

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

CWP No.8869 of 2015 (O&M)

Date of decision:16.08.2016

Ajaib Singh

... Petitioner

Vs.

State of Haryana & another

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Munish Mittal, Advocate for the petitioner.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

...

TEJINDER SINGH DHINDSA, J.

The petitioner who was serving on the post of Sub Inspector under the Haryana State Transport Department retired on 30.04.2015 upon attaining the age of superannuation.

The instant petition has been filed seeking issuance of a writ of mandamus for directing the respondents to grant to him the benefit of extension of two years of service on account of his permanent disability.

Counsel for the petitioner has been heard at length.

In paragraph 6 of the writ petition, it has been averred that a certificate has been issued by the Civil Surgeon, Yamuna Nagar in terms of which the physical disability element of the petitioner has been assessed as 42%.

Counsel appearing for the petitioner would contend that the actual disability element would be more than 70% and accordingly a request had been made to respondent No.2 i.e. the General Manager, Haryana Roadways, Yamuna Nagar Depot, Yamuna Nagar to have the disability element of the petitioner to be re-assessed. However, since no favourable

response was forthcoming, accordingly, the instant writ petition was filed.

During the course of hearing today, counsel has placed reliance upon judgment of the Hon'ble Supreme Court of India in ***Deaf Employees Welfare Association & another Versus Union of India & others, 2014 (1) SCT 352*** to contend that under Section 2(1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, a person with disability has been defined to mean such person who is suffering not less than 40% of any of the disabilities i.e. visual impairment, hearing impaired/loco motor disability. It is the case made out on behalf of the petitioner that as per the 1995 Act and on the strength of the judgment of the Hon'ble Supreme Court in ***Deaf Employees Welfare Association's case (supra)***, the petitioner's physical disability has been assessed to be in excess of 40% and, accordingly, the benefit of two years service is to be granted to him.

Upon notice of motion having been issued, a written statement of the General Manager, Haryana Roadways, Yamuna Nagar has been filed and placed on record.

Along with the written statement, a document at Annexure R-1 has been filed which is in the nature of instructions dated 31.01.2006 issued from the office of the Chief Secretary to Government of Haryana on the subject of raising age of retirement of physical handicapped government employee from 58 years to 60 years.

Perusal of the same would reveal that a decision has been taken by the State Government to raise normal retirement age of disabled group 'A' to group 'D' employees suffering minimum degree of disability of 70% from 58 years to 60 years.

The uncontroverted position is that the instructions and policy decision dated 31.01.2006 has not been assailed in the instant petition.

Faced with such a situation, counsel prays for withdrawal of the petition with liberty to challenge such policy decision dated 31.01.2006 on all grounds that may be available to him strictly in accordance with law as also in the light of the dictum laid down by the Hon'ble Supreme Court in the case of ***Deaf Employees Welfare Association's case (supra)***.

Prayer is allowed. Petition is dismissed as withdrawn with liberty as prayed for.

16.08.2016

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

- | | | |
|-----|----------------------------|-----|
| i) | Whether reasoned/speaking? | Yes |
| ii) | Whether reportable? | No |