

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

- (1)

Civil Writ Petition No. 4360 of 2018 (O&M)
Date of Decision: 05.09.2018
- Gurdev Singh

..... Petitioner
- Versus
- State of Punjab and others

..... Respondents
- (2)

Civil Writ Petition No. 9887 of 2018 (O&M)
- Darshan Kaur

..... Petitioner
- Versus
- State of Punjab and others

..... Respondents
- (3)

Civil Writ Petition No. 5123 of 2018 (O&M)
- Narinder Pal Singh

..... Petitioner
- Versus
- State of Punjab and others

..... Respondents
- (4)

Civil Writ Petition No. 9985 of 2018 (O&M)
- Mrs. Savita Mehta

..... Petitioner
- Versus
- State of Punjab and others

..... Respondents
- (5)

Civil Writ Petition No. 14283 of 2018 (O&M)
- Narinder Kashyap

..... Petitioner
- Versus
- State of Punjab and others

..... Respondents

(6) Civil Writ Petition No. 15751 of 2018 (O&M)

Davinder Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Ranjivan Singh, Advocate for the petitioner(s)
(CWP No. 4360 of 2018)

Mr. Surmukh Singh, Advocate for the petitioner(s)
(CWP No. 9887 of 2018)

Ms. Alka Chatrath, Advocate for the petitioner(s)
(CWP Nos. 5123 & 15751 of 2018)

Mr. Rajinder Sharma, Advocate for the petitioner(s)
(CWP No. 9985 of 2018)

Mr. Deepak Aggarwal, Advocate for the petitioner(s)
(CWP No. 14283 of 2018)

Mrs. Monica Chhiber Sharma, Sr. Deputy Advocate General, Punjab
for the respondent(s)/State and assisted by
Mr. Vikram Batish, Sr. Assistant, O/O DHS, Punjab.

JASWANT SINGH, J.

1. By this common order, the aforementioned six (06) writ petitions bearing CWP Nos. 4360, 9887, 5123, 9985, 14283 & 15751 of 2018 are disposed of, as common issue is involved for adjudication. All the petitions are filed under Article 226 of the Constitution of India seeking quashing of communication(s), whereby claim of the petitioners for extension in their service tenures after reaching the age of superannuation of 58 years under the optional extension policy dated 08.10.2012 read with instructions dated 30.10.2015, has been declined.

2. For the sake of convenience, the facts are obtained from CWP

No. 4360 of 2018. The petitioner(s) joined respondent-Department of Health

& Family Welfare, Punjab on 04.04.1997 as Pharmacist and as per Rule 3.26 of Punjab Civil Services Rules, the date of superannuation of the petitioner was 28.02.2018, on completion of age of 58 years. The State Government by way of notification dated 08.10.2012 amended Rule 3.26 whereby it was provided that State Government may extend date of retirement of a government employee or a class of government employees for a period not exceeding 2 years. The department of Finance (Punjab) issued a notification dated 30.10.2015 addressed to all the Heads of Department reiterating the provisions of amended Rules 2015 alongwith proforma for option from the government employees concerned.

3. The petitioner submitted his option in the prescribed proforma seeking extension in his service tenure i.e. up to 28.02.2019. The respondent vide letter dated 12.01.2018 informed the petitioner that option of extension in service is not available to him because their cadre has been declared 'Diminishing Cadre'. The said letter was based upon memo dated 29.12.2016 (**Annexure P-6**) whereby 906 posts of Pharmacists and 1550 posts of Class-IV in the respondent-Department were declared 'Diminishing Cadre'.

4. Learned counsel for the petitioner(s) contended that on account of 1186 Rural Dispensaries of Health Department having been transferred under the control of Zila Parishads, 906 posts of Pharmacists were declared as 'Diminishing Cadre' out of total sanctioned strength of 2718 posts of Pharmacists in the department of Health, resultantly 1592 posts of Pharmacists constituted sanctioned strength in the year 2006. Thereafter, more posts of Pharmacists were created which resulted into sanctioned strength increasing to 1650 posts of Pharmacist. At present working strength

of Pharmacists is 1391, therefore, 259 posts are lying vacant. The Diminishing Cadre in the facts of the present case, admittedly was never meant that the entire cadre of Pharmacists had been abolished, instead only 906 posts were meant to be phased out, however, even that decision was subsequently deemed to have been modified, when few more posts of Pharmacists were created, and the sanctioned strength was increased after 2006, which vindicates the stand of the petitioner(s).

5. Per contra, learned State Counsel pleaded that out of total strength of 1650 Pharmacists, 236 posts are lying unfilled but 154 Pharmacists are working against the surplus posts and drawing their salary against the Surplus posts of respective SHCs/RD Heads. After adjustment of these surplus posts against the sanctioned unfilled posts of Pharmacists, only 82 posts would be left unfilled. 22 Pharmacists are working on deputation under Health Department of Chandigarh, therefore, only 60 sanctioned posts of Pharmacists are likely to remain unfilled after these adjustments.

6. After having scrutinized record of the case and hearing arguments of both the parties, this Court is of the considered opinion that present bunch of writ petitions deserve to be allowed. The conceded position which emerges from the record is that initially there was sanctioned strength of 2718 posts of Pharmacists and later on 906 posts of Pharmacists were declared as 'Diminishing Cadre'. The said strength was increased which resulted into sanctioned strength of 1650 Pharmacists. The said strength i.e. 1650 is sanctioned strength and has never been declared diminishing cadre. In service jurisprudence Diminishing Cadre implies that as and when the post falls vacant due to any reason, i.e.

retirement/resignation/death/promotion/adjustment elsewhere etc., the post shall stand abolished forthwith. The State has never declared cadre of Pharmacists as Diminishing Cadre indicating its intention that the entire cadre of Pharmacists would be phased out, instead only few (906) of the posts were to be abolished, thereby the reduced sanctioned strength remained untouched.

7. This Court in the case of ***Shashi Kant and Others Versus State of Punjab (CWP No. 22757 of 2012)*** considered the present controversy raised, *inter alia, qua* the posts of Pharmacist and declined claim of the petitioners therein because at that time no vacancy of Pharmacist was lying vacant, whereas the claim of extension of service to Chief Pharmacists was granted because on the said date required number of posts of Chief Pharmacists were lying vacant. It is evident that the concept of diminishing cadre in the facts of the case would not be applicable to the extent of the reduced sanctioned strength. The Optional Extension Policy issued by the Government clearly provides that no extension in service is to be granted where either there is no work or against the posts, which are declared to be a part of diminishing cadre. At present, sanctioned posts of Pharmacists are lying vacant, which were never declared surplus or diminishing, therefore, present petitioners in view of decision of this Court in the case of ***Shashi Kant (supra)*** are eligible for extension of service, provided they fulfill all other conditions and parameters.

Accordingly, in view of the above, the **impugned communications** declining extension of service tenure beyond 58 years to the Pharmacists working within the sanctioned strength in the Department are **quashed** and the Respondent-Department are directed to pass fresh

orders forthwith extending the tenures of the petitioners in terms of the aforesaid Optional Extension Policy. It is made clear that the petitioners who have continued to work under the orders of this Court, would be permitted to continue till fresh orders are passed in their cases, needless to say they would be entitled to salaries etc. for the periods they have worked on the extended service. However, those employees/petitioners who have discontinued to work beyond the age of superannuation (but entitled to extension in service) because of any reason, during the pendency of present petitions would not be entitled to remuneration for such periods till they are allowed to resume work in the light of fresh orders, provided their cases are considered within two weeks of receipt of certified copies of the orders. It is clarified that in such cases, if no fresh orders in view of here-above are passed, then in that eventuality, the competent authority/officer concerned shall be liable to be hauled up in contempt proceedings, apart from personally liable to pay the entire salary for the periods such petitioners were illegally kept from working on extended service alongwith interests @ 6% on the amounts due.

Accordingly, all the present petitions are “**Allowed**” with consequential relief in the above terms. No order as to costs.

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

September 05, 2018

'dk kamra'

**(JASWANT SINGH)
JUDGE**

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