and P-3) on the ground that he being a disabled employee as defined under Section 2(i)(v), is entitled for the benefit under Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955.

It is the case of the petitioner that he had joined the respondent-department on 24.06.1982 and had 60% disability and was working on the

post of Social Studies Master. He was promoted as Lecturer in English on 11.02.2011 and was due to retire on 31.10.2012. He had met with an accident in the year 1972 and his right hand had been amputated and, therefore, he had come under the definition of disabled persons. The certificate dated 31.01.1981 issued by the Civil Surgeon, Hoshiarpur (Annexure P-1) was attached as proof. On account of the notification in the Punjab Government Gazette dated 23.10.1998, the reservation had been made for 3 categories of persons suffering from 3 different types of disabilities. The circulars dated 16.02.1996 and 17.01.2001 had been issued whereby, the age of the blind employees had been raised from 58 to 60 years. Accordingly, the petition was filed that the benefit should be granted to all disabled persons across the board and the claim should not be restricted only to blind employees.

While issuing notice of motion on 05.10.2012, the retirement of the petitioner was stayed and thereafter, in view of the pendency of the Special Leave to Appeal (Civil) No. 10610 of 2013 in the case of State of Punjab vs. Bhupinder Singh, the petition was adjourned sine die. Civil Appeal No. 8855 of 2014 has now been finally decided on 16.09.2014. Resultantly, the present case has been listed.

The respondents in their reply have taken the plea that the petitioner was to retire on 31.10.2012 at the age of 58 years. The claim of the petitioner was based on the judgment of this Court dated 25.05.2011 whereby, circulars dated 16.02.1996 and 17.01.2011 had been directed to be modified and the benefit of enhancement of age to all the categories of the disabled government employees as specified under Section 2(i) of the Act had to be extended. In view of the stay granted by the Apex Court after the

decision of the LPA on 25.09.2012, the petitioner was not entitled for the relief. He had, however, been allowed to continue in service in view of the interim order passed by this Court on 05.10.2012. Thus, it is apparent that the State was also awaiting the decision of the Apex Court.

It is not in dispute that this Court in **CWP No. 7233 of 2010, Bhupinder Singh vs. State of Punjab and others**, decided on 25.05.2011 had allowed the writ petition and directed the State to suitably modify the circulars and extend benefits to all categories of disabled persons. The petitioner therein was also held entitled for emoluments for the extended period of retirement and all consequential benefits. The relevant portion reads as under:-

“In view of the above, this petition is allowed. Respondent State is directed to suitably modify the Circular (Annexures P-2 & P-3) and extend the benefit of enhancement of age to all categories of disabled Govt. employees as specified under Section 2 (i) of the Disability Act in tune and spirit of the Act. The petitioner has been retired at the age of 58 years. It is more than one year that the petitioner has retired. I leave it to the wisdom of the State to re-induct the petitioner into service for the rest of period of retirement up to age of 60 years, however, petitioner shall be entitled to emoluments for extended period of retirement. He shall be deemed to have retired at the age of 60 years and will be entitled to all consequential benefits.”

Thereafter, the petitioner had approached this Court, as noticed above and the LPA in *Bhupinder Singh's case (supra)* had also been dismissed on 25.12.2012 which has further been upheld by the Apex Court.

Thus, the view of the learned Single Judge has been upheld.

This Court had an occasion to deal with the issue thereafter some employees were being granted the benefit and some were being denied and accordingly in ***CWP No. 3974 of 2012, Harbhajan Singh vs. State of Punjab and others***, decided on 18.09.2015 whereby, only notional pay had been given. Accordingly, the benefit of revision of pension had been allowed while noting that the Personnel Department had issued directions dated 18.11.2014 and thereafter, the Department of Finance had, vide instructions dated 10.03.2015, issued direction that in view of the order of the Apex Court dated 16.09.2014, the financial benefits are to be given on attaining the age of 60 years instead of 58 years to such employees. Accordingly, the said case was allowed with directions that all financial benefits be given for the period of two years and that the State shall ensure that in similarly situated cases, benefits are not denied to such handicapped employees as the issue stands conclusively decided. The following order was passed in *Harbhajan Singh's case (supra)* and the relevant observations read thus:-

“3. That after dismissal of SLP filed by Govt. of Punjab in the Hon'ble Supreme Court of India the personnel department issued the directions through letter no. 17/20/2010-2PP2/132 dated 18.11.2014. According to those directions the age of superannuation of all the categories of handicapped persons is enhanced from 58 years to 60 years. This petitioner had been retired on 30.04.2012 after attaining the age of 58 years. Therefore the advice was sought from Department of Finance that after the completing the age of 58 years whether all the financial benefits are to be given to the petitioner upto the age of 60 years or only notional benefits are to be given. The Department of Finance informed through letter no. 10/12/2015-3 XX

(written in Punjabi) 2/432712/1 dated 10.03.2015 that in view of the order dated 16.09.2014 passed by the Hon'ble Supreme Court of India in SLP no. 10610 of 2013 the petitioner may be given all the financial benefits from 01.05.2012 to 30.04.2014 on attaining the age of 60 years instead of 58 years.

4. *In view of aforesaid facts came on record myself C. Roul, Principal Secretary, Department of Education, Govt. of Punjab being a competent officer reached on the conclusion that as per the instructions vide dated 19.11.2014 of personnel department the age of the superannuation of Sh. Kailash Chander Sharma District Science Supervisor, Amritsar is fixed 60 years instead of 58 years. He would be entitled to all the financial benefits since 01.05.2012 to 30.04.2014 after attaining the age of 58 years meaning thereby that till he attains the age of 60 years he is entitled to all the financial benefits.”*

Resultantly, this Court is of the opinion that the present set of cases also deserve similar consideration. Accordingly, a direction is issued to the respondent-State to take into consideration the cases of the petitioners and grant them the necessary benefits as provided under the instructions dated 16.02.1996 and 17.01.2001 and in view of the abovesaid observations.

It is, however, made clear that in the present set of cases, the petitioner in CWP No. 19904 of 2012, has already worked under the interim orders of this Court dated 05.10.2012 and necessary adjustments will accordingly be made. Similarly, it is the case of the petitioner in CWP No. 20169 of 2012 that he was granted extension on account of the instructions dated 08.10.2012 for a period of two years but he would be entitled for the benefits which are given to the persons suffering from disabilities and who

are entitled for the extension under the said instructions over and above which is granted to the ones given under the instructions dated 08.10.2012. Accordingly, the necessary orders will be passed in his case separately. In case there is a dispute that whether the petitioners are to be denied the relief, it will be open to the respondents to pass a speaking order denying the relief since reply has not been filed in some of the cases, as matters were adjourned sine die. The needful be done within a period of two months from the date of receipt of certified copy of the order.

With the abovesaid observations, the writ petitions are allowed.

12.02.2016
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(G.S. SANDHAWALIA)
JUDGE