

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-28940-2018

Date of decision: - 16.11.2018

Gurnam Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

HARSIMRAN SINGH SETHI, J. (ORAL)

Present writ petition has been filed by the petitioner challenging the order dated 30.11.2017 (Annexure P-9) by which his request to grant him the deemed date of extension in service from 01.02.2005 till 31.01.2007 has been rejected.

The facts as enumerated in the present writ petition are that the petitioner is a handicapped person and he retired on attaining the age of 58 years on 31.01.2005. At the time of the retirement, the circular of the State of Punjab dated 16.02.1996 (Annexure P-2) was in operation by which only the blind employees were allowed to continue till the age of 60 years. The said circular dated 16.02.1996 was further amended on 17.01.2001 (Annexure P-3). For all intents and purposes as the petitioner

did not belong to the handicap category (blind), he was made to retire at the age of 58 years on 31.01.2005.

One Sh. Bhupinder Singh filed a CWP No.7233 of 2010 challenging the instructions circular dated 16.02.1996 as amended on 17.01.2001 and prayed that handicapped employees, irrespective of the category, should be allowed to continue in service till the age of 60 years. The said writ petition was allowed by this Court on 25.05.2011. The said decision was challenged before the Hon'ble Supreme Court and after the dismissal of the SLP, the Government of Punjab issued instructions on 19.11.2014 (Annexure P-7) extending the age of retirement of handicapped employees as envisaged under Section 2(i) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Central Act No.1 of 1996). It is only after these instructions, the employees who were covered under the definition of disabled persons, the retirement age was increased up to 60 years.

It is a matter of fact that the petitioner never raised any challenge to the circular dated 16.02.1996, as amended on 17.01.2001, according to which only the blind employees were allowed to continue in service up to the age of 60 years. Petitioner retired from service on 31.01.2005 without raising any objection to the said instructions. Now in the present writ petition, the petitioner has prayed that as the instructions dated 16.02.1996 as amended on 17.01.2001 by which the retirement age of only blind employees was extended up to 60 years, has been quashed, by applying a deeming fiction which should be presumed that the petitioner shall be allowed to continue in service up to the age of 60 years

and is entitled for the full salary for the said period of two years i.e. 01.02.2005 till 31.01.2007.

The legal notice, supposed to have been given by the petitioner on 17.10.2015, was considered by the Government and his claim has been rejected by passing a speaking order dated 30.11.2017 (Annexure P-9). In the said order, it has been mentioned that no legal notice was ever received from the petitioner and he has never approached the respondents despite given several opportunities. The ground given for rejection of the case for deemed extension as claimed by the petitioner is that the judgment of this Court dated 25.05.2011, vide which the instructions dated 16.02.1996, as amended on 17.01.2001, is prospective in nature and the cases of the handicapped employees who have already retired prior to the said date cannot be reopened and they cannot be granted deemed date extension for two years and the salary for the said period. In respect of the examples, which were cited by the petitioner, the same have been dealt with while deciding the case of the petitioner.

I have heard learned counsel for the petitioner and gone through the record.

The contention which has been raised by the petitioner that once the instructions dated 16.02.1996, as amended on 17.01.2001, has been set aside, the petitioner is entitled for the deemed date extension. The cases which have been cited by the petitioner, who were given the benefit of the judgment dated 25.05.2011 are only those persons, who had approached this Court before their retirement and had claimed the extension in service prior to their retirement. In the present case, the

petitioner never raised any grievance and retired on 31.01.2005. It is now only in the year 2018, the claim is being made for deemed date extension in service and the pay for the said period. Counsel for the petitioner has failed to give the reason as to why the petitioner did not approach this Court when he was in service in case he was aggrieved by the instructions dated 16.02.1996 as amended on 17.01.2001. In the absence of any satisfactory explanation, it cannot be presumed that petitioner had no grievance against the instructions mentioned above and hence, accepted the retirement on attaining the age of 58 years on 31.01.2005.

Further, the petitioner is coming to this Court on the basis of a decision which is much subsequent to his date of retirement. A subsequent decision in the case of similar situated person will not entitle the others to claim the same benefit. The Hon'ble Supreme Court in the case of ***State of Uttar Pradesh & Ors. Versus Arvind Kumar Srivastava & Ors. 2015 (1) SCC (L&S) 191*** has dealt with this question and summoned up law on this issue in Para 23 as under: -

“(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

Therefore, the claim of the petitioner is liable to be rejected on the ground of delay itself.

Furthermore, the judgment rendered by this Court in **CWP No.7233 of 2010** titled '**Bhupinder Singh Vs. State of Punjab and others, decided on 25.05.2011**, the benefit of which is being claimed by the petitioner in the present case, is prospective. It cannot be presumed that all the handicapped persons, who had retired from the service of Government of Punjab prior to 25.05.2011 are entitled for the benefit of deemed date extension. Therefore, the claim which is being made by the petitioner by relying upon the judgment of this Court in **Bhupinder Singh's case (supra)** is totally misplaced as the petitioner already stood retired much prior to the said decision. Further, there is no deemed extension which is envisaged under the rules. The extension has only being given to the employees, who had approached this Court, prior to their date of retirement but their litigation culminated either within the extended period or after extension of period of two years. It is only under

those circumstances, the benefit of extension has been given. In the case of the petitioner he never approached this Court before his retirement but he has only approached this Court after 12 years of his retirement claiming deemed extension, therefore, the reliance which is being placed by the petitioner on the other decisions of this Court where the extension has been granted is totally misplaced.

In view of above, no case has been made out to interfere with the impugned order dated 30.11.2017 (Annexure P-9) and hence, the present writ petition is dismissed but there will no order as to costs.

November 16, 2018
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	No