IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 16857 of 2015 (O&M)
Date of decision: January 12, 2017

Jagdish Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. D.S. Bali, Senior Advocate with
Mr. Rahul Sharma, Advocate,
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab,
for respondents No. 1 and 3.

Mr. S.K. Sharma, Advocate,
for respondents No. 2 and 4.

JAISHREE THAKUR, J.

1. The instant petition has been filed under Articles 226/227 of the Constitution for issuance of a writ in the nature of Certiorari quashing the impugned order dated 25th April, 2014, by which the claim of the petitioner seeking extension in her services has been declined.

2. In brief the facts are that the petitioner is the daughter of late Sardar Asinder Singh, a freedom fighter, who was awarded Tamra Patra on 15th August, 1988. She was appointed as Pharmacist with respondent No.2, namely, Punjab State Power Corporation Limited (PSPCL) and she was to retire from service with effect from 30th April, 2014 at the age of 58. As she was to retire on 30th April, 2014, the petitioner moved an application to the

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Chief Managing Director of PSPCL seeking extension of two years in her service based on notification dated 4th April, 1985, which was published in the government Gazette of Punjab Department of General Administration, vide No. 913-3P-11-84/5022 dated 4th April, 1985. The case of the petitioner was recommended by the then sitting MLA for consideration of her case for extension in service. However, without looking into the provision of the notification dated 4th April, 1985 and without giving the petitioner an opportunity to put up her case for extension in service, the claim was dismissed. Aggrieved against that, the instant petition has been filed.

3. Learned counsel for the petitioner argues that a perusal of the notification would show that various concessions/facilities to the freedom fighters were granted, which included 2% reservation in MBBS/BDS Courses in the State Medical Colleges, reservation of 2% in the State services as well as concession in re-employment in State service, upto the age of 60. Further, instructions/notification provided that the Deputy Commissioner of the concerned district to whom the freedom fighter belonged would be the only competent authority to give an eligibility certificate for the grant of said concessions. It is argued that the Deputy Commissioner, Patiala, vide his letter dated 21st March, 2014, duly mentioned that Sardar Asinder Singh son of late Shri Gurdit Singh was a freedom fighter, while further mentioning that late Asinder Singh expired on 19th August, 2001 and his widow was receiving the pension thereafter. The said letter of the Deputy Commissioner further mentioned that the petitioner

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herein was the daughter of late Sardar Asinder Singh, a freedom fighter. It is argued that on the basis of the said instructions, the petitioner was entitled to the extension in her services which has been denied. Reliance also has been placed on a judgment rendered by this Court in **CWP No. 12476 of 2011 titled Amrit Kaur Bedi Versus State of Punjab and others decided on 27.10.2010**, wherein a similarly situated candidate sought extension of her services upto the age of 60 years on account of the benefit as granted under the said instructions dated 4th April, 1985.

4. Per contra, learned counsel appearing for the respondents contends that the petitioner herein is not entitled to the relief sought. While relying upon the Circular dated 28th July, 2011, which clearly specifies that those freedom righters who has been issued with Tamra Patra for taking part in the freedom movement duly approved by Punjab Government/Government of India or who are in receipt of freedom fighter pension, only they are entitled to re-employment upto age of 60 years and 2% reservation in the allotment of house and plots. This facility would not be available to their wards, grandsons and granddaughters. Thus, it is argued that the benefit of extension of grant of two years is limited only to freedom fighters and the petitioner herein being a daughter of the freedom fighter would not be entitled to the benefits, as claimed.

5. I have heard learned counsel for the parties and with their assistance have gone through the record of the case.

6. The only question that arises for consideration, is whether in the present case the concession of re-employment to the petitioner would be

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available or not. The judgment relied upon in **Amrit Kaur Bedi's case (supra),** while noticing the similar contention that the petitioner would not be entitled to the concession on the basis of the Circular dated 28th July, 2011, a co-ordinate Bench, while relying upon a judgment rendered in **CWP No. 16907 of 1997 titled Paramjit Singh Bajwa V. State of Punjab and another decided on 12.8.1999**, allowed the writ petition. In **Paramjit Singh Bajwa's case** similar instructions were issued on 14th September, 1998, restricting the benefit of re-employment only to the freedom fighters. The Court, after appreciating the instructions dated 4th April, 1985, allowed re-employment and the benefit of extension of age to wards of freedom fighters and it was held that the instructions dated 14th September, 1998 limiting the said benefits were against the benevolent policy framed by the State to give concession to freedom fighters and their wards. The ratio as laid down in **Paramjit Singh Bawa's case (supra)** reads as under:-

> *"After hearing learned counsel for the parties, we are convinced that the plea of the respondents that the wards of the freedom fighters are not entitled to get the benefit of the government's policy by giving two years re-employment to the freedom fighters cannot be accepted in view of the fact that an identical plea has been rejected by this Court while deciding CWP No. 910 of 1999 Smt. Tara Devi vs. State of Punjab and others (decided on April 30, 1999). In that case, claim similar to the one made by the petitioner had been made by Smt. Tara Devi. While dealing with the issue of eligibility of the petitioner to get the benefit of two years re-employment, the Court observed as under:-*
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> > *"During the course of hearing Shri Rupinder Khosla did not contest the fact that the benefit of the policy decision*

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contained in the circular Annexure P-2 dated 4.4.1985 has been given to Smt. Jagjit Kaur Tarsike and Smt. Jasvir Kaur who are wards of the freedom fighters. He, however, justified the refusal of the respondents to give similar benefit to the petitioner by arguing that plan language of that circular does not entitle the wards of the freedom fighters to claim benefit of concession in the form of reemployment. Shri Khosla also relied on letter Annexure R-1s dated 14.09.1998 vide which the government issued clarification regarding the scope of the instructions contained in circular letter dated 4.4.1985 and submitted that the mistake committed by the departmental authorities in granting the benefit of the policy of re-employment to the wards of the freedom fighters cannot be made basis for giving similar benefit to the petitioner.

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There is one more reason for our disinclination to accent the submission of the learned Deputy Advocate General. A careful reading of the plain language of the circular letter dated 4.4.1985 and the order dated 11.3.1998 issued in favour of Smt. Jagjit Kaur Tarsike, who was working as Lecturer (Punjabi) shows that the government had given a purposeful interpretation to the benevolent and beneficial policy framed by it to give concession the freedom fighters and their wards. Therefore, even if there is a remote possibility of giving a restrictive interpretation to the circular dated 4.4.1985, we are not inclined to do so because it will defeat the very object of the policy framed by the government and on a consideration of the circular as a whole, we find little difficulty in concluding that the government has

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> *rightly extended the benefit of the policy of reemployment to the wards of the freedom fighters. As a logical corollary, we hold that the petitioner is entitled to get the benefit of the policy of re-employment for a period of two years and failure of the respondents to re-employ her in accordance with the instructions contained in the letter dated 4.4.1985 has resulted in violation of her fundamental right to equality guaranteed under article 14 and 16 of the Constitution."*

7. The facts in the present case are somewhat similar to **Amrit Kaur Bedi's** case (supra). The petitioner has already retired, while seeking extension, but the petitioner had filed a representation seeking extension of service prior to her date of retirement, which came to be declined without noticing the judgment as has been passed by this Court and the relief granted to similarly situated persons. Therefore, relying upon the judgment in **Amrit Kaur Bedi's** case (supra), the present writ petition deserves to be allowed.

8. The petitioner was due to retire on 30th April, 2014 and would have completed the age of 60 years on 30th April, 2016. While issuing notice of motion in the instant case, no stay was granted, so no effective relief in terms of any direction for re-induction in service can be given at this stage, considering the fact that the petitioner would have reached the age of 60 by now, even if she had been re-employed on attaining the age of 58 years.

9. Accordingly, the writ petition is disposed of with a direction to extend the benefit of the Circular dated 4.4.1985 to the petitioner by adding two years period to her service for the purpose of computation of pension and other retiral benefits and then to recalculate the pension and other retiral

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benefits payable to her and pay the same within a period of three months from the date of receipt of a copy of this order.

January 12, 2017 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned Yes
Whether reportable No

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