

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

CWP No. 20637-2015

Date of decision : 19.07.2018

Shakuntla Devi

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sanjeev Kumar Birla, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G. Haryana

RITU BAHRI, J. (Oral)

In the instant writ petition, the petitioner is seeking issuance of writ in the nature of prohibition directing the respondents-State not to retire the petitioner on attaining the age of 58 years w.e.f 30.09.2015, in view of policy decision of the Government-respondent No. 1, whereby superannuation age of the Government employee who is physically disabled/challenged employees is 60 years and further prayer is that the petitioner be held entitled to all other benefits, which are admissible to physically disabled employees as per the government decision given from time to time.

Brief facts of the case are that petitioner was appointed as Lecturer in the School of Haryana, vide letter dated 04.02.1994 (P-1) and is suffering 70% disability, as per certificate (P-3). Thereafter, vide instructions dated 26.11.2014, the Chief Secretary to Government of

Haryana reduced the age of superannuation from 62 to 60 years of physically disabled/challenged employees (P-7). A letter dated 25.05.2011 was issued by the Chief Secretary to all concerned authorities (P-4). Petitioner gave a representation dated 18.09.2015 to the Principal, Government Senior Secondary School, Model Town, Sonapat to send her case for extension of service up to the age of 60 years to the competent authorities.

Thereafter, since the petitioner is going to attain the age of 58 years on 30.09.2015, she approached this Court and this Court on 29.09.2015 issued notice of motion and it was directed that the petitioner be not relieved from the service.

On notice, a written statement dated 15.12.2015 has been filed by respondent Nos. 2 and 4 admitting that the petitioner is working as lecturer and is going to retire on 30.09.2015 on attaining the age of superannuation. However, it has been stated that the case of the petitioner was sent for extension of service but he was not held entitled to hold the post after superannuation, in view of Chief Secretary to Government of Haryana letter dated 21.04.2008, wherein it was held that those physically disabled person are entitled for extension in service beyond the age of 58 year, who possess the minimum degree of disability to the extent of 70%. However, the petitioner was physically disabled to the extent of 50%, as per medical certificate (R-1).

The short question for consideration in the present writ petition is whether the petitioner is entitled for extension of service for a period of two years in terms of the policy of the State Government.

Learned counsel for the petitioner is relying upon a judgment of

this Court in a case of ***Kharaiti Lal vs. State of Haryana and others***, ***passed in CWP No. 13267-2013, decided on 16.01.2015*** whereby the petitioner who was 75% disabled , was held entitled to remain in job for 60 years and be granted consequential benefits.

On the other hand, learned State counsel submits that ***Khairiti Lal's*** case will not be of any help to the petitioner, as in that case the petitioner was 75% handicapped and his case was covered by the letter dated 21.04.2008

After hearing learned counsel for the parties and going through the written statement, the present writ petition deserves to be allowed.

Reference at this stage can further be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Deaf Employees Welfare Association and anr v. Union of India and others, 2014 (3) SCC 173*** wherein Hon'ble the Supreme Court was dealing with a case of Associations who preferred writ petition for issuance of direction to the respondents to grant transport allowance to its Government employees suffering from hearing impairment in equal with that is being given to blinds and orthopedically handicapped Government employees and also for further consequential reliefs. The writ petition was allowed and in para 18 to 22, it has been observed as under:-

“18. The Disabilities Act, as already indicated, states that the "persons with disabilities" means persons suffering from not less than 40% of "any disability", as certified by the medical doctor. When a person is having any of the disabilities mentioned in Section 2(i) and is so certified by the Medical Doctor, he is entitled to the benefits of all the

Schemes and benefits provided by the Government and there can be no further discrimination among the persons with varied or different types of disabilities. In the matter of affirmative action, in our view, there cannot be further discrimination between a person with disability of 'blindness' and a person with disability of 'hearing impairment'. Such discrimination has not been envisaged under the Disabilities Act. All the categories of persons mentioned in Section 2(i) have their own disadvantages, peculiar to themselves. A 'visually impaired person' cannot be equated with 'hearing impaired person' and vice versa. Both have different type and mode of disability. For a blind person, visibility may be poor, sometimes zero per cent, but would be able to hear and understand what is going on in and around him. At the same time, a deaf and dumb person could see, but would not be able to talk and hear what is going on around him. The nature of disability of those categories of persons may not be same, but the disabilities they suffer are to be addressed with care and compassion.

19. Ministry of Finance, Government of India, took the view that a visually impaired person cannot be equated with hearing impaired person since persons who are deaf and dumb are not physically dependent on others for commuting from one place to another, hence they are not entitled to double rate of transport allowance. The view expressed by the Ministry of Finance, in spite of the recommendations made by the Ministry of Health and Family Welfare, for not providing transport allowance to its Government employees suffering from hearing impairment, cannot be sustained. We are of the view that the travel undertaken by the deaf and hearing impaired employees is equally arduous and burdensome as compared to persons having other

disabilities referred to in Section 2(i) of the Act. Hearing impaired persons cannot communicate with the bus conductors, auto and taxi drivers as a normal person can do. Invariably, they have to seek the assistance of a stranger. Time and effort required to reach a destination is considerably more as compared to normal persons. A hearing impaired person sometimes may end up spending more money in travelling as compared to normal persons. At times, he is required to seek assistance of strangers or other travelers.

20. The hearing impaired person also would not be able to hear the sound of horn and passing vehicles and, at times, will have to seek the assistance of other co-passengers or strangers on the road. We find it difficult to subscribe the view that disability, as envisaged under Section 2(a) of the Act, with respect to the hearing impaired persons, is less than the disability of a blind person. No such discrimination has ever been made or visualised among the persons with disabilities mentioned in Section 2(i) of the Act as they form a class by themselves. A further discrimination amongst themselves is clearly violative of Article 14 of the Constitution of India.

21. The Disabilities Act deals with a well defined class i.e. "persons with disabilities" mentioned in Section 2(i). The nature of disability may differ from person to person included in Section 2(i), but all such persons have been categorized as a group of "persons with disabilities" under Section 2(i) read with Section 2(t) of the Act. In our view, the differentia sought to be canvassed by the Ministry of Finance has no rational relation to the object sought to be achieved by the Disabilities Act, which envisages to give equal opportunities, protection and rights to the "persons with disabilities". Equality of law and equal protection of law be afforded to

all the "persons with disabilities" while participating in Governmental functions. Transport allowance is given to Government employees since many of the Government employees may not be residing in and around their places of work. Sometimes, they have to commute long distances to and fro. There has been an unprecedented increase in the commutation time between the residence and place of work which effects the work environment in offices adversely as the employee spend much of their energy in commuting and, in the case of persons with disabilities, the situation is more grave.

21-A. State Commission for Persons with Disabilities, Kerala vide its letter dated 21.3.2003, evidently, taking note of those aspects, requested the Government of Kerala to extend the benefit of conveyance allowance to deaf and dumb employees also and pursuant to the same, the Government of Kerala vide G.O.(P) No. 277/2005/Fin. of Finance Department dated 14.6.2005 extended the benefit of conveyance allowance sanctioned as per the Government Orders to the Government employees with hearing impaired as per the disability defined in the Disabilities Act. The State of Andhra Pradesh, on the recommendations of the Anomalies Committee issued Orders No. 22, Finance (TA) Department dated 17.12.2004 on the recommendation of One Man Committee in 2006, vide G.O. MS. No. 197 dated 6.7.2006 of Finance (TA) Department extended the benefit of Conveyance Allowance to deaf and dumb employees on par with physically handicapped employees.

22. The deaf and dumb persons have an inherent dignity and the right to have their dignity respected and protected is the obligation on the State. Human dignity of a deaf and dumb person is harmed when he is being marginalized, ignored or devalued on the ground that the disability that

he suffers is less than a visually impaired person which, in our view, clearly violates Article 21 of the Constitution of India. Comparison of disabilities among "persons of disabilities", without any rational basis, is clearly violative of Articles 14 of the Constitution of India. In our view, the recommendation made by the Ministry of Health and Family Welfare for extending the benefit of transport allowance to the Government employees suffering from hearing impairment in equal with blinds and orthopaedically handicapped Government employees is perfectly legal and is in consonance with Articles 14 and 21 of the Constitution of India.

Following the ratio of the above mentioned judgment of Hon'ble the Supreme Court, this Court allowed the writ petition in a case of ***Hardev Kaur vs. State of Haryana and others, 2015 (3) S.C.T 825*** wherein the petitioner was physically handicapped to the extent of 60% and was seeking benefit of extension in service from 58 years to 60 years. This Court disposed of the petition and held that the imposition of condition in the notification to the extent that persons, who are having minimum degree of disability 70% are entitled to extension from 58 years to 60 years, is not in consonance with the provisions of Section 2(i) and 2 (t) of the Act, 1995. A direction was issued to the respondents to consider the representation of the petitioner uninfluenced with the above condition imposed in the notification.

This Court vide order dated 29.09.2015 has granted the relief to the petitioner that he be not relieved from service and thus, the petitioner has completed his 60 years of service.

Learned counsel for the petitioner has informed the Court that

despite the relief granted by this Court, the petitioner has been relieved from service on 02.06.2017 i.e before completion of 60 years of service.

Applying the ratio of the above mentioned judgments to the facts of the present case, the present writ petition stands allowed. A direction is given to the respondents to take the date of retirement of the petitioner as 30.09.2017 and she is entitled to consequential benefits along with 6% interest.

(RITU BAHRI)
JUDGE

19.07.2018

G Arora

Whether speaking/reasoned
Whether reportable

Yes
No