

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

**CWP No. 20809 of 2015
Date of Decision:- 19.12.2016**

Resham Singh

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Gagneshwar Walia, Advocate,
for the petitioner.

Mr. Rupam Aggarwal, DAG, Punjab.

Mr. Vishwajit Bedi, Advocate,
for respondents No. 3 and 4.

DAYA CHAUDHARY, J.

Petitioner has joined the services of respondent-Municipal Council as a Fireman on regular basis on 19.12.1984. As per clause (a) of Rule 3.26 of Punjab Civil Services Rules, Volume-I, Part-I, the date of retirement of Government employee other than a class IV employee was on attaining the age of 58 years. However, as per notification dated 8.10.2012, Rule 3.26 was amended and now extension can be granted to the Government employees for two years only, if it is considered expedient in the public interest by the respondent-State. The retirement of the petitioner was due on 30.9.2014 on completion of 58 years of age and in pursuance to the amended provisions, he submitted his request for grant of extension vide

application dated 24.9.2014 which was recommended by respondent No. 4 by recording a reason that the extension was in the interest of the Municipal Council as there was acute crunch of manpower whereafter, the extension was granted for one year i.e. w.e.f. 1.10.2014 to 30.9.2015. Subsequently, the petitioner applied for second year extension after completion of 59 years of service vide application dated 17.7.2015. However, it was recommended but the extension was not granted. Aggrieved, the petitioner has approached this Court for grant of extension in service beyond 59 years of age to the extent of removal of imposition of condition to undertake physical fitness test as per the rules governing the case of fresh recruitment/appointment.

Learned counsel for the petitioner submits that the petitioner was working even after the date of retirement and his work and conduct was satisfactory. Subsequently, a condition of passing of physical fitness test was imposed in an illegal manner just to deny his claim, whereas, no such condition was there at the time of earlier extension. Learned counsel also submits that such condition is required at the time of initial appointment but at the time of granting extension, no such condition is required. This condition was imposed with ulterior motive but the petitioner was ready to undergo that also. However, the case of the petitioner was kept pending for sufficient long period and even the period of second extension i.e. upto 60 years of age has also expired. At the end, learned counsel for the petitioner submits that not only the petitioner has been harassed but the condition of passing physical test is also arbitrary, illegal and against the statutory Rules.

It is not only discriminatory but also violative of Articles 14 and 16 of the

Constitution of India.

In response to notice of motion, separate reply on behalf of respondents No. 1 and 2, 3, 4 as well as respondent No.5 were filed. Learned counsel for the respondents submits that while recommending the case of the petitioner for further extension, it was clearly mentioned that petitioner is not physically fit for grant of extension. Physical fitness was required for best utilization of the resources available with them in view of the nature of duties of the post of Fireman as good health is required to meet out the situation of emergency. Learned counsel for the respondents also submits that the staff is less in comparison to sanctioned strength and good physical health of the limited staff is required.

Heard arguments of learned counsel for the parties and have also perused the documents available on the file.

Admittedly, the petitioner was to retire at the age of 58 years. As per Rules, the extension of two years could be given by considering the public interest. The petitioner was granted one year extension upto the age of 59 years. Thereafter, the extension for next second year was not granted in spite of recommendation made by the respondents. However, nothing has been brought on record to show that during the extended period of one year, there was any complaint regarding work and conduct of the petitioner as no adverse remarks were conveyed. The condition of passing of physical test was imposed at the time of extension of second year whereas such condition was neither required as per the amended rule/provision nor raised by learned counsel for the respondents during arguments and by considering nature of duties, the physical fitness is required to be conducted. The case of the

petitioner was kept pending and ultimately the period of extended year has also expired. The writ petition was filed in the year 2015 and notice of motion was issued in the case on 29.9.2015. The petitioner was due to retire on 30.9.2015.

Learned counsel for the respondents are not in a position to show as to how the condition was required at the time of granting second extension only. No such condition was imposed even at the time of first extension. Even the work and conduct of the petitioner was found satisfactory during first year of extension as no complaint was made against him or conveyed to him. The inaction on the part of the respondents appears to be malafide as a long delay has been caused and later-on a condition has been imposed to undergo physical test just to deprive the petitioner of his right of second time extension. No doubt extension cannot be claimed as a matter of right but there should be reasons for denial of second year extension once it has been granted for one year.

Since the period of extension for second year has elapsed, nothing survives to interfere in this petition at this stage. However, keeping in view the conduct of the respondents in not granting second extension without any sufficient reasons and also to impose a condition at the time of second year extension, which is contrary to provisions of law, a cost equal to one month's last pay drawn by the petitioner in the first year of extension is imposed upon the respondents, which shall be paid to the petitioner by way of demand draft within a period of one month from the date of receipt of certified copy of the order.

It has also been submitted by learned counsel for the petitioner

that the retiral benefits have not been released to the petitioner and direction may be issued to the respondents to release the said benefits.

Accordingly, the respondents are directed to release the retiral benefits for which the petitioner is entitled to, within a period of two months from the date of receipt of certified copy of the order.

Writ petition stands disposed of with above directions.

December 19, 2016
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes