

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

**C.M. No. 5082 of 2018 in/and
Civil Writ Petition No. 24817 of 2014 (O&M)
Date of Decision: 26.04.2018**

Raghubir Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Rajeev Anand, Advocate
for the **applicant**-petitioner.

Mr. Manoj Bajaj, Additional Advocate General, Punjab
for respondent Nos. 1 & 2/State.

Mr. Rupinder Khosla, Sr. Advocate, assisted by
Mr. Sarvesh Malik, Advocate
for respondent No. 3-PUDA.

JASWANT SINGH, J.

C.M. No. 5082 of 2018

Present application moved by the counsel for **applicant-petitioner** is for preponing the actual date of hearing from 08.10.2018.

Notice of the application was issued.

Counsel for the parties have no objection if the actual date of hearing is preponed from 08.10.2018 and the case is fixed for today itself.

In view of above, present **application is allowed**. The date of hearing is preponed from 08.10.2018 and the case is taken up today itself.

CWP No. 24817 of 2014 (O&M)

1. Petitioner-Raghubir Singh, a retired Administrative Officer / Assistant Estate Officer from Punjab Urban Planning and Development

Authority has filed the present petition seeking the quashing the

communication dated 21.11.2014 (**Annexure P-7**) issued by Chief Administrator, Punjab Urban Planning and Development Authority, respondent No. 3, wherein the petitioner was compelled to retire from service on 30.11.2014 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 16.09.2014 passed by Hon'ble Supreme Court in **Civil Appeal No. 8855 of 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 (**Annexure P-5**) have been passed by the State of Punjab whereby benefit of extension of two (02) 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 is a handicapped person having 40% disablement due to old traumatic shortening of two inches of Left Lower Limb was appointed in the Punjab Housing Development Board (now Punjab Urban Planning and Development Authority) on 25.07.1983 as a Clerk. The said disability of the petitioner was duly recognized and acknowledged by the respondents and an Office Order dated 05.08.1988 (**Annexure P-2**) was passed wherein the petitioner was declared to an orthopedically handicapped to the extent of 40%. These facts have not been disputed by the respondents.

3. The Government of Punjab issued circular wherein benefit 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 (**Annexure P-3**) wherein this Hon'ble Court directed the State of Punjab to suitably modify the Circular dated 16.02.1996 and 17.02.2001 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.

Section 2 (i) of 1995 Act defines disability which means following disabilities:-

“ (i) “disability” means--

- (i) blindness;
- (ii) low vision;
- (iii) leprosy-cured;
- (iv) hearing impairment;
- (v) *locomotor disability*;
- (vi) mental retardation;
- (vii) mental illness.”

The State of Punjab filed LPA No. 1719 of 2011 titled “**State of Punjab and Others Vs Bhupinder Singh**” against the aforesated decision dated 25.05.2011 (P-3), 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 (**Annexure P-4**) 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 to grant benefit of enhanced age of superannuation to all categories of handicapped persons mentioned in Section 33 of the Disability Act.

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 (**Annexure P-5**) 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 who was due for his retirement on 30.11.2014 completing 58 years of age in the month of November 2014, made a representation dated 20.11.2014 (**Annexure P-6**) vide Diary No. 20817 to the effect that the service of the petitioner being disabled person be enhanced from 58 years to 60 years in consonance with the policy decision dated 19.11.2014 (**Annexure P-5**).

Respondent No. 3 issued an Order dated 21.11.2014 (P-7) for the petitioner's retirement from service under Punjab Urban Planning and Development Authority w.e.f. 30.11.2014 after attaining the age of 58 years. The petitioner through proper channel gave another representation dated 01.12.2014 (P-8) 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 40%. No decision on the representation of the petitioner was taken upon which the petitioner filed the instant Civil Writ Petition.

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 the stand that the claim of the petitioner is not sustainable 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 Punjab Urban Planning and

Development Authority (Employees Service) Regulation 1999 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. Under the Punjab Urban Planning and Development Authority (Employees Service) Regulation 1999, Regulation 21 provides for superannuation and voluntary retirement and Regulation 21 (2) prescribes age of retirement as 58 years. It was based on the aforesaid 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.

7. During the course of proceedings of the instant CWP, directions were issued by the Order dated 22.11.2016 by this court for the respondent-State as well as respondent No.3 to file affidavits of some responsible officer within a period of four weeks to the following effect :

“.....Learned counsel for respondent-State as well as respondent No.3 are directed to file affidavits of some responsible officer within a period of four weeks to show as to how the provisions of Section 33 of the Act, 1995 are not applicable to the case of the petitioner. It should also be mentioned in the affidavit filed by respondent No.3 as to whether the provisions of Civil Services Rules, Punjab are applicable regarding enhancement of age of retirement of physically handicapped persons from 58 years to 60 years. Respondent-State is also directed to mention in the affidavit as to whether in absence of any provision in the Regulations relating to age of retirement of physically handicapped

employees, the provisions of Civil Services Rules, Punjab would be applicable or not....”

The respondents have not filed any affidavit or response in compliance with the aforestated directions.

8. In meantime another Civil Writ Petition No. 860 of 2015 titled ***“Swaran Singh Jawanda Versus State of Punjab and Others”*** came for consideration before this Court having similar controversy involving the same respondents. In CWP No. 860 of 2015, the following questions were formulated for determination:-

“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?”

In the said CWP No. 860 of 2015 both the above questions were answered in affirmative by the Judgment dated 10.03.2017, allowing the CWP and holding that the Punjab Urban Planning and Development Authority is an ***“establishment”*** as defined under Section 2 (k) of the Persons With Disability Act, 1995. The Government of Punjab is the Appropriate Government in respect of the Punjab Urban Planning and Development Authority and 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 controlled by the Government of Punjab.

It is further held that the Punjab Urban Planning and Development Authority (Employees Service) Regulations, 1999, as relied upon by the respondents are completely silent regarding the grant of various benefits to its 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 instructions 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-5) issued under Section 33 of the Persons with Disability Act 1995, 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.

It has been held that 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, 1995, 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. It was thus concluded that 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.

9. Respondent No. 3/Punjab Urban Development and Planning Authority filed LPA No. 2045 of 2017 titled “Punjab Urban Development and Planning Authority versus State of Punjab and others” against the aforestated Judgment dated 10.03.2017 passed in CWP No. 860 of 2015 and has been dismissed by the Order dated 02.11.2017 finding no infirmity in the findings of the Judgment dated 10.03.2017.

10. The above observations made in CWP 860 of 2015 decided by Judgment dated 10.03.2017 are totally applicable to the case of the petitioner in the instant Writ Petition. Hence, the instant writ petition stands allowed and impugned letter dated 21.11.2014 **(P-7)** is quashed being against the statutory provisions and instructions applicable to the Punjab Urban Planning and Development Authority, and the petitioner held entitled to two years in extension of service w.e.f. 01.12.2014.

The petitioner has attained Sixty years of age being the extended age of retirement under Instructions dated 19.11.2014 **(P-5)** on 30.11.2016, thus, the respondents are directed to treat the petitioner in regular service of the Punjab Urban Planning and Development Authority in continuity upto 30.11.2016 and the petitioner consequentially would be entitled to all retirement/terminal benefits by counting the qualifying service of the petitioner upto 30.11.2016. In the peculiar facts, the petitioner is also entitled to the payment of arrears of pay and allowances for the period from 01.12.2014 to 30.11.2016 and the respondents are directed to pay the said arrears of pay and allowances alongwith the due and revised retirement and pensionary benefits after adjusting the amount, if any, already paid to the

petitioner within two months from the date of receipt of the certified copy of these orders. If the aforementioned payments are not paid within the period of two months, then the arrears of pay and allowances, due and revised retirement and pensionary benefits will be paid with interest @ 8% p.a. from the date due till realization, as also liable for being hauled up in contempt proceedings.

No orders as to costs.

Petition stands '**allowed**' in the above terms.

Since the main has been decided, no orders are required to be passed in the pending miscellaneous application(s), if any, and the same stand(s) disposed of.

April 26, 2018

'dk kamra'

(JASWANT SINGH)
JUDGE

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