

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

CWP No.860 of 2015

Date of Decision:-March 10th, 2017

Swaran Singh Jawanda.

.....Petitioner

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Ms. Vertika H. Singh, Advocate for the Petitioner.

Mr. Harkesh Manuja, Additional Advocate General, Punjab
for respondent nos.1 & 2-State.

Mr. Sarvesh Malik, Advocate for respondent nos.3 & 4-
PUDA/GLADA.

JASWANT SINGH, J.

1. The petitioner, a retired Divisional Engineer from Greater Ludhiana Area Development Authority has filed the present Civil Writ Petition seeking the quashing the letter dated 29.12.2014 (**P-14**) and Order dated 05.01.2015 (**P-16**) issued by Chief Administrator, Punjab Urban Planning and Development Authority, Respondent No. 3 wherein the petitioner was compelled to retire from service on 31.12.2014 without giving him the benefit of enhancement of retirement age up to the age of 60 years being a disabled government employee in view of the judgment dated

2014 titled as State of Punjab and others V/s Bhupinder Singh wherein the order dated 25.09.2012 passed in LPA No 1719 of 2011 by this Hon'ble court has been upheld and instructions dated 19.11.2014 (P-7) have been passed by the State of Punjab whereby benefit of extension of 2 years of service has been extended to all the disabled employees under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and also grant consequential benefits to the petitioner.

2. Briefly, the facts as pleaded by the parties and relevant to the issues for determination are that the petitioner was appointed as Sectional Officer (Civil) in Punjab Housing Development Board, Ludhiana on 10.07.1978 and was last working as Divisional Engineer (C-2) in the Office of Chief Administrator, Greater Ludhiana Area Development Authority (Respondent No. 4). The petitioner acquired disability during service wherein on 30.11.1987, he sustained injuries in an accident while on duty which resulted into amputation of right leg of the petitioner. The petitioner is suffering from "Locomotor Disability" which was assessed at 50% permanent physical impairment by the office of Civil Surgeon, Ludhiana vide a certificate dated 06.06.1989 (P-1). These facts have not been disputed by the Respondents.

3. The Government of Punjab issued Circular dated 16.02.1996 (P-2) and 17.02.2001 (P-3) wherein benefits of enhancement of retirement age from 58 years to 60 years was given to Blind Government Employees. One Bhupinder Singh who was working in the Department of Animal Husbandry, Punjab and who had sustained disability during service filed CWP No 7233 of 2010 before this Court with the prayer that the benefit of

enhancement of retirement age from 58 years to 60 years should be given to him having locomotor disability on the basis of provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 equal with and at par with the Blind Government Employees who have been given the benefit of enhanced retirement age from 58 years to 60 years. The CWP No. 7233 of 2010 was allowed by the Order dated 25.05.2011 (P-4) wherein this Hon'ble Court directed the State of Punjab to suitably modify the Circular dated 16.02.1996 (P-2) and 17.02.2001 (P-3) and extend the benefit of enhancement of age to all categories of disabled Government Employees as specified under Section 2 (i) of the 1995 Act.

The State of Punjab filed LPA No. 1719 of 2011 titled "State of Punjab and Others Vs Bhupinder Singh" against the aforesaid decision dated 25.05.2011, which was dismissed with the following observations:-

"...Thus, with the enactment of the Disability Act, all such disabled persons, irrespective of the nature of their disabilities, are to be treated equally and at par. The Disability Act places responsibility on the society to make adjustments for disabled people so that they overcome various practical, psychological and social hurdles created by their disability. The Act places disabled people at par with other citizens of India in respect of education, vocational training and employment. The Act seeks to establish a coherent and comprehensive framework for the promotion of just and fair policies and their effective implementation. It creates formal procedures, which hasten the process of full and total integration of the disabled in the society. It also aims at facilitating efficient enforcement of policies and permits strong measures against the law-breakers. The main aim of PWD Act is also to define the responsibilities of the Central and State

Governments with regard to the services for disabled persons. The Act aims to ensure full life to a disabled individual so as to enable him to make full contribution in accordance with his disability condition.

The aforesaid discussion would amply demonstrate that it is not only the statutory but constitutional right of persons suffering from disabilities to get special treatment recognized by law. In this process, persons suffering from one disability cannot be treated differently from other kind of disability. All disabled persons falling within the definition of Section 2(I) of the Disability Act form one class. There cannot be sub-classification within this same class. For these reasons, we do not find any justification on merits in any of the submissions of Mr.Puri. Accordingly, LPA No.1719 of 2011 and No.2093 of 2011 are dismissed while LPA No.307 of 2012 is allowed in the light of our observations made hereinabove. ”

The State of Punjab further filed Civil Appeal No. 8855 of 2014 against the decision dated 25.09.2012 passed in LPA No 1719 of 2011 passed by the Division Bench of this Hon'ble Court. The SLP filed by the State of Punjab upheld the order dated 25.09.2012 by the order dated 16.09.2014 (P-6).

4. Pursuant to the aforestated decision of the Hon'ble Supreme Court in Civil Appeal No 8855 of 2013, the State of Punjab through the Department of Personnel issued the instructions dated 19.11.2014 (P-7) under Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, extending the benefit of enhancement of retirement age from 58 years to 60 years of all disabled employees covered under Section 33 of the 1995 Act.

5. In the background of the aforestated facts, the petitioner in the present writ petition was issued an Order dated 18.11.2014 (P-10) for his

retirement from service under Punjab Urban Planning and Development Authority w.e.f. 31.12.2014 after attaining the age of 58 years. The petitioner through proper channel gave a representation dated 05.12.2014 addressed to Respondent No. 3 seeking the benefit of the instructions dated 19.11.2014 as also the benefit of the decisions in Bhupinder Singh's case (supra) to allow him the benefit of extension in retirement age from 58 years to 60 years being a disabled person with "Locomotor Disability" assessed at 50%. No decision on the representation of the petitioner was taken upon which the petitioner earlier filed CWP No. 27013 of 2014 which was disposed of by Order dated 29.12.2014 directing the Respondent No. 3 to act upon and decide the representation dated 05.12.2014 by passing a speaking order.

In compliance of the directions passed on 29.12.2014 in earlier CWP No. 27013 of 2014 filed by the petitioner, the impugned order dated 05.01.2015 (**P-16**) was passed wherein the claim of the petitioner was rejected on the ground that the petitioner was governed by Punjab Housing Development Board Employees Service Regulations, 1995 under which Regulation 25 provides for "Superannuation & Voluntary Retirement" and retirement age of every employee other than Class IV employees has been prescribed as 58 years. The Respondents further relied that the Punjab Housing Development Board was abolished upon the enactment of Punjab Regional and Town Planning and Development Act, 1995 and the services of whole time employees of Punjab Housing Development Board were transferred to Punjab Urban Planning and Development Authority. The service condition of the employees of Punjab Urban Planning and Development Authority are determined by the Regulation made by the

Punjab Urban Planning and Development Authority by exercising powers under Section 26(2) of Punjab Regional and Town Planning and Development Act, 1995. It was based on the aforestated reasons the Respondent No. 3 held that the instructions dated 19.11.2014 issued by the Government of Punjab are only applicable to the employees of the Government and the petitioner being an employee of PUDA and not a Government employee is governed by service condition determined by PUDA under Punjab Regional and Town Planning and Development Act, 1995.

6. The Respondents upon the issuance of the notice of motion in the present writ petition filed their written statement through Respondent No. 3 taking a similar stand as taken in the impugned letter dated 05.01.2015 (P-16). The petitioner filed rejoinder and reiterated the grounds and stand taken in the Civil Writ Petition.

7. From the pleadings and the rival contentions of the parties, the questions that arise for determination in the present writ petition are:-

- i) *Whether the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is applicable to Punjab Urban Planning and Development Authority?*
- ii) *Whether the instructions dated 19.11.2014 (P-7) issued under Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 are applicable to Punjab Urban Planning and Development Authority?*

8. For reply to the aforestated issues, it is necessary to consider provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 as well as the Punjab Regional and

Town Planning and Development Act, 1995.

The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (in short “PWD Act 1995”) is a Central Act which extends to the whole of India except the State of Jammu and Kashmir and came into force w.e.f. 01.01.1996. The PWD Act, 1995 is passed to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. In a meeting to launch the Asian and Pacific Decade of the Disabled Persons, 1993-2002 convened by the Economic and Social Commission for Asian and Pacific Region, which was held at Beijing from 01-12-1992 to 05-12-1992, a proclamation was adopted on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. Our country is a signatory to the said Proclamation.

The PWD Act, 1995, provides for the various schemes regarding the training, settlement, protection, reservation, non discriminatory treatment for full participation and equality of people with disabilities. The act has as an integral part the equalization of opportunities for persons with disabilities.

Section 2 (a) of the Persons with Disabilities Act, 1995 defines Appropriate Government as under :

" Appropriate Government" means,-

- (i) *In relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonment Act, 1924, the Central Government ;*
- (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) In respect of the Central Co-ordination Committee and the Central Executive Committee, the Central Government;

(iv) In respect of the State Co-ordination Committee and the State Executive Committee, the State Government.

Section 2 (k) defines "Establishment" as under :

“ 'Establishment' means a Corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 617 of 'the Companies Act, 1956 and includes Departments of a Government. ”

The Appropriate Government is responsible to carry out the functioning and duties towards the objects and benefits of the PWD Act 1995. The Government of Punjab is responsible for the functions and duties under the Persons with Disabilities Act 1995 and apply same to the *State Government and establishment wholly or substantially financed by that Government, or any local authority.*

The Punjab Urban Planning and Development Authority is an authority established by the Government of Punjab under provisions of Chapter III of the Punjab Regional and Town Planning and Development Act 1995 (for short “PRTPD Act, 1995) wherein Section 17 provides as under :

17(1) *With effect from such date as the State Government may, by notification, specify in this behalf,*

the State Government shall establish for the purposes of this Act, an Authority to be known as the Punjab Urban Planning and Development Authority with headquarters at such place as the State government may specify.

- (2) *The Authority established under sub-section (1) shall be a body corporate as well as a local authority, by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both moveable and immovable, and to contract; and shall, by the said name, sue and be sued.*
- (3) *The Authority established under sub-section (1) shall consist of the following members to be appointed by the State Government, namely :-*
- (i) *a Chariman ;*
 - (i-a) *a Co-Charirman;*
 - (ii) *a Vice – Chariman ;*
 - (iii) *a Chief Administrator who shall be appointed from amongst the officers of the Government of Punjab having such qualifications and experience as may be prescribed ; and*
 - (iv) *not more than twelve and not less than six official and non-official members including the Secretaries to Government of Punjab holding the charge of Local Government and Town and Country Planning: Provided that the number of non-official members shall not, at any time exceed three.*
- (4) *The Chief Minister, Minister-in-Charge of Housing and Urban Development and the Secretary to Government of Punjab, holding the charge of Housing and Urban Development shall, respectively, be the Chairman, Co-Chairman and the Vice- Chairman of the Authority.*

Further under Section 18 Sub Section (4) it is provided that the

members of the authority shall hold office during the pleasure of the State Government and further under Sub Section (5) of Section 18, a member of the Authority may resign his office by giving notice in writing to the State Government and, on such resignation being accepted by the State government, he shall cease to be a member. Under Section 19, the State Government is empowered to remove from office any member of the Authority in the circumstances so mentioned under the said Section.

The control of the Government is evident from the fact that the Punjab Urban Planning And Development Authority is established by the Government of Punjab and the members of the authority are appointed by the State Government wherein the Chief Minister is the Chairman, *Minister-in-Charge of Housing and Urban Development is the Co-Chairman and the Secretary to Government of Punjab, holding the charge of Housing and Urban Development is the Vice Chairman.*

The Chief Administrator who is appointed from amongst the officers of the Government of Punjab by virtue of the provisions of Section 22 is the Chief Executive of the Authority and responsible for its day to day working, transacting the business of the authority, authenticate decisions and orders of the Authority.

Thus, the Punjab Urban Planning and Development Authority is an “*establishment*” as defined under Section 2 (k) of the PWD Act, 1995 and without any doubt an authority controlled by the Government and the Government of Punjab is the Appropriate Government in respect of the Punjab Urban Planning and Development Authority.

Therefore, the incontrovertible conclusion is that the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act, 1995 is applicable on Punjab Urban Planning and Development Authority, an Establishment under the Government of Punjab.

9. Upon the determination of the issue regarding the applicability of the PWD Act, 1995 applicable on Punjab Urban Planning And Development Authority, the next question which arises for determination in the instant CWP is regarding the applicability of the instructions dated 19.11.2014 (P-7) issued under Section 33 of the PWD Act 1995, to Punjab Urban Planning and Development Authority. The instructions dated 19.11.2014 (P-7) have been issued under Section 33 of the PWD Act, 1995.

Section 33 of the PWD Act 1995 is as under :

Section 33

Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent. Each shall be reserved for persons suffering from-

- (i) Blindness or low vision;*
- (ii) Bearing impairment;*
- (iii) Loco motor disability or cerebral palsy, in the posts identified for each disability:*

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

Under Section 33 of the PWD Act 1995, the Appropriate Government is to make provisions regarding every **establishment**. For any such benefit given or scheme launched under Section 33 of the PWD Act by the Government

of Punjab also applies on every establishment under the Government of Punjab which also includes the Punjab Urban Planning and Development Authority.

Furthermore, in the pleaded case of the Respondents No. 2 & 3, it has been stated that the Punjab Regional and Town Planning and Development Act, 1995, was enacted w.e.f. 01.07.1995 and Punjab Urban Planning and Development Authority (PUDA) has been established under Section 17 of the said Act. The Services of the employees of the Punjab Housing Development Board were transferred to Punjab Urban Planning and Development Authority, who became the employees of the said authority. Further under Section 26 (2) of the 1995 Act it provides for determining the service conditions of the employees of PUDA by the Regulation to be made by the authorities. The provisions of Section 26 are reproduced as under:-

- 26. (1) The Authority may appoint such number of officers and other employees including experts for technical and legal work as may be necessary for the efficient performance of its functions and may determine their designations and grades.*
- (2) The officers and other employees of the Authority shall be entitled to receive, from the fund of the Authority, such salaries and allowances and shall be governed by such conditions of service as may be determined by regulations made in this behalf by the Authority.*
- (3) The exercise of any powers or discharge of any duties or functions under sub-section (1) by any officer or other employees of the Authority shall be subject to such restrictions, conditions and limitations, if any, as may be laid down by regulations of the Authority, and shall also be subject to its control and supervision.*

Still further in Para 3 of the preliminary submissions in their written statement, the Respondents No. 3 & 4 have referred that the petitioner was appointed as Section Officer (Civil) in the Punjab Housing Development Board (now PUDA) vide letter dated 15.06.1978 and one of the condition of the said appointment letter was that till the Service Regulations of the Board are framed, the instructions/orders issued by the Government of Punjab will be applicable.

To refute the applicability of the provisions regarding the enhanced age of retirement for the disabled persons from 58 years to 60 years under the Punjab Urban Planning and Development Authority, it is the stand of Respondents No. 3 & 4 that in exercise of powers under Section 26 (2) of the Punjab Regional and Town Planning and Development Act, 1995, Punjab Urban Planning and Development Authority (Employee) Regulations, 1999 are framed by the authority in its 10th meeting held on 22.07.1999. In the said Regulations of 1999, Regulation 21 (2) provides that every employee other than Class IV employee shall retire when he attains the age of 58 years. The said Regulation 21 (2) is reproduced as under:-

21. Superannuation and voluntary retirement –

- (1) Every Class IV employee shall retire when he attains the age of sixty years.*
- (2) Every employee other than Class IV employee shall retire when he attains the age of fifty eight years.*

X x x x x

From the bare reading of Regulation 21 of Regulations of 1999, it is clear that Regulation 21 deals with superannuation and voluntary retirement and do not deal with the benefits relating to the enhanced age of

retirement of physically handicapped employees. It is noted that in the Regulations of 1999 provisions regarding the reservation for appointment and the age relaxation have been provided in consonance with the provisions fixed by the Government of Punjab.

Furthermore, when initial Circular dated 16.02.1996 (P-2) wherein benefits of enhancement of retirement age from 58 years to 60 years was given to Blind Government Employees, was passed, at that time, Punjab Urban Planning and Development Authority (Employee) Regulations, 1999 were not formulated and enforced. It is the stand of the Respondent No. 3 and 4 as stated in Para 3 of their Reply in Preliminary Submissions, that prior to enforcing of 1999 Regulations, the Government of Punjab Circulars and instructions were applicable on the employees of Punjab Urban Planning and Development Authority. Thus by virtue of the applicability of the Punjab Instructions and Circulars, the Circulars Annexure P2 was fully applicable on the Punjab Urban Planning and Development Authority till upon the formulation of the Punjab Urban Planning and Development Authority (Employee) Regulations, 1999 and also remained so applicable as no provisions for the applicability of such benefits of enhanced service and retirement age for the disabled persons was incorporated in the Regulations. The present instructions dated 19.11.2014 is the expansion of the Instructions Annexure P2 wherein in addition to the Blind Employees, the benefit of the extended service of two years to all the disabled employees has been given.

To support the above findings, Regulation 43 of Punjab Urban Planning and Development Authority (Employee) Regulations, 1999, deals with matters not provided in these Regulations as under :

43. Matters not provided in these Regulations:-

In matters for which no specific provision has been made in these regulations or any other regulations made by the Authority the provisions of the Punjab Civil Services Rules as amended from time to time and such others rules and instruction as are framed by the Government of Punjab on the subject shall apply mutates mutandis.

The Regulations of 1999 are completely silent regarding the grant of various benefits to the employees under the provisions of the Persons with Disabilities Act, 1995. In the present case, as the Service Regulations of 1999 have been framed by the Punjab Urban Planning and Development Authority specifically enumerating in Regulation 43 that in matters for which no specific provision has been made in the Regulations then the provisions of the Punjab Civil Services Rules and such others rules and instruction as are framed by the Government of Punjab on the subject shall apply *mutatis mutandis* and thus by virtue of the said provision the Instructions dated 19.11.2014 (P-7) governing the benefit of the enhanced retirement age from 58 to 60 years to disabled persons shall equally apply to the employees of the Punjab Urban Planning and Development Authority.

10. The PWD Act, 1995 has its integral objective to provide Equal Opportunities to the disabled by the appropriate government. Once a beneficial provision/relaxation has been declared under Section 33 of the PWD Act 1995, for the disabled persons by granting them enhancement of age of retirement by two years from 58 to 60 years by the Government of Punjab, then the same will have applicability *mutatis mutandis* to the employees of the Punjab Urban Planning and Development Authority in absence of specific provision made in the service Regulations 1999 or any

other Regulations of Punjab Urban Planning and Development Authority.

In the given peculiar facts and circumstances, any such declaration of limited applicability only to Government Employees and not to employees of establishment would be against the spirit of the provision of Section 33 of the PWD Act itself as would also amount to inequality of opportunity by the State and against the spirit of the PWD Act as also the constitutional right of the disabled person working in the establishment under the Government of Punjab.

In view of the above, the provisions of government of Punjab instructions dated 19.11.2014 issued under Section 33 of the PWD Act 1995 would be applicable *mutatis mutandis* to the Punjab Urban Development and Planning Authority and the employees working therein.

Accordingly the findings are that the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act 1995) is applicable on Punjab Urban Planning and Development Authority and the instructions dated 19.11.2014 (**P-7**) issued under Section 33 of the PWD Act 1995, are applicable to Punjab Urban Planning and Development Authority; and **hence the instant writ petition stands allowed** and impugned letter dated 29.12.2014 (**P-14**) and Order dated 05.01.2015 (**P-16**) are quashed being against the statutory provisions and instructions applicable to the Punjab Urban Planning and Development Authority.

The petitioner has attained Sixty years of age being the extended age of retirement under Instructions dated 19.11.2014 (Annexure **P-7**) on 31.12.2016, thus, the respondents are directed to treat the petitioner in regular service of the Punjab Urban Planning and Development Authority in continuity upto 31.12.2016 and the petitioner consequentially would be

entitled to all retirement/terminal benefits by counting the qualifying service of the petitioner upto 31.12.2016. In the peculiar facts, the petitioner is also entitled to the payment of pay and allowances for the period from 01.01.2015 to 31.12.2016 and the Respondents are directed to pay the said arrears of pay and allowances alongwith the revised retirement and pensionary benefits after adjusting the amount already paid to the petitioner within four months from the date of receipt of the certified copy of these orders. No orders as to costs.

Petition stands allowed in the above terms.

(JASWANT SINGH)
JUDGE

March 10th, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>