

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

**Civil Writ Petition No. 13885 of 2017 (O&M)
Date of Decision: 21.02.2018**

Jagvir Goel

..... Petitioner

Versus

Punjab State Power Corporation Limited (PSPCL),
Patiala and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Gurminder Singh, Sr. Advocate assisted by
Mr. Jatinder Singh Gill, Advocate
for the petitioner.

Ms. Rajni Gupta, Advocate
for respondent Nos. 1 to 3/PSPCL.

Mr. A.K. Chopra, Sr. Advocate, assisted by
Mr. Pankaj Gupta, Advocate
for respondent No. 4.

Mr. Amit Jhanji, Advocate
for respondent No. 5/PGI, Chandigarh.

JASWANT SINGH, J.

1. Petitioner (Jagvir Goel) has filed this writ petition seeking quashing of impugned order dated 14.06.2017 (**Annexure P-29**) whereby respondent-Corporation has relieved the petitioner on account of attaining superannuation age of 58 years even though the petitioner was claiming that he is physically handicapped so superannuation age is 60 years.

2. Facts of the case emerging from pleadings and arguments of both the parties are that the petitioner was promoted as Chief Engineer (Civil) by respondent-Punjab State Power Corporation Ltd. (for short 'PSPCL') in January' 2015 and was further designated as Engineer-in-Chief

attaining the superannuation age of 58 years, who just 17 days before his due date of retirement submitted a representation to the respondent seeking extension on the ground that he is physically disabled person in terms of Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995 (for short 'Act of 1995').

3. The respondent-Corporation raised objection regarding the validity of disability certificate dated 27.05.2015 submitted by the petitioner and asked him to get examined from the Post Graduate Institute of Medical Education Research (for short 'PGIMER'), Chandigarh or from any other reputed institute, where facility of all mandatory tests is available. The corporation extended retirement age of the petitioner from 31.10.2016 to 31.10.2018 on the condition that the petitioner shall provide disability certificate within one month i.e. 30.11.2016 confirming disability, from the Competent Authority designated by Punjab Government.

4. Feeling aggrieved from action of extension of retirement age of petitioner, 3 senior most employees filed CWP No. 23019 of 2016 before this Court seeking quashing of his extension. During the pendency of said writ petition, PGIMER, Chandigarh conducted necessary tests and issued disability certificate. Finding of Dr. N. Banumathe-Audiologist, PGIMER, Chandigarh are reproduced as under:

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

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

Conclusion: R/E: Moderate hearing loss

L/E: Severe hearing loss

Sd/- 15.12.2016

Audiologist: Dr. N. Banumathy”

The hearing evaluation report dated 15.12.2016 was examined by a Board of three doctors of PGIMER, Chandigarh and accordingly, final disability certificate was issued. This Court vide order dated 12.01.2017 directed the Director of PGIMER, Chandigarh to issue disability certificate in the required format, in terms of Rule 4 of 1996 Rules, and in compliance thereof, certificate No. 8011 dated 16.01.2017 was issued. However, the certificate was issued in Form No. III, under Rule 4 of 1996 Rules even though said form relates with multiple disabilities and the petitioner was suffering from single disability i.e. hearing impairment. This court vide order dated 01.05.2017 dismissed said writ petition holding as under:

“ However, consequent upon the issuance of Disability Certificate dated 18.01.2017 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 I a “person with disability” as defined under Section 2 (1) & (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.”

Consequent to disposal of aforesaid writ petition, the respondent-Corporation vide impugned order dated 14.06.2017 relieved the petitioner on the ground that as per disability certificate issued by PGIMER, Chandigarh, the petitioner is not fulfilling condition of loss of minimum 60 db in better ear. This order has led the petitioner to file present writ petition on the ground that impugned order has been passed in violation of order

5. This Court vide order dated 17.08.2017 directed the petitioner to implead PGIMER, Chandigarh as party because dispute hinges upon issuance of disability certificate in statutory Form III rather than Form IV.

6. The petitioner in compliance to order dated 17.08.2017 pleaded PGIMER, Chandigarh as respondent and this Court vide order dated 23.08.2017 issued notice to PGIMER, Chandigarh. Order dated 23.08.2017 reads as under:-

“ CM 11518-CWP-2017 in
CWP 13885/2017

Jagvir Goel vs. Punjab State Power Corporation Ltd. And others

Present:- Mr.JS Gill,Advocate for the applicant/petitioner.

In compliance of the order dated 17.8.2017, petitioner has filed the aforesaid application under Order 1 Rule 10 CPC seeking impleadment of PGIMER, Chandigarh as party respondent.

It is argued that impleadment of PGIMER, Chandigarh is necessary so as to ascertain as to whether Jagvir Goel-petitioner suffers from multiple disability or only “hearing impairment”. If the answer that Jagvir Goel suffers only from singular physical disability i.e. “hearing impairment”, then why the PGI not issued certificate in statutory Form IV applicable for singular disability. PGI would also be required to authoritatively opine as to whether Sh.Jagvir Goel, based on the minutes of the meeting dated 19.12.2016, is eligible to be considered as physically handicapped person or not.

Notice of the application alongwith copy of the petition to PGIMER, Chandigarh for the date fixed in the main case i.e. 29.08.2017.

7. In compliance to order of this Court, Sh. Naresh Kumar Panda, Head of Department of Otolaryngology, PGIMER, Chandigarh filed his Affidavit dated 23.01.2018 alongwith disability certificate issued in Form

IV. The relevant paragraph of said Affidavit Para No. 3, 4 and 5 read as

under:

3. That in compliance of the above-said directions, the deponent submits that the petitioner i.e. Jagvir Goel, is suffering from singular physical disability i.e. **“hearing impairment”**. The deponent further submits that the petitioner was issued a disability certificate in Statutory form IV on 16.01.2018. A bare perusal of the disability certificate clearly shows that the petitioner has a disability of 54%. Original copy of the Certificated dated 16.01.2018 is annexed herewith as **Annexure A/7**.

4. That the deponent further submits that the hearing tests of the petitioner was performed on 15.12.2016. The hearing test reveals that the petitioner has 70/78db hearing loss on the left side and 50/58db hearing loss on the right side (average of 500 Hz, 2 KHz and 4 KHz), hence the petitioner was given a disability certificate of 54%. The deponent further submits that as per the persons with disability Act 1995, **“Hearing impairment means a loss of 60db or more in the better ear in the conversational range of frequencies”**. Therefore, based on the minutes of meeting dated 19.12.2016, the petitioner does not fall under the definition of Hearing impairment, and **is not eligible to be considered as physically handicapped person.**

5. The deponent further submits that The persons with disability Act 1995 was repealed by the Person with disability Act, 2016 on 27.12.2016 and as per 2016 act, the Hearing impairment includes:-

a) “Deaf” means person having 70db hearing loss in average frequencies in both the ears.

b) “hard of hearing” means person having 60 DB to 70 DB hearing loss in speech frequencies in both ears;

Accordingly, the petitioner is not eligible to be considered as hearing impaired person under the Person with disability Act, 2016 as his hearing loss is 58db in the right ear.

to look into the relevant sections of Act, 1995:

Section 2. Definitions – *In this Act, unless the context otherwise require-*

Section 2(I) *“Hearing Impairment” means loss of sixty decibels or more in the better ear in the conversational range of frequencies;*

(p) *“Medical Authority” means hospital or institution specified for the purposes of this Act by notification by appropriate Government.*

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

Section 33. Reservation of posts

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) hearing impairment;

(iii) locomotor 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.”*

9. The affidavit of professor Naresh Kumar Panda makes it clear that the petitioner was issued disability certificate of 54%. The petitioner has 70/78 db hearing loss on the left side and 50/58 db loss on the right side. Hence, the petitioner was given disability certificate of 54% whereas as per Act of 1995, hearing impairment means loss of 60 or more in the better ear in the conventional range of frequencies. The petitioner does not suffer from

loss of 60 db or more in the better ear, therefore, petitioner is not physically handicapped person in terms of Act of 1995. The PGIMER, Chandigarh has issued aforesaid certificate, therefore, there is no reason to consider any other certificate. The Court is conscious of the fact that in earlier round of litigation the extension of the petitioner was not disturbed and petition of other employees was dismissed, however, this Court cannot ignore the fact that PGIMER, Chandigarh had not submitted a report which could categorically settle the issue. The Court is not expert of the subject and disability certificate issued by PGIMER, Chandigarh was not clear so PGIMER, Chandigarh was directed to make the issue clear and affidavit submitted by PGIMER, Chandigarh has put the controversy on rest.

In view of the fact that the petitioner is not suffering from loss of 60% or more in the better ear, there is no ground to interfere with the impugned order and accordingly present petition is **dismissed**. No order as to costs.

Since the main case has been decided/dismissed, therefore, no orders are required to be passed in the pending miscellaneous application(s), if any.

February 21, 2018

'dk kamra'

**(JASWANT SINGH)
JUDGE**

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