

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.3910 of 2016 (O&M)
Date of Decision: 21.03.2016**

Dalbir Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Karan Singla, Advocate,
for the petitioner.

Mr. R.Kartikeya, Advocate,
for the applicant-respondent No.2.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. In the application filed under Article 226 (3) of the Constitution by the respondent for vacation of stay order, two issues have been highlighted therein which repulse the case of the petitioner for extension in service citing the Punjab Government policies after amendments carried out in Rule 3.26 of the Punjab Civil Services Rules, Volume-I Part-I granting one year extension at a time to employees for a maximum period of two years after reaching the age of superannuation, which hurdles are placed firstly, for the reason that the petitioner did not occupy a sanctioned cadre post as Private Secretary when he reached the age of retirement and therefore extension in service was not available as a matter of right.

Secondly, the petitioner does not make the minimum benchmark of 40%

disability as hereafter explained.

2. It has been averred in the application by way of rebuttal to the claim of the petitioner that certain employees were promoted in the past on ad hoc basis and subsequently in the year 2002 the respondent Corporation in its 73rd Board meeting convened on December 21, 2001 had taken a decision to treat these posts as a “dying cadre” of which the petitioner occupied one. It was decided that the employees would continue to hold the posts till they retire and after retirement, the post would stand abolished. Evidence of the decision as contained in letter dated March 14, 2002 is placed at Annex R-2/3 of the miscellaneous application. If the petitioner was occupying an ad hoc post in a dying cadre then his post would stand abolished on superannuation and such retiring employees could get no benefit of the Punjab Government extension policy even if it were adopted by the Corporation. Mr. Kartikeya, learned counsel appearing to press the preliminary objections taken in the application, points out to the contrary stating that the Corporation has not adopted the policy of the Punjab Government dated October 30, 2015. When post stands abolished on retirement all rights come to an end in so far as extension in service is concerned. If the cadre was not declared a dying one the petitioner would evidently would have been boarded out of service as surplus long ago.

3. In the present case, relief was and is primarily sought on the contention that the petitioner is a person who suffers from disability and is protected by section 33 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. He claims to be a person of low vision. It is on the strength of this submission

that notice of motion was issued on February 26, 2016 and the interim order was passed based on policy enabling differently-abled employees to benefit of two years additional service after superannuation. It has been pointed out that the petitioner did not gain employment in the Corporation as a person of disability. If low vision falls in the category of disability then there is a prescription that the disability must be certified not less than at 40% in relation to the permanent handicap. It is disclosed in the stay vacation application that the disability suffered by the petitioner is only to the extent of 25% and, therefore, his case does not fall in the protections afforded by the Act and policy framed thereunder. On account of these twin hurdles placed on way to relief it would not be possible to interfere in the matter since the petitioner fails to satisfy the test of right-duty relationship between the parties so necessary to invoke the writ jurisdiction.

4. Hence I find neither any substantial merit in the petition nor a clear or categorical actionable claim in favour of the petitioner based on violation of fundamental or civil rights. The prayer for extension is accordingly declined. The application is allowed. The interim stay order stands vacated. With the vacation of the interim stay order itself no life remains in the main petition to call for a detailed written statement from the contesting respondent Corporation. The petition is thus taken on board by consent for final disposal today and the same is hereby ordered to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

21.03.2016
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