

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

Civil Writ Petition No.8794-CAT of 2018

Date of decision: December 21, 2018

Union Territory, Chandigarh Administration and others ...Petitioners

Versus

Dr. Vinod Kumar Sharma and another ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Akansha Sawhney, Advocate
Ms. Priyanka Dalal, Advocate
for the petitioners – Union Territory.

Mr. B.S. Sewak, Advocate
the respondent No.1.

HARINDER SINGH SIDHU, J.

The Union Territory, Chandigarh and others have filed the present writ petition laying challenge to order dated 13.12.2017 of the Central Administrative Tribunal, Chandigarh Bench in O.A. No.060/01109/2016, whereby, the Original Application filed by respondent No.1 has been allowed.

Respondent No.1 is a physically handicapped person with 82% disability. He was initially appointed as Sanskrit Teacher on 10.11.1979. He was given officiating charge of Headmaster on 27.07.2011 and was regularly promoted as such w.e.f. 11.05.2012. He had filed the Original Application for issuance of directions to the petitioners herein to consider

his claim for extension in service for a period of two years beyond the age of 60 years being disabled person in terms of Punjab Government Instructions dated 22.12.2014 and the decision in CWP No.25972 of 2015 ***Dr. Jagjivan Singh Vs. State of Punjab and others'*** decided on 03.08.2016

It was not disputed that in terms of the “Conditions of Service of Union Territory of Chandigarh Employees Rules, 1992”, which have been framed under Article 309 of the Constitution, the conditions of services of the employees of the Chandigarh Administration shall be the same as those appointed to corresponding posts in the Punjab Civil Service and would be governed by the same Rules.

As per instructions dated 08.10.2012, the Government of Punjab approved one year extension in service for Punjab Government Employees of Group A, Group B, Group C and Group D. The benefit was to be applicable only to those employees who exercised their option in this behalf. Vide subsequent instructions dated 20.09.2013 a further extension in service of one year to Punjab Government employees was granted subject to the same condition of exercise of option. Both these letters were adopted by the Union Territory Chandigarh for all its employees and employees of all Boards and Corporations of the Union Territory on the same terms and conditions as mentioned therein.

Vide instructions issued on 17th January, 2001, the Punjab Government had enhanced the retirement age of blind employees from 58 years to 60 years. Hon'ble Supreme Court in its order dated 16.09.2014 in Civil Appeal No.8855 of 2013 titled as “Government of Punjab and others Vs. Bhupinder Singh and others” had held these instructions to be against

Section 33 the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 (for short “the Act”). Thereafter, the Government of Punjab issued instructions dated 19.11.2014 as per which the benefit of enhanced retirement age would be admissible to all employees covered under Section 33 of the Act. Based on these instructions, which were adopted by the Union Territory Administration on 11.12.2014, the retirement age of respondent No.1 was enhanced from 58 years to 60 years vide order dated 11.02.2015.

The Government of Punjab meanwhile issued a clarification dated 21.11.2014, as per which, the guidelines dated 08.10.2012 and 20.08.2013 granting extension in service to the Punjab Government employees would not be applicable to blind employees and physically handicapped employees whose retirement age was already 60 years. This was followed by another clarification dated 22.12.2014. As per this, blind and Orthopedically handicapped Class-IV employees would be entitled to get optional extension after 60 years. This letter was circulated by the Chandigarh Administration on 19.08.2015 to all its Departments/Boards and Corporations for information and necessary action.

The letter dated 22.12.2014, limiting the benefit of extension in service beyond 60 years only to blind persons and Class-IV employees was held to be arbitrary and discriminatory in Dr. Jagjivan Singh's case (supra). It was held that the benefit could not be confined to only Class C and D posts but would be applicable to all groups and categories of disabled employees as specified under Section 2(i) of the Act.

It was in the light of this decision that the Tribunal held that

respondent No.1 was entitled to the benefit of extension in service beyond 60 years. Considering that respondent No.1 was in service when the OA was filed but he had retired on 31.12.2016 during the pendency of the case, the competent authority was directed to issue order of reappointment by extending the benefit of extension in service forthwith failing which he would be entitled to the pay and all other consequential benefits of service w.e.f. 01.01.2018

Learned counsel for the petitioners has argued that it was only on 22.05.2017 that the Punjab Government had issued instructions for the grant of benefit of extension in service after retirement to employees appointed against the 3% physically handicapped quota. The U.T. Administration had on 06.07.2017 written to the Ministry of Home Affairs, Government of India to convey its concurrence to the adoption of the said instructions for its employees. The concurrence is still awaited. In the absence of such concurrence the benefit could not have been granted to the respondent No. 1.

There is no merit in this submission. The learned Tribunal has primarily relied on the decision of this Court in Dr. Jagjivan Singh's case (supra). In that case the High Court had held that the letter dated 22.12.2014 of the State of Punjab whereby extension of two years from 60 to 62 years was granted only to physically handicapped Class IV employees was arbitrary. The State was directed to extend the benefit to all groups of physically handicapped employees. The letter dated 22.12.2014 had been circulated by the Chandigarh Administration on 19.08.2015 to all its Departments/Boards and Corporations for information and necessary

action. In the light of this, while adjudicating the applicant's claim the learned Tribunal has rightly relied on the decision in Jagjivan Singh's case (supra) and held the U.T. Administration to be bound by it. The binding effect of a judgment is not contingent on consequential instructions for its implementation being issued.

There is no infirmity in the order.

Dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

December 21, 2018
Atul

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No