

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 5281 of 2015
Date of Decision:- 16.03.2016

Som Prakash

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

**Present: Mr. Lalit Rishi, Advocate
for Mr. Anurag Goyal, Advocate
for the petitioner.**

Mr. Hitesh Pandit, Addl. A.G., Haryana.

**Mr. Gaurav Jindal, Advocate
for respondent Nos.2 and 3.**

RITU BAHRI, J. (Oral)

Petitioner by way of present writ petition is seeking quashing of order dated 21.01.2015 (Annexure P-16) in compliance of order dated 09.12.2014 (Annexure P-15), passed by this Court and further writ in the nature of certiorari quashing of impugned order dated 27.11.2014 (Annexure P-14), vide which he has been ordered to be retired ante-dated w.e.f. 28.02.2014 and further prayer for issuance of directions to the respondents to allow him to continue in service up to the age of 60 years in pursuance to the instructions dated 31.01.2006 (Annexure

P-1), issued by the Government of Haryana.

Petitioner is physically handicapped to an extent of 70%. He was working as LDC at the office of S.D.O. "Op" UHBVNL, Kesri, Ambala. The age of compulsory retirement/superannuation is 58 years in the State of Haryana. The Government of Haryana vide instructions dated 31.01.2006 had raised the age of retirement of physically handicapped Government employees from 58 years to 60 years. In pursuance to above instructions dated 31.01.2006, the Government of Haryana issued another instructions dated 21.04.2008, vide which it was decided that for the purpose of giving extension beyond 58 years in the case of physically disabled employees. The Medical Board of PGIMS, Rohtak shall be designated as the Medical Board for the State and its Director shall personally Head the said Board and all such cases where extension in service beyond 58 years is sought on the ground of physical disability would be referred to the said Board for issue of medical certificate of disability to such employee.

The petitioner completed 58 years on 28.02.2014. However, he was allowed to continue in service, as the department was aware of the fact that he was appointed under physically handicapped category. Respondent No.2, vide letter dated 12.09.2014 (Annexure P-3), had requested the Medical Superintendent, PGIMS, Rohtak, to issue the medical certificate of disability in view of instructions dated 21.04.2008 (Annexure P-2). The Medical Superintendent had written a letter dated 15.09.2014 (Annexure P-4) to respondent No.2 to direct the petitioner to appear before the Special Medical Board on 19.09.2014 at 9 AM. Thereafter, the petitioner had appeared before the Special Medical Board on 19.09.2014 and on the same day the Medical Superintendent had informed him that the Haryana Government vide letter dated 26.08.2014 (Annexure P-6) had increased the age of superannuation of physically handicapped employees from 60 to 62 years, therefore, the certificate of the

disabled employee from 58 to 60 years cannot be made now. The petitioner had got his certificate of disability prepared from the Medical Board comprising of Civil Surgeon, Ortho Surgeon & Principal Medical Officer, Government Hospital, Ambala City, in which, the disability of the petitioner has been assessed as permanent @ 70%. Thereafter, the petitioner had made a representation dated 09.10.2014 (Annexure P-9), which was forwarded by SDO (OP) S/Divn., UHBVNL, Kesri, vide letter dated 09.10.2014 (Annexure P-10) to respondent No.2 for consideration.

In the meantime, the Government of Haryana vide letter dated 26.11.2014 (Annexure P-12) decided to withdraw the earlier letter dated 26.08.2014 (Annexure P-5), vide which the age of superannuation was increased from 58 to 60 years and vide another letter dated 26.11.2014 (Annexure P-12/A) the age of physically handicapped person was also reduced from 62 to 60 years. Thereafter, the petitioner made a detailed representation dated 26.11.2014 (Annexure P-13). Vide order dated 27.11.2014 (Annexure P-14), the petitioner was retired from services ante-dated i.e. w.e.f. 28.02.2014.

Aggrieved against the said order, the petitioner has approached this Court by way of CWP No.25101 of 2014 titled Som Parkash Vs. State of Haryana and others, which was disposed of on 09.12.2014 (Annexure P-15) by observing that respondent No.3 was directed to look into the matter and consider the grievance of the petitioner raised in his representation dated 26.11.2014 (Annexure P-13) and it was also open to respondent No.3 to refer the petitioner to the Director, PGIMS, Rohtak, for his medical examination.

Learned counsel for the petitioner argued that on 09.12.2014 the petitioner had not crossed the age of 60 years as the date of retirement was 28.02.2014. On 12.09.2014, the petitioner had applied for extension of service for further period of two years from the date of retirement on the ground that he is

suffering from disability. Vide impugned order 21.01.2015 (Annexure P-16), the petitioner was not held entitled for extension in service. The reasons given in the order were that as per instructions dated 28.03.2006, the employee concerned was had to submit papers for extension prior to the date of retirement i.e. attaining of 58 years of age to enable the department to carry out the required verification regarding extent of disability in time. The aforesaid instructions were further amended vide instruction dated 21.04.2008, whereby power to issue Medical Certificate to physically disabled employees was vested with Medical Board of PGI, M.S. Rohtak. The petitioner had submitted the medical certificate dated 18.10.1993 at the time of first representation dated 12.09.2014, the extent of disabilities suffered by him was 65% handicapped. The required papers have been suffered by the petitioner for extension after 7 months of the date of retirement i.e. 28.02.2014. The request made being belated has been rejected.

Learned counsel for respondent Nos.2 and 3 argued that order dated 21.01.2015 (Annexure P-16) has been passed as per instructions dated 31.01.2006 (Annexure P-1), thereafter, amended instructions dated 21.04.2008 (Annexure P-2) and 28.03.2006 (Annexure P-17). As per disability certificate submitted by the petitioner on 18.10.1993 (Annexure R-1), he was 65% disabled and the certificate which he has submitted showing the disability of 70% has not been certified by the Board of PGIMS, Rohtak.

After hearing the learned counsel for the parties and after perusing the record, this Court is of the considered view that the petitioner was allowed to continue in service beyond the date of his retirement i.e. after attaining the age of 58 years i.e. 28.02.2014 and thereafter vide letter dated 12.09.2014 respondent No.2 had requested the Medical Superintendent, PGIMS, Rohtak, to issue the medical certificate of disability to the petitioner. Petitioner was asked to appear him on 19.09.2014. However, on that day the certificate of handicapped employee

was not issued as the Haryana Government had enhanced the age of superannuation from 60 to 62 years of the physically handicapped employees as per instructions 29.08.2014 (Annexure P-6) as is evident from the letter dated 19.09.2014 (Annexure P-7). Hence, the petitioner was not given any certificate. As per instructions dated 21.04.2008 (Annexure P-2), the petitioner had got his certificate of disability 01.10.2014 (Annexure P-8) from Medical Board comprising of Civil Surgeon, Ortho Surgeon & Principal Medical Officer, Government Hospital, Ambala City. However, this certificate was not accepted by the department and his representation dated 26.11.2014 (Annexure P-13) was rejected as the Government had decided to reduce the retirement age of physically handicapped from 62 to 60 years, vide impugned order dated 21.01.2015 (Annexure P-16). The petitioner had appeared before the Special Medical Board on 19.09.2014 and on account of increasing the age of superannuation of physically handicapped employee from 60 to 62 years the certificate of the disabled employee from 58 to 60 years cannot be made. The petitioner cannot be blamed on account of the instructions issued by the department and subsequently withdrawn by the department reducing the age from 62 to 60 years for physically handicapped employees.

In compliance of order dated 15.10.2015 passed by this Court, the petitioner appeared before the Medical Board of PGIMS, Rohtak and they have given a certificate now on 02.11.2015 to the effect that he is suffering from amputation through right forearm (below elbow), old malunited fracture calanuem (left) which secondary subtalar arthritis of left side. His permanent physical disability is to the extent of 70%. The certificate has now been issued by the Medical Superintendent, Pt. B.D. Sharma, PGIMS, Rohtak and the disability relates back to 19.09.2014, when he had appeared before the Medical Superintendent, Pt. B.D. Sharma, PGIMS, Rohtak and when the certificate was

not issued on account of instruction dated 29.08.2014, whereby the age of physically handicapped employees had been enhanced from 60 to 62 years. For all intents and purposes, on 19.09.2014, the petitioner was having 70% permanent disability and on that date he was entitled to continue in service beyond 58 years.

In view of above facts, the present writ petition is allowed. The orders dated 21.01.2015 (Annexure P-16) and dated 27.11.2014 (Annexure P-14) are set aside. The respondents are directed to give all the consequential benefits to the petitioner within a period of three months from the date of receipt of copy of this order.

March 16, 2016
naresh.k

(**RITU BAHRI**)
JUDGE