

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 18577 of 2015

Date of decision : 24-07-2018

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Krishan Chander

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. S.S Kharb, Advocate for the petitioner.

Mr. Hitesh Pandit, Additional Advocate General,
Haryana.

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RITU BAHRI, J.

The petitioner is seeking writ of certiorari for quashing the inaction of the respondent for not extending the service for two years from 58 to 60 years on the ground of physical disability i.e 75% and quash the action of forcible retirement dated 30.6.2015. A further direction has been sought to the respondents to grant extension for two years w.e.f 1.7.2015 to 30.6.2017 to the petitioner till he attains the age of 60 years.

The petitioner was born on 12.6.1957 and he was appointed on 21.10.1981 as peon on regular basis. Thereafter, he was promoted as Lab Attendant (Chemistry) on 01.01.1998. The petitioner was physically handicapped with permanent disability of 75%. On 31.1.2006, the

Government issued Instructions (Annexure P-1) to raise the age of retirement of the physical handicapped Government employees who possess the minimum degree of disability of 70% from 58 years to 60 years. Vide clarification dated 28.3.2006 (Annexure P-2) to the instructions dated 31.1.2006 issued by the Chief Secretary to Government of Haryana, any employee who submits the papers even up to the date of retirement can seek advantage of the Instructions for raising the age of retirement from 58 to 60 years. The Government of Haryana further issued some clarification on 21.4.2008 (Annexure P-3) about the Instructions dated 31.1.2006 to the effect that for the purpose of giving extension beyond 58 years in the case of physically disabled employees, the Medical Board of PGIMS, Rohtak shall be designated as the Medical Board for the State.

On 17.6.2015, the medical Board of PGIMS, Rohtak medically examined the case of the petitioner and found that the petitioner was permanently physically disabled to the extent of 75% vide medical examination certificate dated 17.6.2015 (Annexure P-9). Thereafter, the petitioner submitted an application dated 24.6.2015 (Annexure P-10) for extension of service for two years from 58 to 60 years w.e.f 1.7.2015 to 30.6.2017 on the ground of disability. Thereafter, a legal notice dated 1.7.2015 (Annexure P-11) was served by the petitioner upon respondent no.2 to extend the service of the petitioner on the ground of disability. On 8.8.2015 (Annexure P-12), the petitioner again sent a reminder to respondent no.2

The petitioner has placed on record copy of the order dated 08.12.2010 in CWP No.20527 of 2010, titled as 'Santosh Sharma vs. State of Haryana and others', whereby, one Santosh Sharma had filed a writ

petition seeking extension of two years on the ground of physical disability. After notice of motion, the petitioner was granted extension of two years. As the prayer made in the writ petition stood granted, this writ petition was disposed of as having been rendered infructuous.

In the present case, the stand taken by the respondents in the written statement is that as per the Instructions dated 25.2.2015 (Annexure R-1), the applicant was required to submit his case at least 3 months before attaining the age of 58 years, but the case of the petitioner was received in the office of respondent on 29.6.2015 i.e just one day before his retirement. Consequently, the petitioner was retired from services on his due date i.e 30.6.2015. It is admitted that the case of the petitioner was covered under the above said Instructions dated 25.2.2015 (Annexure R-1).

In a separate written statement filed by respondents no. 3 to 4, it was stated that the PGIMS, Rohtak issued handicapped certificate to the petitioner on 17.6.2015 (Annexure R-4). Thereafter, the case of the petitioner was sent to the higher authority by respondent no.4 for extension in service from 58 to 60 years. It was again reiterated that his case was rightly rejected vide order dated 28.7.2015 (Annexure R-5) as his request was made only one day prior to his retirement. The petitioner should have applied three months before his retirement to enable the respondent-Department to carry out the requisite verification in time as per Government Instructions dated 25.2.2015 (Annexure R-1).

After hearing counsel for the parties and going through the contents of the writ petition and the written statements, it transpires that the petitioner was conscious of his right and pursuant to instructions dated 25.2.2015 (Annexure R-1), he proceeded for extension in service in the

month of May itself. There was only a gap of two months in making an application after the Instructions were issued on 25.2.2015 (Annexure R-1). The petitioner being handicapped cannot be denied this benefit only on the ground that after initiating proceedings to get handicapped certificate in May, he could only make a formal application one day before retirement. After getting a certificate on 17.6.2015 (Annexure R-4), he made an application for extension of his services on 29.6.2015 and this could not be made a ground to reject his case. At the maximum, the petitioner could have been denied the benefit of interest but the benefit of extension of service could not have been denied. Moreover, in the case of similarly situated persons i.e Smt. Santosh Sharma (in CWP No. 20527 of 2010), such benefit was extended during the pendency of the writ petition itself.

Reference in this case can be made to a judgment passed by this Court in the case of **Ram Kishan Sharma vs. State of Haryana and others** **2009(2) SLR 655**, wherein the petitioner had challenged the order dated 27.4.2007, whereby he was retired on attaining the age of 58 years even though he was disabled. As per Instructions dated 31.01.2006 (Annexure P-3), the age of retirement for disable persons who possess the minimum degree of disability of 70% was 60 years. The stand of the respondents was that Ist Medical Certificate which was submitted by the petitioner on completion of one year after the accident took place in the year 1999 do not show his disability to the extent of 70% . However, it was not disputed that late medical certificate issued by the Civil Surgeon, Faridabad showed the disability of the petitioner as more than 72%. It was held that the claim of the petitioner could not be rejected on the ground of an earlier medical certificate when respondents can ask the petitioner for undergoing fresh

medical examination. In this case, the benefit of extension of service was granted after he had retired.

In view of all that has been discussed above and in view of ratio laid down by the judgment in the case of Ram Kishan Sharma's case (supra), the prayer of the petitioner could not be rejected on the ground that the application for extension of service was made by the petitioner only one day before retirement. With these observations, this writ petition is being allowed and the respondents are directed to extend the benefit of extension of service for two years from 58 to 60 years on the ground of physical disability as per Instructions (Annexures P-1 to P-3) with all consequential benefits.

24.07.2018
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No