

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 13867 of 2015
Decided on:30.08.2019

Sham Sunder

...Petitioner

Versus

Punjab State Power Corporation Limited & Anr.

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

**Argued by : Mr. Sunil Kumar Sharma, Advocate
for the petitioner.**

**Mr. S.K. Sharma, Advocate
for the respondents.**

ARUN MONGA, J.

1. Grievance of the petitioner, as per the writ petition filed in the year 2015, *inter alia*, is qua non-grant of benefit of extension in service from 58 years to 60 years on account of suffering from 60% permanent disability. Accordingly, issuance of writ in nature of *mandamus* has been sought directing the respondents to reinstate the petitioner into service until he turn 60 years.

2. Petitioner was born on 03.04.1956, attained the age of 58 years on 03.04.2014 and was retired from service accordingly on 31.03.2014, despite his request not to retire him by giving him benefit of being a disabled employee as defined under Section 2(i)(v) of The Persons with Disabilities(Equal Opportunities, Protection of Rights and Full

Participation) Act, 1995(for brevity, 1995 Act). He was initially appointed as *ad hoc* lineman with respondents on 16.09.1977. While on duty he met with an accident in the year 1978 when he was carrying on repair work of main electricity line. After the accident, he remained under treatment for about two years, but suffered 60% permanent disability. On 20.03.2014 he submitted a representation for extension of his service specifying that he is suffering from 60% disability as per medical certificate issued by the Civil Surgeon. Notwithstanding, he was retired from the post of Additional Assistant Engineer on 31.03.2014. Hence, writ petition filed before this Court on 10.07.2015.

3. In the return filed on behalf of respondents Punjab State Power Corporation Limited & Anr. (for brevity, Corporation), the claim of the petitioner has been resisted on the ground that at the time of his entry in service, he was shown to be medically fit and, therefore, as per his service record he does not suffer from any disability.

4. As regards the medical certificate issued by the Civil Surgeon, the same is stated to have been issued on 26.05.2015, after the date of superannuation i.e. 31.03.2014 and, therefore, the respondents' stand is that the same cannot be taken into consideration/ service record.

5. As regards the petitioner having met with an accident while on duty in the year 1978, the same has been admitted in corresponding para No.4 of the written statement. However, it is stated in the said corresponding para that no disability was reported by the petitioner.

6. I have heard the rival contentions of learned counsel for the parties and have gone through the pleadings of the case along with relevant record appended thereto and I am of the view that as long as it is established

that petitioner suffered 60% disability owing to the accident while on duty in the year 1978 and for that matter, even if otherwise, he is suffering 60% permanent disability, then it is irrelevant, whether the medical certificate was issued by the Civil Surgeon on 26.05.2015.

7. For the reasons stated hereinafter, petitioner was entitled to the benefit of enhancement of age of retirement from 58 years to 60 years, in terms of order/ judgment dated 17.11.2014 rendered by a Co-ordinate Bench of this Court in CWP No. 21068 of 2012(Lubhaya Ram Vs. State of Punjab & Ors.), which is squarely applicable to the case of petitioner.

8. The stand of the respondents that medical certificate issued by the Civil Surgeon is of later date than retirement date of the petitioner, is belied by the contents of the application dated 20.03.2014 of the petitioner, whereby he sought enhancement of his age of retirement under handicapped quota. The contents of his application have not been denied by the respondents. In the said application, petitioner has clearly stated that he had met with an accident while on duty which led to his 60% permanent disability and the medical certificate was submitted by him in the department for seeking further promotion. That being the position, I see no reason why petitioner be not accorded the benefit of the following ratio enunciated by my brother Harinder Singh Sidhu, J., who speaking for this Court, observed in Lubhaya Ram's case (supra) as under:-

“This Court in CWP No. 7233 of 2010 titled as 'Bhupinder Singh v. State of Punjab and others' decided on 25.05.2011 held the circulars of the State Government confining the benefit of enhancement of retirement age only to blind persons tends to discriminate between the different categories of persons suffering with disability. The State was directed to

extend the benefit of circular regarding enhancement of age of retirement to all categories of disabled Government employees as specified in Section 2(i) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. This judgment has been affirmed by Hon'ble the Supreme Court in State of Punjab and others vs. Bhupinder Singh (Civil Appeal No. 8855 of 2014 decided on 16.09.2014). Admittedly, 'Locomotor Disability' is listed as disability in Section 2(i) of the Act. The present case is squarely covered by the aforesaid judgment and is accordingly allowed. The petitioner has retired in March, 2013 at the age of 58 years. It is more than a year and half since the petitioner has retired. He would complete 60 years on 05.03.2015. As he is left only with a few months before he attains the age of 60 years, it is upto the State Government to re-induct him into service for the remaining period upto the age of 60 years. However, he shall be entitled to emoluments for extended period of retirement. He shall be deemed to retire at the age of 60 years and will be entitled to all consequential benefits."

9. In the present case, petitioner had already been retired on 31.03.2014 and was to complete 60 years service on 31.03.2016. Had his case been decided expeditiously, he could have been taken back in service for remaining period up to the age of 60 years. Admittedly, at this stage, benefit of being taken back in service on enhancement of age cannot be granted to the petitioner, but it is not the petitioner who is at fault and the blame lies squarely on the respondents for not giving him the benefit under the 1995 Act, *ibid*.

10. Accordingly, the writ petition is allowed with a direction to the

respondents that they shall treat the petitioner to have retired on 31.03.2016 by granting him the benefit of enhancement of age from 58 years to 60 years. He shall be deemed to have retired at the age of 60 years and will be entitled to all consequential benefits thereof in terms of Lubhaya Ram's case (supra).

- 11. Disposed of in above terms.
- 12. No order as to costs.

(ARUN MONGA)
JUDGE

August 30, 2019
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| 1. Whether speaking/ reasoned: | Yes/ No |
| 2. Whether reportable: | Yes/ No |