

116 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH

CWP No. 21690 of 2017
DECIDED ON: SEPTEMBER 22, 2017

APRIL SINGH & OTHERS

....PETITIONERS

VERSUS

STATE OF PUNJAB AND ANOTHER

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Gaurav Sharma, Advocate
 for the petitioners.

JASPAL SINGH, J (ORAL)

By virtue of instant petition preferred under Articles 226/227 of the Constitution of India, petitioners have sought the issuance of a writ in the nature of mandamus directing the respondents to treat the petitioners as having been continued in service upto the age of 62 years being physically handicapped persons in view of the authoritative pronouncement of this Court in CWP No. 25972 of 2015 titled as **Dr. Jagjivan Singh vs. State of Punjab and others;** decided on August 03, 2016 (Annexure P-11) with further direction to grant them all the consequential benefits such as refixation of their pay, pension, arrears of salary and pension etc.

2. Learned counsel for the petitioners has contended that vide

instructions dated October 08, 2012 (P-8) and dated September 20, 2013 (p-9) the Government of Punjab has granted the extension in service to the employees of Group 'A', Group 'B', Group 'C' and Group 'D' for a period of one year but subsequent thereto, the Government of Punjab issued instruction dated December 22, 2014 whereby, visually challenged/physically handicapped Class IV employees were held entitled to be given further two years of extension in service after attaining the age of 60 years by inviting option from them. However, the afore-said benefit was not extended to the other physically challenged/handicapped employees. Thus, physically challenged persons were discriminated by not providing extension for two years at par with the visually challenged persons, who were to retire on completion of age of 62 years. The circular dated December 22, 2014 was challenged in Court by way of filing of writ petition i.e. CWP No. 25972 of 2015, captioned as **Dr. Jagjivan Singh vs. State of Punjab and others;** The said writ petition has since been allowed by this Court vide order August 03, 2016 (P-11) wherein, it has been categorically observed that benefit of extension of service cannot be restricted to blind or visually challenged employees and other physically disabled employees are also entitled to avail the said benefit. Thus, petitioners are also entitled to continue in service up to the age of 62 years, on the doctrine of parity, petitioners are also entitled to the same relief, which has been granted vide Dr. Jagjivan Singh's case (supra). Though, petitioners have since retired but on the same pattern, they are entitled to the benefit of extension in service period upto the age of 62 years as well as consequential benefits.

3. Learned counsel for the petitioners has further submitted that one of

the petitioners moved representation dated January 16, 2017 (P-12) and at this juncture, they feel satisfied in case a direction is issued to the concerned authority to deal with the said representation by treating it on behalf of all the petitioners and to pass a speaking order, within some specified period.

4. This court has given an anxious thought to the afore-said submission made by learned counsel for the petitioners but does not find any legal as well as factual force therein. In fact, petitioners are neither entitled to the benefits claimed through the instant petition nor for consideration of the so called representation dated January 16, 2017 (P-12), in view of the discussion made hereinafter.

5. A close scrutiny of the afore-said judgment transpires that Dr. Jagjivan Singh, a physically challenged officer preferred the afore-said writ petition while challenging the letter dated December 22, 2014 as it only provided the benefit of extension of two years in service to the blind/visually challenged Class IV employees, whereas, no such benefit was extended to the physically challenged/handicapped employees. The afore-said letter was undoubtedly declared to be discriminating and in violation of rules and physically challenged/handicapped employees were also held entitled to the benefit accorded to the visually challenged employees.

6. Now, the question which survives for determination is whether Dr. Jagjivan Singh's case (*supra*) is applicable to the petitioners and the answer is in the negative. Dr. Jagjivan Singh, a physically challenged officer, was to retire on attaining the age of 60 years on December 31, 2015. However, prior to the date of his retirement, he preferred a Civil Writ Petition bearing No. 25972 of

2015, which was allowed vide order dated August 03, 2016 (P-11). He was granted the benefit especially keeping in view the fact that he filed a writ petition while in service i.e. prior to the date of his retirement on attaining the age of 60 years. Whereas, in the instant petition except Jaswant Singh and Mohan Lal all other petitioners stood retired prior to the issuance of letter dated December 22, 2014, whereas, Jaswant Singh and Mohan Lal retired on July 31, 2015 and February 28, 2015 on completion of 60 years of their service, respectively. They did not prefer any writ petition challenging the afore-said instructions dated December 22, 2014 during their service and approached this Court for the first time by virtue of instant petition in the Month of September 2017 i.e. even after, completion of their 62 years of age. Since the petitioners have already attained the age of more than 62 years prior to the filing of present petition, they cannot be treated at par with Dr. Jagjivan Singh, who has been granted the benefit vide judgment dated August 03, 2016 (P-11).

7. It can be safely concluded that petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover money for the period, for which, they did not perform their duties. By not coming forward to challenge the afore-said letter dated December 22, 2014, petitioners are deemed to have acquiesced to the proposition and it would be unjust to give them a remedy where, by their conduct, they have done that which might fairly be regarded as equivalent to a waiver of it. Petitioners are guilty since they have acquiesced in accepting the

retirement and did not challenge the same in time. Had they been vigilant enough they would have filed a writ petition as others did in the matter. Such a question came up for consideration before Hon'ble Apex Court in the case of **Chairman, U.P. Jal Nigam & Anr. vs. Jaswant Singh & Anr; 2007 (1) SCT 224.** Para 13 of the judgment, which is relevant for the disposal of instant petition reads as under:

“In view of the statement of law as summarized above, the respondents are guilty since the respondents has acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussion on the financial management of the Nigam. Why the Court should come to the rescue of such persons when they themselves are guilty of waiver and acquiescence.”

8. Adverting to the facts of the case in hand, since the petitioners have failed to challenge the letter dated December 22, 2014 when they were in

service and have filed the instant petition after completion of 62 years of their age, they cannot be held to be entitled to the benefit at par with Dr. Jagjivan Singh's case (supra). Thus, taking the case of the petitioners from either of the angles, this Court does not find any merit in the instant petition. As such, it stands dismissed.

SEPTEMBER 22, 2016
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*