

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

C.W.P. No. 25444 of 2014 (O&M)

Date of Decision:- 18.10.2016

Roshan Lal

...Petitioner

vs.

State of Haryana and others

...Respondents.

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Sudesh Sahi, Advocate,
for the petitioner.

Mr. L.S. Virk, Addl. AG, Punjab.

Mr. Shekhar Kumar, Advocate,
for respondent No. 3.

DAYA CHAUDHARY, J.

This petition has been filed for issuance of a writ in the nature of Certiorari for quashing of impugned order dated 25.11.2014 (Annexure P-3) whereby the petitioner has been retired from service without granting him one year extension in service as provided under instructions dated 20.9.2013 (Annexure P-2). A further prayer has also been made for issuance of direction to the respondents to grant him one year extension in service in view of said instructions.

Briefly, the facts of the case, as made out in the present petition, are that the petitioner was working as a Safai Karamchari in the Municipal

Corporation, Pathankot. Thereafter, he was regularized and was posted as Safai Jamadar in the office of Municipal Corporation, Pathankot. As per service record of the petitioner, he was to retire on 31.12.2013 on completion of 60 years of age. He was given extension in service for one year, which had to expire on 31.12.2014 but he was retired by passing impugned order dated 25.11.2014 and further extension of one year was not granted to him.

Impugned order dated 25.11.2014 has been challenged in the present writ petition by raising various grounds.

Learned counsel for the petitioner submits that the petitioner has wrongly been denied extension, whereas, in view of instructions dated 8.10.2012, he was entitled for one year further extension w.e.f. 31.12.2014. Learned counsel also submits that other similarly situated employees were also granted extension in view of instructions dated 20.9.2013. The action of respondents in retiring the petitioner and not granting him extension is arbitrary and discriminatory. Learned counsel also submits that impugned order is non-speaking and does not disclose any reasons whatsoever and pick and choose policy has been adopted by the respondents as the extension has been granted to other employees of the respondent-Corporation.

Learned State counsel opposes the submissions made by learned counsel for the petitioner. He submits that petitioner was to retire from service on 31.12.2013 on completion of 60 years of service but he was granted extension for a period of one year but subsequently it was declined after considering his case on the ground that 3 FIRs were registered against

him and it was not in the public interest to give him extension for further one year. Learned State counsel also submits that extension cannot be claimed as a matter of right as it is the discretion of the employer.

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

The facts with regard to appointment and date of retirement on completion of 60 years of service are not disputed. It is also not disputed that petitioner was granted one year extension in view of instructions dated 20.9.2013 but subsequently it was declined as 3 FIRs were registered against him. Rule 3.26 of the Punjab Civil Services Rules Vol. I Part I was amended vide notification dated 8.10.2012. As per Proviso to said Rule, the services of a government employee or class of government employees may be extended beyond the date of retirement for a period not exceeding two years, after getting an option from the concerned government employee (s). Petitioner was also granted extension for one year w.e.f. 1.1.2014 to 31.12.2014 but his request for further extension was declined, as three FIRs were pending against him, details of which are hereby reproduced as under:-

- a. FIR no. 81 dated 13.09.2014 u/s 420 of IPC registered at P.S. Shahpurkandi, District Pathankot.
- b. FIR no. 82 dated 13.09.2014 u/s 420 of IPC registered at P.S. Shahpurkandi, District Pathankot.
- c. FIR no. 147 dated 10.10.2014 u/s 353/186/341 of IPC registered at P.S. Division No.2, Pathankot.

The case of the petitioner was considered for extension by

relying upon instructions dated 8.10.2012 and the subsequent instructions and clarification dated 30.10.2014 and it was decided that the petitioner was not eligible for second year extension in view of instructions of the State Government dated 30.10.2014. It is a settled proposition of law that a Government servant has no right to continue in service beyond the age of superannuation. In case, he is to be retained beyond that age, extension can be given to the employee, which is a discretion of the respondent-employer by considering the public interest. In the present case, the service record of the petitioner was considered and it was found that it was no longer desirable in the public interest to grant him extension for further one year. Accordingly, he was retired from service and further extension was not granted. This Court has considered this issue in CWP No. 26001 of 2014 titled as **Amrik Singh vs. Punjab State Cooperative Agricultural Development Bank Limited and another,** decided on 26.5.2015 wherein it has been held that tainted employee cannot and should not be forced upon an employer in view of settled position of law. In case, such an employee is allowed to continue in service even after attaining the age of superannuation, it would not be in the public interest. It was also held that in case such an employee is allowed to occupy the post, which otherwise would have been filled up by way of promotion from amongst the employees, who are having unblemished service record and have also legitimate expectation, it would not be in the public interest. The relevant portion of the judgment is as under:-

“An employee with a taint cannot and should not

be forced upon an employer, especially in view of the settled position of law, as referred to above. If tainted employees like the petitioner are allowed to continue in service even after having attained the age of superannuation, then such continuance would be against public interest. Further, on their continuance after the date of their superannuation, they would continue to occupy the posts, which otherwise would have been filled up by way of promotion from amongst the employees, who have unblemished records and who have been legitimately expecting such promotions on the retirement of their seniors on attaining the age of superannuation. Further, unemployed youth, who have recently passed out from Colleges and Universities, legitimately expect to enter into a career at the earliest, would have to wait for tainted persons like the petitioner to end their extended innings.”

In judgment of **State Bank of Bikaner and Jaipur and others vs. Jag Mohan Lal**, 1989 AIR (SC) 75, it was held by Hon'ble the Apex Court that right of extension in service is not a legal right but it is a benefit, however, this benefit is not a concession but is a privilege, to which, an officer is entitled to after years of hard work in the respondent-Bank. The right to get extension of service beyond the age of superannuation was considered in case **State of Assam vs. Basanta Kumar Das**, 1973 (1) SLR 921. In said judgment, decisions rendered in cases **Kailash Chandra vs. Union of India**, AIR 1961 SC 1346, **B.N. Mishra vs. State**, (1965) 1 SCR 693 and **State of Assam vs. Pramadhar**, (1971) 1 SCR 503, were discussed. It was held that a Government servant has no right to continue in service beyond the age of superannuation and in case he or she is retained

beyond that age, it is only the discretion of the government. It was further held that in case certain persons were found fit to be continued in service, it does not mean that the others, who were not found fit, had been discriminated. The whole idea is of continuing only the efficient people in service in stead of pleading long length of service. Hon'ble the Apex Court in **Basanta Kumar Das's** case (supra) has held as under:-

“A Government servant has no right to continue in service beyond the age of superannuation and if he is retained beyond that age it is only in the exercise of the discretion of the Government.”

In **Jag Mohan Lal's** case (supra), the Apex Court, while considering a similar Rule and issue, has held as under :-

“9. What do we have here in this case to distinguish those principles or not to apply those principles? In our opinion, there is none. In the scheme provided herein the respondent or any other officer of the Bank has a legitimate right to remain in service till he attains the age of superannuation. But beyond that age, he has no such right unless his service is extended by the Bank. The further rights of parties are regulated by the proviso to Regulation 19(1). It reads:

“Provided that the competent authority may at its discretion, extend the period of service of an officer who has attained the age of fifty eight years or has completed thirty years' service as the case may be, should such extension be deemed desirable in the interest of the Bank.”

10. Look at the language of proviso and the purpose underlying. The Bank may in its discretion

extend the service of any officer. On what ground? For what purpose? That has been also made clear in the proviso itself. It states "should such extension be deemed desirable in the interest of the Bank". The sole purpose of giving extension of service is, therefore, to promote the interest of the Bank and not to confer any benefit on the retiring officers. Incidentally the extension may benefit retired officials. But it is incorrect to state that it is a conferment of benefit or privilege on officers. The officers upon attaining the age of superannuation or putting the required number of years of service do not earn that benefit or privilege. The High Court has completely misunderstood the nature of right and purpose of the proviso. The proviso preserves discretion to the Bank. It is a discretion available with every employer, every management, State or otherwise. If the Bank considers that the service of an officer is desirable in the interest of the Bank, it may allow him to continue in service beyond the age of superannuation. If the Bank considers that the service of an officer is not required beyond superannuation, it is an end of the matter. It is no reflection on the officer. It carries no stigma."

In the case of **D. C. Aggarwal (Dead) by LRs. vs. State Bank of India and another** reported as **(2006) 5 SCC 153**, the Apex Court, while following the above principle, as laid down in the case of **Jag Mohan Lal (supra)**, has held as under :-

"25. The argument for the learned counsel for the appellant proceeded on a misapprehension of the manner in which extension of service is to be

granted. In State Bank of Bikaner and Jaipur and others v. Jag Mohan Lal (hereinafter "Jag Mohan Lal") this Court had occasion to point out that a rule under which extension of service can be granted beyond the normal age of retirement, does not invest a legal right in the employee to be granted such an extension. The very same regulation as in this case was interpreted in Jag Mohan Lal (supra) and it was pointed out therein that the sole purpose of giving extension of service is to promote the interest of the bank and not to confer any benefit or favour on retiring officers. It was pointed out that it was not a conferment of a benefit or privilege on officers. Merely because the officer has put in the requisite number of years of service, that does not earn him/her that benefit or privilege. This Court observed:

"The Bank, however, is required to consider the case of individual officers with due regard to (i) continued utility; (ii) good health; and (iii) integrity beyond reproach of the officer. If the officer lacks one or the other, the Bank is not bound to give him extension of service. In this case, the Bank has shown to the High Court that the case of the respondent was considered and he did not fit in the said guidelines. The High Court does not sit in an appeal against that decision. The High Court under Article 226 cannot review that decision."

If the bank considers that the continuance of services of an officer is desirable in the interest of the bank, it may allow him to continue beyond the age of superannuation.

If the bank considers that the service of the officer is not required beyond the age of superannuation, that is the end of the matter. Further, non-extension of service is no reflection on the caliber of the officer and it carries no stigma.

*26. It appears to us that these principles were not kept in mind by the learned Single Judge when he interfered with the discretion of the respondent-bank not to grant an extension to the appellant. The Division Bench has, however, rightly applied the legal principle stated in **Jag Mohan Lal (supra)** and found that there was no such right vested in the appellant to demand an extension beyond the age of fifty-eight years. Further, in the facts and circumstances of the case, the Division Bench found that the extension had been refused for good reasons and was not liable to be interfered within its writ jurisdiction. We agree with this reasoning of the High Court.”*

This issue was also considered in **C. W. P. No. 3826 of 2015 – Romesh Garg vs. State of Punjab and others**, decided on 24.04.2015, wherein after following the law as laid down by the Apex Court, as also this Court, it was held that no employee has a right to continue in service after the date of his superannuation and thus, cannot seek a mandate for the same. The relevant portion of the judgment is reproduced below :-

“In view of the above, it can safely be held that the petitioners have no vested right to seek extension in their services beyond the age of superannuation.

To grant or not to grant extension is as per the discretion of the employer.

Further, since extension in service beyond the age of superannuation cannot be claimed as a matter of right, it virtually is by way of a concession given by the employer to its employee and once such extension is held to be by way of a concession, then there is no reason in law why the same cannot be unilaterally withdrawn for justifiable reasons and in public interest.”

On the facts and circumstances of the case as well as the law position as discussed above, I am of the considered view that extension is a discretion available with the employer, who has to see whether it is in the interest of the respondent to grant extension in service beyond the age of superannuation or not. In case, the employer comes to the conclusion that extension in service is not in the public interest, then it cannot be claimed as a matter of right. The respondent-employer is required to consider the case of any individual officer with regard to the utility, good health and integrity beyond reproach of the officer while granting extension. In case, the respondent-department thinks that the same is not in the interest of the respondent-Department/institute, it can be declined. The interest of the employer is the primary consideration for giving extension in service. It may be that extension can be given for one year and it can be denied for the second year.

In the present case, the case of the petitioner was considered while granting extension for second year and due to pendency of 3 FIRs against him, it was not found in the interest of respondent-employer to grant him extension for another one year and it was declined.

Accordingly, I find no merit in the submissions made by

learned counsel for the petitioner and petition being devoid of any merit is accordingly dismissed.

October 18, 2016
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(DAYA CHAUDHARY)
JUDGE