

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6414 of 2016

Date of Decision: 24.01.2018

Gopi Ram

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ram Niwas Sharma, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.

1. In the matter of Haryana Government raising the age of retirement of physically handicapped Government employees from 58 to 60 years the right is controlled by policy instructions dated January 31, 2006, March 28, 2006 and April 21, 2008, the copies of which policies are placed at Annex P-4, P-5 and P-7 with the writ petition. The instructions dated March 28, 2006 designate the Director, PGIMS Rohtak to be the authority to constitute a Medical Board to determine the extent of disability of an employee for purposes of extension in service until age 60. The Chief Medical Officer on reference and after physical examination certified the percentage of the handicap of the petitioner at 60% signed in the Medical Certificate dated February 07, 1983 while the instructions require 70% disability to be eligible for considered for extension in service for two years beyond the age of superannuation, specified in rules at age 58.

2. The petitioner contends that the condition of the minimum

degree of disability of 70% stipulated in the policy notifications is not in consonance with the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (“1995 Act”) and toward this end the petitioner relies on a judgment of the learned Single Judge in CWP No.3919 of 2015, *Hardev Kaur v. State of Haryana and others* decided on March 04, 2015.

3. The learned Single Judge in the order and judgment delivered in *Hardev Kaur* case ruled that the condition of minimum degree of disability of 70% imposed in the notifications is not in consonance with the provisions of the 1995 Act and decided that and not is the policy illegal it deserves to be quashed.

4. Thereafter, the respondent - Director of School Education has been directed to consider the representation of Hardev Kaur uninfluenced by the condition imposed in the notification and in compliance of the observations made in the judgment regarding Sections 2 (i) and 2 (t) of the 1995 Act.

5. Relying on the decision of the Supreme Court delivered case, Deaf Employees Welfare Association and another v. Union of India and others, reported in book 2014 (1) RCR (Civil) 377 taken in the first motion hearing without receiving the reply of the State and issuing notice to the Law Officer on the asking of the Court, makes the order not a contested one or one passed after receiving the views of the Government in a written statement in a matter involving extension of service beyond retirement to a special classified group of citizens. It has been mentioned that against the order, the department has filed LPA No.732 of 2017 but the same has not

been listed so far. The present position obtaining is that the appeal is posted awaiting service of respondents by last order dated January 08, 2018.

6. It was on the directions of this Court in CWP No.366 of 2016 filed earlier by the petitioner that he was medically examined on directions by the Medical Board of PGIMS Rohtak and disability then was assessed at 50% of the patient-candidate suffering from Post Polio Residual Paralysis (R) Lower Limb per certificate dated March 03, 2016. Since the petitioner does not fall within the purview of the executive instructions he was retired from service on December 31, 2015 at the age of 58 years.

7. The question agitated in this petition is as to whether the provisions of the 1995 Act will prevail over the policy instructions as far as percentage of disability concerned. The 1995 Act prescribes minimum 40% disability as condition precedent to reap the benefits of the 1995 Act.

8. Section 2 (i) of the Central Act defines disability with seven different debilitating conditions including blindness, low vision, locomotor disability etc. Section 2 (t) defines what a person with disability means and prescribes the same to be a person suffering from not less than forty per cent of any disability as certified by a Medical authority.

9. Chapter V of the 1995 Act provides for appropriate Governments and local authorities to provide opportunities to disabled children and persons of disability to free education, non-formal education etc., while Chapter VI of the 1995 Act deals with reservation of posts for persons with disabilities. Identification of posts manageable by disabled persons is done by the mandate of Section 32 of the Act is dispersed on posts, in the establishments, which can be reserved for persons with

disabilities.

10. Section 33 of the Act deals with reservation of posts. Section 38 of the 1995 Act provides that the appropriate Governments and local authorities shall, by notification, formulate schemes for ensuring employment of persons with disabilities. Section 39 provides for reservation of seats for persons with disabilities in educational institutions. There are schemes for preferential allotment of land for certain purposes, such as, non-discrimination in transport on the road, inbuilt environment including ramps in public buildings etc. and non-discrimination in Government employment. Section 68 deals with unemployment allowance. The Act provides for a wide range of activities which are made open to persons with disabilities and to provide them equal treatment.

11. The Supreme Court in *Deaf Employees Welfare Association* did not deal with age of retirement nor is such a concession provided under the 1995 Act and, therefore, the same has to be regulated by virtue of rules and notifications. The Haryana Government has guaranteed extension in service to persons with disability with minimum 70% disability of the afflicted employees to be applied uniformly in all departments.

12. If the prescription is by operation of policy instructions, I find no reason to hold that the ceiling of 70% disability is illegal or arbitrary or that it should be brought down to 40% disability in the vision of the 1995 Act. There was no guarantee to the petitioner when he was employed, may be against quota for physically handicapped, that the guarantee would run beyond age 58 years, which is the age prescribed in the rules as to age of superannuation. The fact remains staring in the face that the petitioner

attained the age of 60 years on March 31, 2017 and therefore, reinstatement is out of the question. Still further, this Court heard Mr. Sharma on July 27, 2016 and passed the following order:-

“Notice of the application to the non-applicant/respondents.

Ms. Shruti Jain Goyal, AAG, Haryana, accepts notice on behalf of the non-applicant/respondents.

Heard learned counsel on the application.

Willy nilly, the petitioner worked for 9 months beyond the period of superannuation while his case was under consideration for extension. Having worked and discharged duties salary becomes non-recoverable. Therefore, recovery shall not be made from the petitioner on the principle of quantum meruit. However, the petitioner's case for pension be accelerated and pension be given to him without prejudice to his prayers in the petition and subject to its outcome. The petitioner will cooperate with the paper-work and complete the necessary formalities.

C.M. stands disposed of accordingly.”

13. The interim order dated July 27, 2016 is adverse and prejudicial to the interest of the petitioner but the same has not been challenged in appeal.

14. In view of the above, the petition has no merit at all and is accordingly dismissed. However, recovery orders are quashed.

(RAJIV NARAIN RAINA)
JUDGE

24.01.2018
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Whether speaking/reasoned *Yes*

Whether reportable *No*