

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 7738 of 2015

Date of decision : July 26, 2018

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Satpal Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. S.P Chahar, Advocate for the petitioner.

Mr. Gaurav Jindal, Addl. A.G, Haryana.

Mr. Amardeep Hooda, Advocate for respondents no. 3 and 4.

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RITU BAHRI, J.

The petitioner is seeking writ of certiorari for quashing the order dated 26.4.2013 (Annexure P-3), whereby he has been retired at the age of 58 years and further to set aside the order dated 13.8.2014 (Annexure P-6), vide which the claim of the petitioner for retiring at the age of 60 years being 75% physically handicapped has been rejected.

The Chief Secretary to Government of Haryana vide Instructions dated 31.1.2006 (Annexure P-7) decided to raise the normal retirement age of such disabled Group 'A' to Group 'D' employees who

possess the minimum degree of disability of 70% from 58 years to 60 years. The Chief Secretary to Government of Haryana vide Instructions dated 28.3.2006 (Annexure P-8) has given directions that a Medical Board is to be constituted by the CMO of the Districts for the purpose of assessing the handicap of a Government employee and similar Instructions have been issued by the Registrar (Annexure P-9). The petitioner has placed on record the application (Annexure P-1) along with his disability certificate issued by Department of Medicine, Neurology, PGIMS Rohtak dated 16.4.2013. A perusal of this Certificate shows that he is disabled to the extent of 75% and further disability certificate dated 1.5.2013 (Anexure P-2) from the office of Civil Surgeon, Rohtak shows that the petitioner is handicapped neurologically and percentage of his disability is 75%.

A Co-ordinate Bench of this Court in the case of ***Umesh Kumar vs. State of Haryana and others (CWP No. 13585 of 2014) decided on 22.3.2017*** has examined the case of claim for extension of service of the petitioner beyond 58 years up to 60 years with reference to disability of 73.5% of both ears. In this case vide communication dated 12.3.2014, the petitioner's claim for extension of service with reference to disability of 73.5% of both ears beyond 58 years up to 60 years was rejected. It was observed by this Court that having regard to the contention of the petitioner that his case was covered by policy decision of the State Government dated 31.1.2006, it is evident that nowhere in the policy it is stated that whether an employee who seeks extension of service for the period of 2 years after attaining age of 58 years should be permanently disabled person. That

apart, under The Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 definition of disability does not reveal to the extent whether disability is to the extent of permanent or temporary. Therefore, one must go by Act even though if there is error committed under the Rules, with reference to Form No. IV Rule will not prevail over the Act, 1995, in the present case so as to point out the disability is temporary or permanent. Consequently, petition was allowed and respondents were directed to extend the service benefits with reference to policy decision of the State Government dated 31.1.2006.

Written statement has been filed on behalf of respondent no.2. In the written statement, Annexure R-2/2 has been placed on record, whereby, the Chief Executive Officer, The Rohtak Central Co-operative Bank Ltd. by way of a letter addressed to the Registrar, Cooperative Societies, Haryana, Sector – 2, Panchkula conveyed the information that the Board of Directors of the Bank in its meeting held on 22.7.2013 considered the issue and rejected the claim of the petitioner after considering him mentally disabled person not physically. The Registrar, Cooperative Societies, Haryana i.e respondent no.2 further wrote to the Medical Superintendent, PGIMS, Rohtak vide letter dated 17.9.2013 (Annexure R-2/3) to clarify whether the petitioner is mentally disabled or physically disabled and percentage of disability and also requested to intimate whether mental disability is covered under physically disability. Deputy Medical Superintendent, PGIMS, Rohtak clarified vide letter dated 7.10.2013 (Annexure R-2/4) with the remarks that patient is mentally normal as per

proforma higher mental functions are normal except mild dysarthria (i.e difficulty in articulation) already written in proforma. Patient had physically disability i.e 75%. A perusal of this clarification shows that the petitioner has been held to be 75% physically disabled.

In view of the clarification dated 7.10.2013 (Annexure R-2/4), letter dated 13.8.2014 (Annexure P-6) is set aside. The respondents are directed to extend the service benefits to the petitioner. As the petitioner must have completed 60 years, therefore, question of continuation of the petitioner does not arise. Respondents are further directed to pay arrears of pay for 2 years minus pension with 6% interest. The arrears shall be calculated and disbursed within a period of 3 months.

July 26, 2018
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No