

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

CWP No.21425 of 2017 (O&M)

Date of Decision: 10.10.2017

Barjinder Pal Dhiman

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Harinder Sharma, Advocate
for the petitioner.

TEJINDER SINGH DHINDSA, J. (Oral)

As per pleadings on record, petitioner came to be appointed as a College Librarian in the Department of Higher Education, Government of Punjab on 30.09.1988 on regular basis. The date of birth of the petitioner being 09.09.1957, he attained the age of superannuation i.e 58 years as on 30.09.2015. Vide order dated 31.08.2015, passed by the Secretary, Department of Higher Education, Government of Punjab and in terms of the option exercised, the petitioner was granted extension of one year in service i.e. from 01.10.2015 to 30.09.2016 as per letter dated 08.10.2012, issued by the Finance Department (Finance Personnel-2 Branch).

2. Thereafter, vide order dated 01.08.2016, passed by the Principal Secretary, Department of Higher Education and

Languages, State of Punjab, petitioner was granted the second extension in service from 01.10.2016 to 30.09.2017.

3. The instant writ petition has been filed seeking enhancement in his age of retirement up to 62 years.

4. The claim of the petitioner for the age of superannuation to be considered as 62 years is based on a letter dated 19.10.2006 (Annexure P-2), issued by the University Grants Commission on the subject of **“Revised Scheme of Career Advancement”** as approved by the Ministry of Human Resource Development. Counsel would urge that the letter dated 19.10.2006 at Annexure P-2 was addressed to all Education Secretaries across the State Governments and Union Territories. Para 4 of the letter prescribes the age of superannuation for Assistant Librarians/College Librarians and Assistant Directors of Physical Education/College Directors of Physical Education and the same reads as under:-

“4. Age of superannuation

It has been decided that the age of superannuation for Assistant Librarians/College Librarians and Assistant Directors of Physical Education/College Directors of Physical Education would henceforth be 62 years”

5. Further contend that the letter dated 19.10.2006 (Annexure P-2), issued by the University Grants Commission, has been accepted by the Department of Higher Education of the

Government of Punjab in entirety and without exception through notification dated 20.09.2017 (Annexure P-3). Accordingly, it is argued that the petitioner is vested with a right to continue in service and to be treated as having superannuated on attaining the age of 62 years. Consequently, the petitioner prays that the extension in service granted to him after attaining the age of 58 years, he regularized for all intents and purposes i.e. for fixation of pay, grant of annual increments etc.

6. Having heard counsel for the petitioner at length and having perused the pleadings on record, this Court is of the considered view that the claim raised in the instant writ petition is not well founded.

7. It is by now well settled that the relationship between the Government and its employees is not like an ordinary contract of service between a Master and Servant. Once appointed to a post or office, the Government employee acquires a status and his rights and obligations are determined by Statute or Statutory Rules which may be framed by the Government. Concededly, Rule 3.26(a) of the Punjab Civil Services Rules Volume I, Part-I, governs the age of retirement of the petitioner. Such Rule reads as under:-

“3.26 (a) Except as otherwise provided in other Clauses of this rule, every government employee shall retire from service on the afternoon of the last day of the month, in

which, he attains the age of 58 years. He must not be retained in service after the age of retirement, except in exceptional circumstances, with the sanction of the competent authority on public grounds, which must be recorded in writing.”

8. The language of the Rule is clear and unambiguous. Rather it is couched in negative terms. Every Government employee “**shall**” retire upon attaining 58 years of age and must not be retained in service thereafter except in exceptional circumstances. Such Rule has not been amended till date.

9. The letter dated 19.10.2006 (Annexure P-2), issued by the University Grants Commission and notification dated 20.09.2017 (Annexure P-3) issued by the respondent-State, cannot be considered to have acquired the character of a Statutory Rule. The letter dated 19.10.2006 (Annexure P-2), issued by the University Grants Commission and subsequent notification issued by the State Government at Annexure P-3 at best would be in the nature of executive instructions and cannot be accepted to be a statutory amendment of the existing Rule i.e. Rule 3.26(a), governing the age of retirement. Acceptance of the prayer and claim raised in the instant petition would virtually tantamount to amendment of the relevant rule by a deeming fiction. Such proposition advanced on behalf of the petitioner is preposterous. If the prayer of the petitioner is to be accepted,

then the very sanctity of exercise of powers under Article 309 of the Constitution of India and framing of Statutory Rules would be lost.

10. In view of the reasons recorded above, the writ petition is found to be without merit and is dismissed.

11. Petition dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

10.10.2017

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***Whether speaking/reasoned* : Yes/No**

***Whether reportable* : Yes/No**