

CWP No.9930 of 2015

Ankur Goyal
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.218

**Civil Writ Petition No.9930 of 2015
DECIDED ON: May 14, 2018**

KRISHAN CHAND

..PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Sunny Singla, Advocate,
for the petitioner.

Mr. T.P.S. Chawla, Deputy Advocate General, Punjab.

JASPAL SINGH, J.

Through the instant civil writ petition, preferred under Articles, 226/227 of the Constitution of India, petitioner has sought issuance of a writ especially in the nature of mandamus thereby directing the respondents to grant the pension and other pensionary benefits to him as per instruction dated 19.11.2014 (P-8) in terms of judgment passed in CA No.8855 of 2013

arising out of SLP No.10610 of 2013 in ***Bhupinder Singh's Case*** by enhancing the retirement age from 58 years to 60 years.

2. The contention of learned counsel for the petitioner is that State of Punjab issued a Notification in the Punjab Government Gazette dated 23.10.1998, notifying the Act known as "Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" (for short 'Act, 1995') which defines disability. The State of Punjab issued Circulars No.9/6/94-3PPII/3220 dated 16.02.1996 (P-2) and No.9/6/94-3PPII/840 dated 17.01.2001 (P-3), whereby enhancing the age of retirement from 58 years to 60 years was only for blind persons and not to all other categories of physically disabled persons. There being a disparity amongst the physically disabled persons as defined in Section 2 (i) of the Act, 1995, the aforesaid circulars were challenged by way of CWP No.7233 of 2010 captioned as ***Bhupinder Singh vs. State of Punjab & ors.***, which was allowed vide order dated 25.05.2011 (P-5). The operative part of this judgment, which is read as under:-

"In view of the above, this petition is allowed. Respondent-State is directed to suitably modify the Circulars (Annexures P-2 & P-3) and extend the benefit of enhancement of age to all categories of disabled Govt. employees as specified under Section 2(i) of the Disability Act in tune and spirit of the Act. The petitioner has been retired at the age of 58 years. It is more than one year that the petitioner has retired. I leave it to the wisdom of the State to re-induct the petitioner into service for the rest of period of retirement upto age of 60 years, however, petitioner shall be entitled to emoluments for extended

period of retirement. He shall be deemed to have retired at the age of 60 years and will be entitled to all consequential benefits.”

3. Aggrieved against the said order dated 25.05.2011 (P-5), the State of Punjab & ors. filed LPA No.1719 of 2011, which was upheld and all disabled persons falling within the definition of Section 2 (i) of the Act, 1995 form one class and there cannot be sub-classification within the same class, meaning thereby the judgment rendered in ***Bhupinder Singh case (supra)*** was upheld. Subsequent thereto, the State Government issued letter No.17/20/2010-2PP2/132 dated 19.11.2014 (P-8), whereby the Government took the decision after considering the judgment rendered in ***Bhupinder Singh case (supra)*** that the benefit not only will be given to the blind employees but also to all disabled employees who are covered under Section 33 of the Act, 1995 i.e. Blindness of low vision, Hearing Impairment or Locomotor Disability or cerebral palsy. On the strength of the aforesaid documents and judgments, learned counsel for the petitioner submits that petitioner is entitled to the benefit of two years and consequently, entitled to the salary as well as other benefits.

4. On the other hand, learned State counsel – Mr. T.P.S. Chawla has ebulliently argued that petitioner is not entitled to the benefit of aforesaid Scheme, whereby a period of two years extension was given to the disabled employees. In fact, the said circular No.9/6/94-3PP2/3220 dated 16.02.1996 (P-2) was issued, whereby the extension for a period of two years in age was granted to the employees who were suffering from blindness. It was only after the judgment rendered in case ***Bhupinder***

Singh case (supra), other disabled employees who have been defined in Section 2(i) of the Act of 1995 were also made entitled for the same benefit. After the dismissal of the Civil Appeal No.8855 of 2014 arising from SLP (C) No.10610 of 2013 preferred by the State of Punjab in *Bhupinder Singh case (supra)* vide order dated 16.09.2014, Instructions No.17/20/2010-2PP2/132 dated 19.11.2014 (P-8) were issued, which are prospective in nature. These instructions cannot be held to be retrospective as there is no express or necessarily implied provision in the scheme/letter dated 16.02.1996 (P-2). Since, there is no specific provision made in the letter dated 19.11.2014 (P-8) to make it operative retrospectively nor there is any such express term, it clearly follows that it is prospective in nature. In the instant case, petitioner stood retired in the year 2007 remained tight lipped for the period of 7-8 years and after coming to know the judgment especially rendered in *Bhupinder Singh case (supra)*, he preferred instant petition. Since, letter dated 19.11.2014 (P-8) is prospective in nature and petitioner is not entitled for the relief claimed through the instant petition. He further submits that petitioner has also not approached the Court with clean hands. He has placed on record true copy of letter dated 04.06.2007 (P-4) allegedly written to the Director Public Instruction (S.E.), Punjab by the petitioner-Krishan Chand. The vernacular or carbon copy of the aforesaid letter dated 04.06.2007 (P-4) has not been produced or placed on record, rather a perusal thereof is suggestive of the fact that said letter is antedated and has been filed only to cover up the delay. In fact, in the year 2007, neither any directions were given by this High Court for enhancement of age nor the Circulars dated 16.02.1996 (P-2) and 17.01.2001 (P-3) were

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under challenge. The CWP No.7233 of 2010, which is now made the basis of his claim by the petitioner was filed in 2010 and decided on 25.05.2011 and the said letters are nothing obliged and seems fabricated. Thus, the petitioner does not deserve the relief claimed through the instant petition.

5. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioner as well as learned State counsel and have minutely scanned the documents.

6. After bestowing due consideration, this Court is of the considered view that various contentions raised by learned counsel for the petitioner do not carry any legal and factual weight. In fact, petitioner has failed to prove his case and as such, instant petition merits dismissed.

7. Concededly, vide Circular No.9/6/94-3PPH/3220 dated 16.02.1996 (P-2) the age of retirement was raised of the blind State Government employees from 58 years to 60 years and subsequent thereto, vide another Circular No.9/6/94-3PPH/840 dated 17.01.2001 (P-3) issued by the State of Punjab in the context with the aforesaid letter, such employees were exempted from their medical check up after the age of 58 years. The Circular dated 16.02.1996 (P-2) was challenged through CWP No.7233 of 2010 captioned as ***Bhupinder Singh vs. State of Punjab & ors.***, which was allowed vide order dated 25.05.2011 (P-5) and LPA preferred by the State against thereof, was also dismissed by the Division Bench of this Court vide judgment dated 25.09.2012 and it was directed to treat all the employees who are physically disabled as defined in Section 2(i) of the Act,

1995. Subsequent thereto, the aforesaid instructions dated 19.11.2014 (P-8) were issued. Since the instructions dated 19.11.2014 (P-8) for prospective in nature, it cannot be made applicable from retrospective effect. There is nothing specific in the letters/circulars that it would have retrospective effect. Moreover, a glance at the operative part of the judgment rendered in ***Bhupinder Singh case (supra)*** which has also been reflected in para No.2 of the judgment depicts that in the said case, petitioner retired at the age of 58 years i.e. more than one year prior to the passing of the said judgment i.e. 25.05.2011 (P-5). The matter was left to the State to re-induct of the petitioner into service for the rest of period of the retirement upto the age of 60 years. However, petitioner shall be entitled to the emoluments for the extended period of retirement.

8. Here, in the case in hand, petitioner stood retired on 31.08.2007 on completion of 58 years of service. Prior to the filing of the instant petition, he neither come forward by way of a representation either to the department concerned nor approached this Court like that of ***Bhupinder Singh (supra)*** rather, slept over the matter and it was only in the month of May, 2015, instant petition was filed on the basis of judgment rendered in ***Bhupinder Singh case (supra)***. Since, there is a delay and latches on the part of the petitioner and further the letter dated 19.11.2014 (P-8) issued by the Government can be said to have the prospective effect, petitioner is not entitled the benefit.

9. While parting with the judgment, it would be appropriate to observe that the letter dated 04.06.2007 (P-4) is antedated and appears not have been served upon the Director Public Instruction (S.E.), Punjab, to

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whom, it is addressed. Neither the carbon copy or nor vernacular has seen in the light of the day nor there is any document to show that this letter was actually delivered in the office of DPI (S.E.), Punjab. Rather, a glance at the aforesaid letter appears that this is nothing but antedated creation which gives a reference about the directions given by this Court with regard to enhancement of age from 58 years to 60 years. Neither any matter has been brought to the notice of this Court to be pending in the year 2007 before this Court nor the judgment delivered either by this Court or any other Court with regard to enhancement of age from 58 years to 60 years except ***Bhupinder Singh case (supra)*** which was filed in the year 2010 and disposed of in the month May, 2011. Such a creation made by the petitioner just to show that he made earlier representation is deprecable.

10. As an up shot of the aforesaid discussion, this Court does not find any merit in the instant petition. It stands dismissed.

11. No order as to costs.

May 14, 2018

Ankur

**(JASPAL SINGH)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

Yes/No