

CWP No.23019 of 2016

#1# Manoj Kumar
2017.05.01 14:47
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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.23019 of 2016

Date of Decision: 01.05.2017

Er. Mohinder Pal Garg and Ors.

....Petitioners

Versus

Punjab State Power Corporation Ltd and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Pawan Kumar, Sr. Advocate with
Mr. Vipin Kumar, Advocate for the petitioners.

Mr. Vinod S. Bhardwaj, Advocate for
Respondent Nos.1 & 2-PSPCL.

Mr. Gurminder Singh, Sr. Advocate assisted by
Mr. Jatinder Singh, Advocate for private respondent No.3.

JASWANT SINGH, J

1. Petitioners-Mohinder Pal Garg, Anil Kumar Gupta and Vinod Kumar, who are working as Deputy Chief Engineers with the Punjab State Power Corporation Limited (for short "PSPCL"), by filing this writ petition are seeking a writ of Certiorari for quashing the impugned order dated 28.10.2016 (**P.12**) issued by respondent Nos.1 & 2 extending the age of retirement of Jagbir Goel-respondent No.3 from 58 years to 60 years being physically handicapped, however, without having any valid "Disability

Certificate" as required under the provisions of Personal With Disabilities (Equal Opportunities), Protection of Rights and Full Participation Act, 1995 (for short "1995 Act"); with a further directions to the respondents to promote them as Chief Engineer (civil) with effect from the date, respondent No.3 was given the extension in service; with further prayer to declare the Disability Certificate of hearing impairment issued by Civil Surgeon, Patiala dated 27.5.2015 (**P.6**) to respondent No.3 as illegal being not as per the guidelines issued by the National Institute of Hearing Impairment under the 1995 Act.

2. Learned counsel for the petitioners submits that the impugned office order dated 28.10.2016 (**P.12**) thereby granting the extension in retirement age of respondent No.3 from 58 years to 60 years, on the basis of his alleged disability is legally unsustainable as he is not suffering from the "Hearing Impairment" as per the parameters laid down under the provisions of 1995 Act as well as the guidelines issued thereunder.

Per contra, learned counsel for the respondents have vehemently supported the impugned order by arguing that the same does not require any interference by this Court while exercising jurisdiction under Articles 226/227 of the Constitution, taking into account the Disability Certificate dated 18.1.2017 issued by the Post Graduate Institute of Medical Education and Research, Chandigarh (for short "PGIMER") in favour of respondent No.3.

3. Heard learned counsel for the parties and perused the paper book with their able assistance.

There is no dispute with regard to the service particulars of the petitioners as well as respondent No.3 except the minimum percentage of disability of respondent No.3, as required under the provisions of 1995 Act and Instructions issued thereunder from time to time for grant of extension in retirement age from 58 years to 60 years. In due course, respondent No.3 was to retire on 31.10.2016 after attaining the age of superannuation i.e 58 years as his date of birth is 09.10.1958; but since he has been granted the extension in service for a period of two years i.e upto 31.10.2018 being a person with disability, on the basis of his Disability Certificate dated 27.5.2015 (P.6) and thus the same has adversely affected the petitioners as they were expecting further promotion to the post of Chief Engineer occupied by respondent No.3.

4. To prove his disability, respondent No.3-Jagvir Goel while submitting an application dated 14.10.2016 (P.5) sought extension in retirement age from 58 years to 60 years, as required under 1995 Act and produced a Disability Certificate dated 27.05.2015 (P.6) issued by Medical Board of the office of Civil Surgeon, Patiala showing him to be Audiological Handicap to the extent of 74.58%. After consideration of the same, respondent No.1-PSPCL passed the impugned order dated 28.10.2016 (**P.12**), the relevant part of which reads as under:

“The Punjab State Power Corporation Limited under the aforesaid Circular in order to extend the age of retirement of Er. Jagvir Goel, Engineer in Chief, Civil Design and Construction, PSPCL, Patiala (Code No.102901, date of birth 09.10.1958) and is pleased to modifies the office order no.457 dated 15.09.2016

by amending the same by extending the date of retirement from 58 years to 60 years and accordingly his date of retirement is being changed from 31.10.2016 to that of 31.10.2018 on the following condition:

The officer shall provide within the month i.e by 30.11.2016 disability certificate regarding hearing impairment strictly in complying with GOP, Department of Social Security and Women & Child Development (Disability Branch) No.9/23/2015-3-DC/506 dated 24th June, 2015 from the competent authority designated by Punjab Govt.

The certificate should indicate clearly loss of minimum sixty decibels in the better ear and percentage of hearing disability.

In case the certificate is not produced within stipulated time i.e by 30.11.2016, the extension so granted shall be dispensed with forthwith.

This is being issued with the approval of competent authority.”

Apprehending the proposed extension in service to respondent No.3, the petitioners submitted two representations dated 07.10.2016 and 24.10.2016 (P.7 & P.8) by alleging that as per the guidelines issued by the National Institute for Hearing Handicapped under 1995 Act, the disability Certificate submitted by respondent No.3 cannot be the basis for any extension, being invalid as the same was procured on extraneous considerations, thus, no extension in service from 58 years to 60 years could be granted.

5. In order to decide the matter in controversy, it is necessary to make a reference of the relevant provisions as

contained in Government Circulars as well as 1995 Act and 1996 Rules framed thereunder. Clause 8(ii) of O.M dated 24.6.2015 (P.11) issued by the Govt. of Punjab (Department of Social Security and Women and Child Development-Disability Branch) defines the "Hearing Impairment" as under:

"Hearing Impairment means loss of sixty decibels or more in the better ear in the conversational range of frequencies."

Section 2 (a-ii),(i-iv),(l),(p) & (t) of 1995 Act read as under:

" 2. Definitions- *In this Act, unless the context otherwise requires-*

(a) "appropriate Government" means-

(i) xxxx xxxxxxxx

(ii) in relation to a State Government or any establishment wholly or substantially financed by that Government or any local authority, other than a Cantonment Board, the State Government;

(iii) & (iv) xxxx xxxxx

(i) "disability" means

(i) to (iii) xxxx xxxxxxxx

(iv) hearing impairment

(v) to (viii) xxxx xxxxx

(j) & (k) xxxx xxxxx xxxxx

(l) "hearing impairment" means loss of sixty decibels or more in the better ear in the conversational range of frequencies;

(m to o) xx xxx xxx

(p) "medical authority" means any hospital or institution specified for the purposes of this Act by notification by the appropriate Government;

(q to s) xx xxxxx xxxxx

(t) “person with disability” means a person suffering from not less than forty per cent of any disability as certified by a medical authority;

Rule 4 of 1996 Rules envisages issuance of Disability Certificate to a person with disability as prescribed in different Forms i.e Form II, Form III or Form IV applicable to different type of disabilities. Rule 5 talks of review of a decision regarding issue of or refusal to issue a Disability Certificate. Rule 6 lays down that the Certificate issued under rule 4 to be generally valid for all purposes and the same reads as under:

“ 6. Certificate issued under rule 4 to be generally valid for all purposes.- A certificate issued under rule 4 shall render a person eligible to apply for facilities, concessions and benefits admissible under schemes of the Government and of Non-Governmental Organizations funded by the Government, subject to such conditions as may be specified in relevant schemes or instructions of Government etc, as the case may be.”

It is apt to mention here that format for issuance of Disability Certificate as provided in Form No.III prescribed under Rule 4 of 1996 Rules was inserted by way of Notification dated 30.12.2009 w.e.f 01.01.2010.

6. A perusal of order dated 06.12.2016 passed by this Court reveals that respondent No.3 had been asked by respondent No.1-PPCL to seek a report regarding his disability from PGIMER Chandigarh within a period of seven days and in furtherance thereof, respondent No.3 requested PGIMER Chandigarh on 01.12.2016 for conducting necessary tests and issuance of a

Disability Certificate. Accordingly, respondent No.3 was examined by Dr. N. Banumathy-Audiologist, PGIMER, Chandigarh on 15.12.2016 and his relevant findings are reproduced as under:

“ Findings: Right ear: Wave V could be traced till 65 db nHL

Left ear: Wave V could be traced till 80 db nHL

CONCLUSION: R/E: Moderate hearing loss

L/E : Severe hearing loss

Sd/- 15.12.16

Audiologist: Dr. N. Banumathy”

It also transpires that Hearing Evaluation Report dated 15.12.2016 of respondent No.3 was examined as per the Minutes of Meeting by three Doctors of PGIMER, Chandigarh headed by its Chairman along with two members, on 19.12.2016 for issuance of final Disability Certificate and the relevant part of the same on record at page 152 of the paper book reads as under:

“ The HOD Dr. Naresh Panda requested Dr. Jaimanti Bakshi, Additional Professor in the Department on 5.12.2016 to kindly see the patient and conduct necessary hearing tests on him. Mr. Jagvir Goyal attended the ENT OPD on 15.12.2016 wherein he was examined by Dr. Jaimanti Bakshi in detail and subsequently referred for hearing tests which included the puretone Audiometry, Impedence Audiometry, Speech Recognition Test and the BERA Test. Photocopies of the hearing evaluation tests are enclosed for perusal. His evaluation tests have revealed that he has got Severe Sensory Neural Hearing Loss on the Left side (70/83 dB) and a sloping Sensory Neural Hearing Loss on Right side (50/58 dB) (avg for 50 Hz, 2KHz, and 4 Khz).

The ABR done on 15.12.2016 shows a moderate hearing

loss on right side and severe hearing loss on left side.

The case with all the relevant details may kindly be referred to the Medical Disability Board of PGI for final disability certification.

Sd/- (Prof. Naresh K. Panda) Sd/- (Dr.Jaimanti Bakshi) Sd/- (Dr. Banumathy N)
Chairperson 19.12.16” Member Member ”

It is necessary to mention here that this Court vide order dated 12.1.2017 directed the Director, PGIMER, Chandigarh for issuance of Disability Certificate, in terms of Rule 4 of 1996 Rules, in the required format and in compliance thereof, Certificate No. 8011 dated 18.1.2017 (on record at page 157 of the paper book) was duly issued in favour of respondent No.3 in the format as prescribed in Form No.III appended under Rule 4 of 1996 Rules (In case of Multiple Disabilities), the relevant part of which reads as under:

“ POSTGRADUATE INSTITUTE OF MEDICAL EDUCATION AND RESEARCH
CHANDIGARH

DISABILITY CERTIFICATE

Certificate No.8011 Date: 18.01.17

1. This is to certify that we have carefully examined Shri JAGVIR Goyal son of SH. VED PARKASH GOYAL

Date of Birth: 09.10.1958 Age 58 years Male/female : Male

Central Registration No.201606265332 Sp. Clinic No. XXXX

Permanent resident of House No. 92, Maharaja Yadvindra Enclave The & Distt Patiala, Punjab whose photograph is affixed above, and are satisfied that:

(a) The diagnosis in His/Her case is B/L S.N. Deafness. He/She is a case of Multiple Disability. Extent of his/her permanent physical impairment/disability has been evaluated as per guidelines for the disabilities ticked below, and shown against the relevant disability in the table below:

Sr. No .	Disability	Affected part of Body	Diagnosis	Physical/mental disability (%)
1	Locomotor disability@	Xxxxx	Xxxxx	Xxxxxxx
2	Low vision/Blindness#	Xxxxx	Xxxxxx	Xxxxxx

Sr. No .	Disability	Affected part of Body	Diagnosis	Physical/mental disability (%)
3	Hearing impairment	B/L Ears	B/L S.N. Deafness Rt. Moderate, Lt Severe	54%
4	Mental Retardation/illness	Xxxxx	Xxxxxx	Xxxxxx
5	Others	Xxxxxx	Xxxxxxx	Xxxxxx
6	Total	Xxxxx	Xxxxxx	xxxxxx

(b) In the light of the above, his/her overall permanent physical/mental impairment as per guidelines** as follows:

In figures **54% Percent, In words Fifty Four Percent**

2. This condition is progressive/non-progressive/likely to improve/not likely to improve.

3. Reassessment of disability is:

i) Not necessary OR

ii) Is recommended/after Three Years xxxx months, and therefore this Certificate shall be valid till xxxxxxxx (DD/MM/YY)

4. The applicant has submitted the following documents as proof of residence:

Nature of Document	Date of issue	Details of authority issuing certificate
Voter ID Card	27.08.2015	ECI, ERO, Distt Patiala, PB.

5. Signature and seal of the Medical Authority

Name & Seal of Member

Sd/- Prof. Ashok Gupta

Deptt of Otolarynology

Member Special Medical Board

Name & Seal of Member

Sd/- Convenor

Special Disability Board

PGIMER, Chandigarh

Name & Seal of Member

Sd/- Chairman

Med. Disability Board

PGIMER, Chandigarh

Sd/-
Signature/Thumb impression in whose
Favour disability certificate is issued. ”

Emphasis supplied

A perusal of clause 1(a) & (b) of the Disability Certificate clearly proves that respondent No.3 is a case of Bilateral Sensory Neural Deafness (B/L S.N. Deafness) and suffering from **Multiple Disability** to the **extent of 54%** and that is the reason that he has been issued the Disability Certificate in the format as prescribed in Form III (in case of Multiple Disabilities), appended under Rule 4 of 1996 Rules.

7. There is no dispute that as per the provisions of Rule 3.27 of the Punjab Civil Services Rules, Volume I Part I (for short “The

CS Rules”), if a Government employee, who is suffering from any of the disabilities, not less than 40% as certified by Medical Authority then he shall retire at the age of 60 years instead of 58 years and the relevant part of the Rule 3.27 of the CS Rules in this respect reads as under :

“ 3.27 Notwithstanding anything contained in rule 3.26, the date of retirement of a Government employee (other than a Group ‘D’ employee), who is suffering from any of the disabilities viz., blindness or low vision, hearing impairment, locomotor disability or cerebral palsy, shall be the date on which he attains the age of 60 years instead of 58 years:

Provided that whenever an appointing authority has reason to believe that such a Government employee is mentally or physically unsuitable to discharge the duties of the post held by him, it shall require him to appear before a Civil Surgeon for a medical check-up and his continuance in the Government service beyond the age of 58 years, shall be subject to being declared fit on such medical check-up.”

Although, as per the guidelines (P.9) issued by the National Institute for The Hearing Handicapped for issuing of Hearing Disability Certificate (for Centers recognized by appropriate authority), the following parameter has been laid down:

“Hearing disability Certificate is issued as per the definition of hearing disability published in Persons with Disability Act. (PWD) 1995 which says that the hearing disabled person is one who has the hearing loss of 60 dB HL or more in the better ear for conversational range of frequencies.”

However, consequent upon the issuance of Disability Certificate dated 18.1.2017 by the PGIMER, Chandigarh in favour

of respondent No.3 being the competent Medical Authority as specified under Section 2 (p) of the 1995 Act, this Court has no option but to accept the same as a legal and valid Disability Certificate issued under Rule 4 of 1996 Rules. Consequently, for the present, the issue whether respondent No.3 is fulfilling the required parameters of "Hearing Impairment" and is a "person with disability" as defined under Section 2 (l) & (t) respectively of 1995 Act is closed and does not require any further consideration by this Court. However, the petitioners, if so chose and advised, may assail the Disability Certificate, if permissible, as per law.

In view of the aforesaid, this Court finds no merit in the present petition and the same is dismissed with the aforesaid observations.

May 1st, 2017
manoj

(JASWANT SINGH)
JUDGE