

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 08.10.2018****CWP No.23775 of 2012**

Ram Kishan

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. T.C.Dhanwal, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Ramesh Malik, Advocate, for respondent No.6.

RAJIV NARAIN RAINA, J. (ORAL)

1. At the time of superannuation, the illness of the petitioner was diagnosed as Limb Girdle Muscular Dystrophy, characterized by progressive muscle wastage which affects predominantly hip and shoulder muscles. The effect of the medical condition in relation to the disability, in the opinion of the Medical Board presided over by the Senior Professor & Head, Department of Medicine, PGIMS, Rohtak and four other doctors including the Assistant Professor of Neurology, PGIMS, Rohtak was that the patient suffered from severe Neurological Deficit (100%). The Board declared that the patient is not fit for the job of Ophthalmic Assistant, the post on which the petitioner served at the time of retirement.

2. With these disabilities present, the petitioner was rendered completely unfit to discharge duties of his office. The policy instructions of the Haryana Government conceded two years of extended service beyond the age of retirement at age 58 in cases where an employee suffered from

minimum certified disability of 70%. The petitioner fell in that category. There was some dispute regarding non-production of the disability certificate by the petitioner as per impugned order dated 31.10.2012 (Annex P-11) informing him that since his disability certificate was not received in the office of the Senior Medical Officer, CHC, Narnaund, Hisar, he was being relieved from service on the date of retirement i.e. on attaining the age of 58 years. He was asked to produce papers and complete his documents pertaining to his pension at the earliest otherwise the office disclaimed responsibility for any delay.

3. The department of respondent Government ultimately accepted his case and disbursed two years of salary i.e. up to October, 2014 in April 2018 which payment has been received by the petitioner pending litigation. However, Mr. Dhanwal submits that the petitioner would also be entitled to interest on delayed payments, which claim is pressed at the hearing on the petition as a subsisting one which deserves to be paid.

4. I have considered this contention in the above background of facts and circumstances, but feel unable to persuade myself to accede to the request for payment of interest for two reasons. Firstly, in this petition filed in November, 2012 there is no specific prayer for award of interest on delayed payments. Normally, what is not asked for should not be granted unless there is a clear right that follows incidental or ancillary or by necessary implication. The material prayers in the petition are still for quashing the order/letter dated 31.10.2012 and for issuance of writ in the nature of mandamus directing the respondent Department to grant benefit of policy instructions dated 31.01.2006, which raise the retirement age of persons with disability beyond 70% from 58 to 60 years and to grant him

consequential benefits arising there from. Admittedly, the petitioner has not made a request before the authorities before approaching court for award of interest apart from not making a prayer in this petition by resort to amendment of pleadings.

5. The other reason for denying interest on delayed payment of salary of two years is that the underlying principles of the instructions of 2006 are quite possibly at least that a person with disability should be fit and able enough to perform duties of office, health permitting. Where an employee is rendered *non compos mentis* by serious illness or one who suffers from a disability categorized as a neurological disorder of 100%, then, he may be of hardly any continued use and productivity to the administration, which requires minimum efficiency to do the job, though at reduced levels in case of persons with disability.

6. A disabled person can be otherwise healthy. The difference between disability or its nature and health for discharge of full duties and responsibilities on the same or less tedious post must be kept in mind. If a person is a vegetable for all practical purposes, I fail to see how the policy of extended employment has any meaning, speaking realistically. The policy I believe is not meant for drawing salary for two years virtually sitting at home without labour or spending time almost non-functional in office. Disability is a fact; the extent, nature and degree of disability in relation to employment is a fact; who can do what in spite of the disability is also a fact. It is not a matter of mere percentages, nor is it a matter which can be painted with one stroke of the brush. The best test is the empirical test by measurement of the physical and mental condition of a person with disability is confined or circumscribed having regard to the law in Persons with

Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 to which the policy owes its existence apart from humanitarian grounds.

7. I would, therefore, for the above reasons, refrain from awarding interest on the principal sum of money already disbursed to the petitioner, as any interest so ordered would impact the State exchequer i.e. the tax payers' money without a reasonable justification. The petitioner and his family ought to be satisfied with the payment of arrears of salary for two years without doing any work.

8. With these observations and for the reasons stated above, the petition on a claim for interest is found short of award of relief and thus the case stands dismissed. No other point was pressed at the hearing. No costs.

08.10.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>