

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

**CWP No.25972 of 2015
Date of decision: 03.08.2016**

Dr. Jagjivan Singh

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Pawan Kumar, Sr. Advocate with
Mr. Rozer Kumar, Advocate
for the petitioner.

Mr. Anshul Gupta, AAG, Punjab
for the respondents- State.

Daya Chaudhary, J.

The petitioner has approached this Court by way of filing the present writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to extend the date of his retirement upto the age of 61 and 62 years in pursuance of circulars issued by the respondent-State as same benefit has already been extended to other similarly situated employees. A further prayer has also been made to the effect that letter dated 22.12.2014 (Annexure P-7) be declared as discriminatory and violative to provisions of **The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995** (for short 'the Disability Act, 1995') and also to the effect that the benefit of said letter should not be limited to blind persons only.

Briefly, the facts of the case as made out in the present writ

petition are that the petitioner joined as Medical Officer on 24.02.1984. He belongs to reserve category of scheduled caste and is physically handicapped person to the extent of 50% as per medical certificate dated 17.08.2006 issued by the office of Civil Surgeon, Sangrur. He was promoted as District Health Officer, Mansa in the year 2009. The date of birth of petitioner is 01.01.1956 and he was to retire on his attaining the age of 60 years on 31.12.2015. The present writ petition was filed before the date of his retirement i.e., 31.12.2015.

Learned counsel for the petitioner submits that as per circular dated 19.11.2014 issued by the State Government, the retirement age of blind persons/employees was enhanced from 58 to 60 years in view of judgment rendered in *Bhupinder Singh vs. State of Punjab and others, 2011(4) SCT 55*. Learned counsel further submits that earlier this benefit was confined only to the blind persons but subsequently, it was extended to all physically handicapped persons as defined under Section 2(i) of the Disability Act, 1995. Learned counsel also submits that subsequently, a circular was also issued on 22.12.2014 and again the retirement age of physically handicapped persons was extended from 60 to 62 years but it was applicable only to Class IV employees. Learned counsel also submits that the benefit of disability cannot be confined only to Class-IV employees under the Disability Act, 1995. The State Government applied this benefit to blind persons also and age was extended from 60 to 61 years even in case, the employee was blind. In case of one Bhajan Chand, who was working as Lecturer Music, which was Class-II post, the benefit was given. Learned counsel also submits that the case of the petitioner is squarely covered by

the Supreme Court in *Union of India and another vs. National Federation of the Blind and others, 2013(4) SCT 807*.

Learned State counsel submits that the petitioner is not entitled for this benefit as he has already retired from service at the age of 60 years. Learned State counsel further submits that in the Punjab Government letter dated 21.11.2014, it has specifically been mentioned that the blind and the physically handicapped employees, who have retired at the age of 60 years, cannot be granted extension after the age of superannuation. The blind and the physically handicapped employees have already enjoyed 2 years more period vis-a-vis other employees, who had to be retired at the age of 58 years. Learned State counsel also submits that the judgment rendered in **Bhupinder Singh's case (supra)** is not applicable to this case as in that case, the age of superannuation was extended from 58 to 60 years in view of Section 33 of the Disability Act, 1995. Learned State counsel also submits that the petitioner has sought extension for further two years after the age of superannuation i.e., 60 years and the petition is liable to be dismissed. Moreover, circular dated 22.12.2014 is applicable only to Class-IV employees and the petitioner is not entitled for any extension.

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

Admittedly, the petitioner joined as Medical Officer on 24.02.1984 and he belongs to reserve category of scheduled caste. The date of birth of petitioner is 01.01.1956 and he has already retired on attaining the age of 60 years on 31.12.2015. It is also not disputed that the petitioner

dated 17.08.2006 issued by the office of Civil Surgeon, Sangrur. Even it has not been disputed that the State Government has decided to raise the age of retirement of blind persons/employees from 58 to 60 years. As per arguments raised by learned State counsel, the age of retirement from 58 to 60 years has been extended only to blind persons and the same was not given to physically handicapped candidates.

It was held in **Bhupinder Singh's case (supra)** that the retirement age of physically handicapped persons as defined under Section 2(i) of the Disability Act, 1995, all physically disabled persons would be entitled for the benefit of extension in retirement age from 58 to 60 years and the same is not confined to only blind persons. Said Bhupinder Singh was deemed to have retired at the age of 60 years along with all consequential benefits. Against said decision passed by the Single Bench, LPA No.1719 of 2011 was filed by the State was dismissed on 25.09.2012. Thereafter, the SLP filed before to Hon'ble the Supreme Court was also dismissed vide judgment dated 16.09.2014.

The petitioner earlier approached this Court by way of filing CWP No.26373 of 2013 by claiming that by virtue of the judgment rendered in **Bhupinder Singh's case (supra)**, he was to retire at the age of 60 years. However, in the meantime Punjab Government issued a circular dated 19.11.2014 vide which, the age of retirement of all the physically handicapped persons was increased to 60 years and as such, the writ petition filed by the petitioner was rendered infructuous vide order dated 24.12.2014, which is reproduced as under: -

“Mr. Rajiv Prashad, Additional Advocate General,

Punjab, has filed an affidavit of the Director Health

and Family Welfare, Punjab, Chandigarh, in Court today which is taken on record. This Court is happy to note that Government has taken a decision to extend the benefit of service till the age of 60 years for all the handicapped employees serving in the Punjab State. Persons with disability serving with the Punjab Government as are covered by the instructions now disclosed in the affidavit, that the event of superannuation is postponed by two years and, therefore, these two years are covered for increments and period qualifying for pension. Therefore, the petitioner will be continued till he reaches the age of 60 with all consequential benefits in accordance with law.

Instructions to this effect have been issued vide memo No.17/20/2010-2PP2/132 dated 19.11.2014. On the assurance given in the affidavit, the matter has been rendered infructuous and the instructions as applicable to the petitioner in terms of the affidavit are taken as undertaking to this Court.”

Admittedly, the State of Punjab has already granted the benefit of extension of one year of service to one physically handicapped employee, namely, Bhajan Chand, who was working as Lecturer in Music and was blind. His service was extended from 60 years to 61 years by the office of Director, Education Department, Mohali, Punjab vide order dated

60 years. Subsequently, on 08.10.2012 and 20.09.2013, two circulars were issued vide which, the retirement age of all the employees was extended from 60 to 61 years and 61 to 62 years. Said two circulars were applicable to all the employees whether they are physically handicapped or under the general category.

One another circular was also issued by the respondents-State extending the age of retirement of physically handicapped persons from 60 to 62 years but this circular was confined only to Class-IV employees but subsequently it was made applicable to blind persons as well. Although the petitioner belongs to scheduled caste and in case, he is considered to be in general category, even then also, he is entitled for further extension in his service from 60 to 61 and 61 to 62 years.

In the case of Bhajan Chand, Lecturer in Music (Blind), the age was extended for one year as per circular issued by the State Government and the petitioner is also entitled to get the benefit of extension of one year like said Bhajan Chand.

In **Bhupinder Singh's case (supra)**, the benefit of age of retirement was given to blind persons by extending it from 58 to 60 years. Said Bhupinder Singh met with an accident while on duty and lost his forearm and his right arm was amputated. He claimed same benefit as was granted to blind persons at the time of his retirement. It was held that no distinction can be there between a person suffering from one kind of disability or the other. All categories of disabled persons are to be treated alike without any discrimination to achieve the objective of the Act. The petition was allowed and the respondent-State was directed to suitably

modify the circulars by extending benefit of enhancement of age to all the

categories of disabled Government employees as specified under Section 2(i) of the Disability Act, 1995 in tune of spirit of the Act. The petitioner in that case was retired at the age of 58 years. It was left to the respondent-State to reinduct the petitioner into service for the rest of period of retirement upto the age of 60 years. However, the petitioner was held entitled to emoluments for extended period of retirement and he was deemed to have retired at the age of 60 years and was held entitled for all consequential benefits.

Said judgment rendered in **Bhupinder Singh's case (supra)** was challenged by way of filing LPA No.1719 of 2011 and was dismissed vide judgment dated 25.09.2012. The relevant portion of the judgment is reproduced as under: -

“Thus with the enactment of the Disability Act, all such disabled persons, irrespective of the nature of their disabilities, are to be treated equally and at par. The Disability Act places responsibility on the society to make adjustments for disabled people so that they overcome various practical, psychological and social hurdles created by their disability. The Act places disabled people at par with other citizens of India in respect of education, vocational training and employment. The Act seeks to establish a coherent and comprehensive framework for the promotion of just and fair policies and their effective implementation. It creates formal procedures, which hasten the process of full and total integration of the

disables in the society. It also aims at facilitating efficient enforcement of policies and permits strong measures against the law-breakers. The main aim of PWD Act is also to define the responsibility of the Central and State Governments with regard to the services for disabled persons. The Act aims to ensure full life to a disabled individual so as to enable him to make full contribution in accordance with his disability condition.

The aforesaid discussion would amply demonstrate that it is not only the statutory but constitutional right of persons suffering from disabilities to get special treatment recognized by law. In this process, persons suffering from one disability cannot be treated differently from other kind of disability. All disabled persons falling within the definition of Section 2(I) of the Disability Act form one class. There cannot be sub-classification within the same clause.

For these reasons, we do not find any justification on merits in any of the submissions of Mr. Puri.

Accordingly, LPA No.1719 of 2011 and No.2093 of 2011 are dismissed while LPA No.307 of 2012 is allowed in the light of our observations made hereinabove.”

In **National Federation of the Blind's case (supra)**, the appeal was filed before Hon'ble the Apex Court against judgment of the Delhi High Court wherein the High Court interpreted Section 33 of the Disability Act, 1995. Certain directions were issued to be complied with by Union of India. It was held that the computation of reservation for persons with disabilities has to be computed in case of Group A,B,C and D posts in an identical manner. Certain clauses in the OM dated 29.12.2005, which were contrary to the reasoning were struck down and State was directed to issue new office Memorandum in consonance with decision rendered by Hon'ble the Apex Court.

In the present case, the claim of the petitioner has not been considered on the ground that in the Government letter dated 21.11.2014, it has specifically been mentioned that the blind and physically handicapped employees, who have been retired at the age of 60 years, cannot be provided extension after obtaining the age of superannuation. The petitioner in the present case is seeking extension for further two years one year after another after his age of superannuation i.e., 60 years but in **Bhupinder Singh's case (supra)**, the age was extended from 58 to 60 years to all disabled persons according to Section 33 of the Disability Act, 1995.

As per stand of the respondents-State, the age of superannuation was extended to the other disabled persons, who are blind or low vision, suffering from hearing impairment and locomotors disability or cerebral palsy etc. The benefit was not extended to the petitioner as it was to be extended to Class-IV employees only.

Section 38 of the Act provides for formulation of schemes for

and local authorities. This section reads as under:-

“ 38. (1) The appropriate Govt. and local authorities shall by notification formulate schemes for ensuring employment of persons with disabilities and such schemes may provide for

(a) the training and welfare of persons with disabilities;

(b) the relaxation of upper age limit;

(c) regulating the employment;

(d) health and safety measures and creation of nonhandicapping environment in places where persons with disabilities are employed;

(e) the manner in which and the persons by whom the cost of operating the schemes is to be defrayed; and

(f) constituting the authority responsible for the administration of the scheme.”

Section 39 further makes it obligatory for all Govt. Educational Institutions and other educational institutions receiving aid from the Govt. to reserve not less than 3% seats for persons with disabilities. Similarly Section 43 also imposes an obligation upon the Govt. and local authorities to frame schemes in favour of the persons with disabilities for the preferential allotment of land at concessional rates for houses, setting up of business, special recreational centres, establishment of special schools, research centres and establishment of factories by entrepreneurs with disabilities etc. Chapter VIII of the Disability Act further deals with the

non-discrimination with persons under disabilities in respect to transport, user of road, facilities in public buildings. Section 47 further prevents discrimination in Govt. employment and reads as under:-

“47. (1) No establishment shall dispense with or reduce in rank an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability;

Provided that the appropriate Govt. may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

The entire scheme underlining the Disability Act is to provide equal opportunities to persons suffering from various kinds of disabilities with those who do not suffer with any such disabilities. The Act also

protects the rights of disabled persons and provides opportunities for full participation in all matters to enable the disabled persons to come to the level of normal human beings and not to suffer on account of any physical deformity or disability. Section 2 (i) has defined 7 kinds of disabilities. Chapter VI (Section 32 to Section 41) provides for equal opportunities for employment and also reservation in services. Section 33 provides reservation in services not less than 3% for three categories of disabled persons i.e. (i) blindness or low vision (ii) hearing impairment (iii) locomotor disability or cerebral palsy. Persons suffering from all kinds of disabilities have been treated at par.

From various provisions of the Act noticed herein above, it is abundantly clear that all categories of disabled persons have been treated alike and have been subjected to similar treatment in all spheres of their life. From the scheme of the Act it also appears that every kind of disability places a person in one or other kind of disadvantage depriving him not only the enjoyment of normal life but also deprives such a person of equal opportunities with those who do not suffer from any deformity. It is with this objective that the Parliament of this country enacted this legislation. There is no distinction between a person suffering from one kind of disability or the other. All seems to be in similar disadvantageous position. Thus, the contention of the State that the enhancement of age meant only for blind persons cannot be extended to persons suffering from other kinds of physical disabilities does not seem to be rational, logical nor does it achieve any special purpose. It is , thus, necessary rather expedient that all categories of the disabled persons be treated alike without any

discrimination to achieve the objective of the Act.

A Division Bench of this Court while considering the question of allotment of houses to one category of disabled persons under Section 43 of the Act issued directions for expanding the scheme to all categories of disabled persons as defined under Section 2 (i) of the Disability Act. The relevant observations are as under:-

“ If the expression “disability” under the Act covers seven categories of persons including persons suffering from mental retardation and mental illness, we do not see how a scheme or a policy framed pursuant to Section 43 of the Act can have a restricted meaning to the said definition. Section 33 of the Act which deals with reservation of posts for only three categories of persons suffering with disabilities is a specific provision dealing with public employment of disabled persons. The provisions contained in the aforesaid Section 33 of the 1995 Act, therefore, have no application to other fields covered by the Act including the field covered by Section 43 of the 1995 Act. We, therefore, direct that the policy in force for providing housing/accommodation/land to disabled persons be suitably expanded to all categories of persons with disabilities as defined by Section 2 (i) of the 1995 Act. However, it is left to the discretion of the State to specify the percentage of reservation for each of the said categories. With the aforesaid observations

and directions, these Public Interest Litigations are disposed of.”

In view of the ratio of judgment in **Bhupinder Singh's case (supra)**, the circulars issued by the State Government confining the benefit of enhancement of retirement age only to blind persons creates discrimination between different categories of the persons suffering with disabilities. It was held that the benefit of circular is required to be expanded and extended to all physically disabled persons as well. These circulars are administrative in nature and the Government cannot discriminate by its executive or administrative action. The State Government was directed to modify the circulars and extend the benefit of enhancement of age to all categories of disabled Government employees as specified under Section 2(i) of the Disability Act, 1995 in tune and spirit of the Act.

In the present case, the petitioner retired at the age of 60 years whereas he was entitled for extension of his age upto the age of 62 years like one Bhajan Chand, who was blind. Moreover, the controversy in hand is squarely covered by **National Federation of Blind's case (supra)** wherein it was held that the benefit of reservation under the Disability Act, 1995 cannot be confined to Class C and D posts. It is applicable to all Group A, B, C and D posts and as such, the classification made by the respondent-State is contrary to provisions of the Disability Act, 1995.

Accordingly, in view of the facts and law position as discussed above, the present writ petition is allowed and the respondents are directed to consider the case of the petitioner in view of **National Federation of**

Blind's case (supra) by granting the extension by one year as mentioned in

the circulars issued by the State Government by granting benefit to Class III and IV employees as it was held in said judgment that the benefit cannot be restricted to Class C and D posts only but it is applicable to all the Groups. The necessary exercise be done within a period of two months from the date of receipt of certified copy of this order. In case, the petitioner is found to be entitled, the necessary benefits be granted within one month thereafter. In case, any adverse order is passed, the petitioner is at liberty to challenge the same.

03.08.2016
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	✓ Yes/No
Whether Reportable	✓ Yes/No