

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.13978 of 2018 (O&M)

Date of Decision: July 05, 2019

Davinder Singh Bajwa

...Petitioner

Versus

State of Haryana & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. R.K.Malik, Senior Advocate with
Mr. Sunil Hooda, Advocate,
for the petitioner.

Ms. Palika Monga, DAG, Haryana,
for the State.

AMIT RAWAL, J.

CM No.5188 of 2019

Additional affidavit along with medical report dated
12.07.2018 is taken on record.

CM stands disposed of.

CM No.17415 of 2018

Written statement of respondent No.8 along with Annexures
R8/1 to R8/7 is taken on record.

CM stands disposed of.

CWP No.13978 of 2018

Challenge in the present writ petition is to the order dated
29.05.2018 (Annexure P-16) of the Additional Chief Secretary, Public
Health Engineering Department, whereby claim of the petitioner for

extension in service from 58 years to 60 years, has been declined.

On 16.09.1987, as per the averments, petitioner was appointed as Assistant Executive Engineer, Public Health Engineering Department, Haryana and was promoted as Chief Engineer after having been promoted as Executive Engineer and Superintending Engineer. Unfortunately, in the month of January, 2014 while on official duty as Chief Engineer, met with an accident and suffered severe head injury. The peripheral (Field) vision in both the eyes, as a fallout of the accident, has been reduced to a great extent.

Mr. R.K.Malik, learned Senior Counsel assisted by Mr.Sunil Hooda, Advocate, representing the petitioner submitted that the Haryana Government issued instructions on 21.04.2008 (Annexure P-1) in respect of the employees suffering a disability of more than 70% and above to extend retirement age from 58 years to 60 years. Petitioner was examined from Medicity (Medanta) Gurugram and disability certificate reflected more than 85% disability. Petitioner submitted a representation dated 26.03.2018 (Annexure P-2) for being examined by the Medical Board of Doctors of PGIMS, Rohtak, but was orally informed that the same could be only referred by the head of the department. Accordingly, a representation dated 30.03.2018 (Annexure P-4) was submitted to the head of the department, i.e., Engineer-in-Chief, Public Health Engineering Department, Haryana. Since no decision was taken on the representation, writ petition bearing No.11632 of 2018 was filed. This Court, vide order dated 09.05.2018 (Annexure P-9), disposed of the writ petition to decide the representation. Case of the petitioner was forwarded to the Director, PGIMS, Rohtak, which submitted report Annexure P-10, as per report, the Medical Board of Pt.B.D.Sharma, PGIMS, Rohtak opined as under:-

“Impression: As per Visual Disability Criteria Gazette notification Govt. of India, No.61 dated 05.01.2018, the visual disability is 80% (Eighty Percent)”.

Vide order dated 18.05.2018, petitioner was communicated a decision by Additional Chief Secretary, Government of Haryana, Public Health Engineering Department regarding deemed retirement on attaining the age of superannuation, i.e., 58 years. Mr.Malik buttressed his argument by referring to Annexure P-14, whereby, the deemed disability with regard to both the eyes has been explained by the Board. The case of discrimination was also pointed out by referring to Annexure P-15 dated 13.04.2010, whereby one R.P.Makkar, Sub Divisional Engineer, who was also handicapped having disability of more than 75%, was retained beyond the age of 58 years upto 60 years. The representation came to be decided vide impugned order dated 27.05.2018 (Annexure P-16), wherein department, according to Mr. Malik, has misinterpreted Rule 143 of the Haryana Civil Services (General) Rules, 2016.

It was also contended that during the pendency of the writ petition, office of the Chief Secretary, Haryana acknowledged that petitioner is having physical disability to the extent of 80% and the retirement age of disabled employees having minimum disability of 75% and above, has been increased from 58 to 60 years, therefore, his case is covered under Rule 143 (i) of the Rules, 2016 and instructions of January, 2006, March, 2006, April, 2008 and January, 2015. The Medical Board, vide certificate dated 12.07.2018, certified that petitioner is able to perform his duties and responsibilities as Chief Engineer (Civil) and, thus, submitted that the action of the respondents is wholly atrocious and fallacious in declining the relief by not retaining him beyond 58 years.

Ms. Palika Monga, learned Deputy Advocate General, Haryana submitted that there is misrepresentation of rules as the expression “may or may not” has not been read in correct perspective. The rules does not debar department to retire physically handicapped employee at the age of 58 years. The duties of the Chief Engineer are more onerous than other incumbent. The PWD Code envisaged the discharge of certain duties and responsibilities on behalf of the Chief Engineer, who is required to ensure that designs, drawings, specifications and estimates are sound and realistic. He is responsible for monitoring of the projects on regular basis and hold review meetings and inspections from time to time, inspections of work at least five days in a month, monitor all IT related applications pertaining to his sphere of work and spend more time on computer or laptop. Owing to the visual disability, petitioner would not be able to discharge the duties and, therefore, rightly so his claim has been declined and, thus, urged this Court for dismissal of the writ petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel and the reason is not one but many.

It would be apt to reproduce Rule 143 of 2016 Rules emphatically relied upon by Mr.Malik. The same read thus:-

“Rule 143. A Government employee who becomes disabled while in service shall bring to the notice of his Head of Department minimum three months before attaining the age of 58 years. He shall be got examined from a Medical Board of the Post Graduate Institute of Medical and Science, Rohtak to be headed by its Director. On receipt of medical report from the Board, the appointing authority or the Head of Department whichever is higher, shall take a final decision to grant or not

to grant the extension in service to such physically disabled employee.”

The Haryana Government in supersession of the previous notification, in terms of the implementation of the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 (Central Act No.1 of 1996) for providing reservation for handicapped, also issued notification dated 03.02.2017. It is settled law that the instructions cannot override the rules. The rule is mandatorily and statutorily required to be followed by the departments.

I would be failing in my duty in not referring to Annexure P-14 dated 21.08.2009, whereby the Medical Board of Doctors gave the detail of the visual suffered by one R.P.Makker. The same reads thus:-

“Mr.R.P.Makker, SDE, 58 years Male has been examined by three Ophthalmologists in Eye OPD vide Eye OPD No.25666 dated 20.08.2009 and Card No.0566307 and the findings are as under in duplicate:-

Vision-Right Eye-5/60

Left Eye-Finger counting 1 m distance

B/E-No improvement with glasses

Anterior segment Right Eye-Immature Cataract present

Left Eye-Diffuse corneal haze.

-Pseudophakis with after cataract.

Fundus Right Eye-Media hazy due to Immature senile cataract.

Left Eye-Media hazy due to diffuse macular corneal haze.

Tractional Retinal bands (Operated case of RD) seen in the temporal half.

Imp:- Patient is having vision 6/60 in R/E and finger counting at 1 m distance in L/E. At present visual handicap of the patient is 75% (seventy five percent). Final visual handicap can be decided after the cataract extraction of R/E.”

On plain and simple reading of the aforementioned rule, it is clear that the department is not mandatorily required to retain the person blindly, who is suffering from disability more than 70% beyond the age of 58 years. PWD Code, extracted in order Annexure R-2, leaves no manner of doubt that the Chief Engineer has to discharge multifarious tasks, like inspections in the field, monitoring of IT related applications, designs, drawings and specifications etc. It is unfortunate that the petitioner while in service suffered the disability, who cannot implore to retain in service. The disability suffered by him would be a great impediment and hindrance in discharging the official duties in consonance with the PWD Code.

For the reasons aforementioned, the impugned order, in my view, does not enable this Court to form a different opinion. The writ petition is accordingly dismissed. The interim order dated 30.05.2018 is also vacated.

July 05, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No