

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

**CWP No.19273 of 2015
Decided on : 17.03.2016**

Om Parkash

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present: Mr. Manish Dadwal, Advocate for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

G.S. Sandhawalia, J. (Oral)

The petitioner seeks the quashing of the order dated 29.05.2015 (Annexure P-15), vide which during the currency of his first extension in service, which was from 11.06.2014 to 31.05.2015, he was retired at the age of 59 years w.e.f 31.05.2015.

At that point of time charge-sheet dated 10.12.2014 (Annexure P-8) had already been issued to him under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 which was during the currency of the first extension. However, in view of the inquiry report, he was let off vide order dated 30.05.2015 by giving a warning. Thereafter, he filed an application for 2nd extension of service on 04.06.2015 (Annexure P-18), till the age of 60 years. The same has been declined vide order dated 25.08.2015 (Annexure P-21) by the Additional Secretary, which is also under challenge.

The reasoning given is that the earlier decision of non-grant of extension is not to be considered again and neither it was necessary nor expedient in the case of the petitioner to grant extension from 59 to 60 years.

Counsel for the petitioner has vehemently submitted that the defence of the State is that there is another inquiry pending against him and that only under Rule 10 for minor punishment. Therefore, it does not come within the ambit of the instructions, on account of which the petitioner can be denied the extension.

The basic principle remains that extension in service is a mere concession and it cannot be asked as a matter of right. In **CWP No.3826 of 2015 titled Romesh Garg Vs. State of Punjab & others** and in **CWP No.3847 of 2015 titled Iqbal Mohammad Vs. State of Punjab & others**, decided on 24.04.2015, it has already been held so. The relevant part reads as under:-

“In view of the above, it can safely be held that the petitioners have no vested right to continue in service beyond the age of superannuation and such continuance in service beyond the age of retirement is only at the sole discretion of the employer. If that is so, then the extension in service, even if granted, can be unilaterally curtailed through validly exercised discretion of the employer.

It is true that at an earlier point of time, the petitioners had been permitted to continue in service beyond their date of superannuation, but as per the settled law, as discussed above, their continuance in service beyond the date of their superannuation, is only at the sole discretion of the employer. If

that is so, then the extension in service, even if granted at an earlier point of time, could have been curtailed through a unilateral decision taken for justifiable reasons and in public interest.

Further, extension of service beyond the age of superannuation, being not as a matter of right, is virtually a concession given by the employer to its employee and once such extension is held to be a concession, then there is no reason in law why the same cannot be unilaterally withdrawn. In this regard, the following observations made in a recent decision of this Court in the case of Baljit Kaur and others vs. State of Haryana and others reported as 2015 (1) Service Cases Today 647, can be usefully referred to :-

“At the highest, it was a concession granted unilaterally by the employer and has thereafter been withdrawn unilaterally.”

In Baljit Kaur's case (supra), the decision of the Government of Haryana, reducing the age of superannuation from 60 years to 58 years was challenged before this Court and while dismissing the writ petitions, the above observations were made.

The argument raised on behalf of the petitioners that the curtailment of the extension in service already granted, is bad in law being in violation of principles of natural justice, is an argument, which needs to be considered only to be rejected.

Principles of natural justice would be attracted to the facts of a case, where some legal right is adversely effected, but in the facts of the case in hand, once the Apex Court has, through a catena of judgments (some of which have been referred to earlier), held that an employee has no right, much less a vested or legal right to continue beyond the age of superannuation, then curtailment of such period would not attract the principles of natural justice and the same can be done through a unilateral decision taken by an employer.

The extension in service in the case of the petitioners has been curtailed on the ground that they face departmental action which could entail major penalty. It is admitted by the petitioners that at the time, the orders impugned by them were passed, they were all facing disciplinary action which could lead to the imposition of a major penalty. Their cases are thus covered by the instructions impugned by them. In view of such admission, I fail to understand what prejudice has been caused to the petitioners on

account of non-issuance of a notice to them before ordering them to be relieved. The extension of service, as observed earlier, is by way of a concession given by an employer to its employee and any concession so granted can be unilaterally withdrawn. That being so, there is no question of violation of principles of natural justice for curtailment of period of extension of service already granted.”

In the present case as on 29.05.2015, admittedly, there was a proceedings for major penalty pending against the petitioner. In view of the instructions, his case was reconsidered and he was retired w.e.f. 31.05.2015, for which no fault can be found.

It is not disputed that, thereafter, the petitioner has been let off. However, that does not give him any vested right, as such to ask for extension in service, in view of the law laid down above. The order whereby his second extension in service was declined at that point of time is thus not liable to be interfered with on the same principle.

In such circumstances, there is no scope for interference in the present order, in view of the settled position of law. Accordingly, the present writ petition stands dismissed.

MARCH 17, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE