

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

1. CWP No. 21833 of 2016

Sh. Rachpal Singh and ors **...Petitioners**

versus

Chandigarh Administration and others **...Respondents**

2. CWP No. 24541 of 2016

Vijay Pal Singh **...Petitioner**

versus

The Administrator, U.T Chandigarh & ors. **...Respondents**

Date of decision : 26.02.2019

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. D.S. Patwalia, Sr. Advocate with
Ms. Harmanjeet Kaur , Advocate
for the petitioners in both the cases.

Ms.Madhu Dayal, Advocate
for CITCO-respondent No.3 in both the cases

RITU BAHRI, J.

The above said two petitions, as noted above, are being disposed of by this common judgment, having arisen out of the impugned order dated 22.09.2016 (P-32), vide which the benefit of 02 years of extension in service after the age of 58 years has been denied to the petitioners-employees of Chandigarh Industrial and Tourism Development Corporation (for short 'CITCO'). However, for facility of reference, the facts are being taken from CWP No. 24541-2016.

Brief facts of the case as pleaded by the petitioner in the present

case are that the petitioner joined the service with CITCO as clerk in the year 1988 and was due to retire on 30.11.2016, on attaining the age of 58 years. CITCO is a Government Undertaking of U.T. Chandigarh and is a State within the meaning of Article 12 of the Constitution of India. The Corporation has been following the pay scales and conditions of service in respect of its employees on the pattern being followed by U.T. Chandigarh as such order and/or instructions issued from time to time for UT are applicable *mutatis mutandis* to the employees of the Corporation. The UT Chandigarh was constituted on 01.11.1966 under the provisions of Punjab State Reorganization Act, 1966 by means of a notification dated 01.11.1966 issued by Government of India, Ministry of Home Affairs, in exercise of its power conferred under the proviso to Article 309 of the Constitution of India.

In the year 1992, a notification dated 13.01.1992 (Annexure P-2) was issued under Article 309 of the Constitution and the President of India framed conditions of service of U.T Chandigarh Employees Rules, 1992 (effective from 01.04.1991) providing that the conditions of service appointed to the Central Civil Services posts is Group A to D under the administrative control of The Administrator of U.T Chandigarh shall, subject to any other provision made by the President in this behalf, be the same as the conditions of service of persons appointed to corresponding posts in Punjab Civil Services and shall be governed by the same Rules and orders are for the time being applicable to the letter category of persons.

Subsequently, the Home Secretary, Chd Administration issued letter dated 29.10.1992 (Annexure P-3) to the effect that words “other cognate matters” appearing in letter dated 26.10.1992 shall besides others

include age for recruitment and retirement (including pre-mature and voluntary retirement), pension and other retirement benefits.

Vide notification dated 08.10.2012, the Punjab Government amended Rule 3.26 clauses (a) and (b) of Punjab Civil Services Rules, Volume I Part I by providing that in case it is necessary or expedient in public interest so to do, the service of a government employee or class of government employees, may be extended beyond the date of retirement for a period of not exceeding two years, after getting an option from the concerned government employee or the government employees as the case may be.

The benefit of extension in service was made applicable to employees retiring on 31.10.2012 or after that, vide notification dated 08.10.2012 (Annexure P-4) after taking the option from the employees on the prescribed option form, within three months prior to completion of age of 58/60 years.

Thereafter, while considering the supplementary agenda item No. 174.5 in meeting held on 29.01.2013 (P-6), the Board of Directors of CITCO accorded approval for giving extension to CITCO employees beyond the age of 58 years and further decided to refer the matter to Chd. Administration to make applicable order dated 07.12.2012 (P-5) in respect of CITCO employees. Vide decision dated 29.01.2013 (P-6), the Board decided that pending approval of Chandigarh Administration, the willing employees of CITCO retiring on 31.01.2013 or thereafter, be not retired. The copy of agenda item is Annexure P-6 and decision of Board of Directors dated 29.01.2013 is Annexure P-7.

Vide order dated 28.03.2013 (Annexure P-8), the Chandigarh

Administration considered that Boards/Corporations etc including CITCO are generally facing a shortage of employees and extending the benefit of extension in service would help in maintaining efficient administrative functioning. Respondent No. 1 decided to extend the provisions of order dated 07.12.2012 (P-5) to all employees of Boards/Corporations etc. including CITCO to bring them at par with other U.T employees in the matter of extension in service.

The employees of CITCO were then extended the benefit of extension in service vide Board of Directors meeting held on 12.04.2013 (Annexure P-9). The Chandigarh Administration then granted extension in service for another three months to the employees of U.T Chandigarh and to the employees of Boards/Corporations, vide letter dated 20.05.2013 (Annexure P-10). Finally respondent No. 1 issued decision dated 31.07.2013 (Annexure P-11) adopting the Punjab Government's notification dated 08.10.2012 (P-4) for granting extension in service to the employees of the Administration and Boards/Corporations including CITCO for one year on the pattern of Punjab Government notification.

CITCO in its meeting held on 20.08.2013 (Annexure P-13) decided not to adopt the aforesaid decision dated 31.07.2013 (P-11) of respondent No. 1 and decided to allow the extension period only to those who had been granted the extension earlier. The decision taken in the meeting appeared in the newspaper on 21.08.2013 and the CITCO Worker Union filed CWP No. 18849-2013 in which this Court granted interim relief on 30.09.2013 (Annexure P-16) that "Till then no person who is covered under the policy would be denied the extension.

The Government of Punjab issued notification dated

20.09.2013 (P-17) granting additional one year's extension and the Chandigarh Administration adopted the same and the approval of respondent No. 1 was conveyed vide letter dated 19.12.2013 (P-17) to extend the service for one more additional year of the employees of Boards and Corporations as well. The Board of CITCO also allowed the additional extension of one year by approving the Agenda Item No. 179.6 in meeting held on 25.02.2014 (Annexure P-17 colly). The CITCO then again mooted Agenda Item No. 183.14 citing salary factor and the Board in its meeting held on 26.02.2015/30.03.2015 (P-18) again decided to take up the matter with Chd Administration for reviewing/withdrawing the decision of extension in service to CITCO employees (Annexure P-18). The Company Secretary of CITCO vide letter dated 16.04.2015 (Annexure P-19) conveyed to the Manager (P&A), CITCO about Board's decision and further stated that the "Board also felt that sanctioned posts may be reviewed and wherever required posts should be filled up through outsourcing instead on regular basis in the overall interest of the Corporation. Thereafter, the Home Department Chandigarh Administration issued memo dated 10.03.2016 (P-23) in response to CITCO letter No. 22.06.2015 intimated to CITCO that the "proposal contained in your communication under reference has been considered in consultation with the Department of Personnel, who has advised that the Board does not have the discretion to pick and choose the instructions to be adopted by the Administration. Further, if CITCO does not want to grant extension, it can always deny the same quoting the valid reasons or by wedding put the non-performing employees with the approval of the competent authority (Annexure P-23). On 24.05.2016 (Annexure P-24), the CITCO again decided to refer the matter to Chd

Administration citing the competition at the hands of various star category hotels in the city and that extension beyond 58 years would negatively hamper the performance standards.

On 08.06.2016, respondent No. 1 asked to take legal opinion in the matter and the Legal Remembrance, Chd Administration on 21.06.2016 refrained from offering any comments in view of the matter being sub-judice in this Court (Annexure P-25 colly). On 01.07.2016, the Advisor to the Administrator put up a note "In any case units of CITCO are mostly running in loss and salary burden is an important factor behind it apart from lack of professionalism. Therefore, extension in retirement is no way justified. On 06.07.2016, respondent No. 1 approved the note of Advisor on file (Annexure P-26 colly). Further the Administrator on 27.09.2013 (P-15) rejected the request of CITCO Management to review the benefit (Annexure P-27 colly). The remark dated 13.07.2016 given by the Administrator upon representation dated 12.07.2016 (P-29) given by the Union against order dated 06.07.2016 read as "HE Administrator would like to discuss it with AA." This Court then disposed of CWP No. 18849-2013 on 06.10.2016 (P-31) as the final decision was taken . However, a liberty was granted that if any Member of the petitioners-Union is aggrieved of the order at Annexure P-31, it would always be open for such employee to raise a challenge to the same, if so advised and on grounds available, in accordance with law (Annexure P-31). The copy of impugned order is dated 06.07.2016 endorsed on 22.09.2016 (Annexure P-32). Hence the present writ petition.

After hearing learned counsel for the parties at length, the present petition deserves to be dismissed as in the present case, the approval of U.T Administration Chandigarh was given on 06.07.2016 (P-32) and

thereafter, vide impugned order, CITCO decided not to give extension to its employees beyond the age of 58 years. The impugned order has been passed after taking the approval from the Administrator U.T Chandigarh. The CITCO Worker Union also filed CWP No. 18849-2013 which was disposed of on 06.10.2016 (P-31) as the final decision was taken. However, a liberty was granted that if any Member of the petitioners-Union is aggrieved of the order at Annexure P-31 it would always be open for such employee to raise a challenge to the same, if so advised and on grounds available, in accordance with law (Annexure P-31). Thereafter, the CITCO relieved its employees on 10.10.2016 who were on extension. In the written statement filed on behalf of the respondents, it has further been stated that State of Punjab has exempted its commercial organizations like (a) Milkfed (Verka) (b) Sugarfed (Punjab State Federation of Cooperative Sugar Mills Ltd) (c) Punjab School Education Board (d) PUDA etc from the application of notification of extension of service beyond the age of superannuation (58 years). This fact is not being disputed by learned senior counsel for the petitioners.

The petitioners who are not even a Government servant and are merely the employees of a public sector undertaking and have no vested right to continue to enjoy the status of the employee of an instrumentality of the State. Further the representation dated 12.07.2016 (P-29) submitted by the CITCO Workers Union was discussed and filed on 14.07.2016 by respondent No. 1 and 2 (R-2). The impugned order has rightly been passed as the CITCO is facing the problems of lack of professionalism and loss and salary. At present there are 897 regular employees working under CITCO. Out of which, 34 Nos are in Group 'A', 70 Nos are in Group 'B',

398 Nos are in Group 'C' and 398 Nos are in Group 'D'. The financial burden is 4,10,00,000 per months that comes out to Rs.48 crore per annum. The total salary burden of 36 relieved employees is Rs.18,62,861/- approx per month (Annexure R-3). As far as advertisement dated 24.09.2016 is concerned, the same has been issued for employing staff on contractual basis for the management of the lounges at Chandigarh International Airport. Once the State of Punjab exempted its commercial organizations like (a) Milkfed (Verka) (b) Sugarfed (Punjab State Federation of Cooperative Sugar Mills Ltd) (c) Punjab School Education Board (d) PUDA etc from the application of notification of extension of service beyond the age of superannuation (58 years), the petitioners cannot claim that they have been discriminated for not granting extension in service.

Reference at this stage can be made to judgments passed by this Court in cases of ***Gurmeet Singh Randhawa vs. State of Punjab and others, 2015 (4) SCT 437 and Baljit kaur and others vs. State of Haryana and another, 2015 (2) RSJ 181.***

In ***Baljit Kaur's case (supra)***, this Court was dealing with the case of petitioners, who were assailing the decision of the State Government in reducing the age of superannuation from 60 years to 58 years. The writ petitions were dismissed instructions dated 26.11.2014 were upheld wherein it was clarified that such employees who had reached the age of superannuation but could not be retired till date due to enhancement of superannuation age as per earlier instructions dated 26.08.2014, they would now be retired/superannuated w.e.f 30.11.2014. In para 40, it has been observed as under:-

40. In K.Shyam Sunder and others (supra), the Hon'ble Supreme Court while examining the issue of change of policy with the change of

Government had held as follows:

“Thus, it is clear from the above, that unless it is found that act done by the authority earlier in existence is either contrary to statutory provisions, is unreasonable, or is against public interest, the State should not change its stand merely because the other political party has come into power. Political agenda of an individual or a political party has come into power. Political agenda of an individual or a political party should not be subversive of rule of law.”

Such dictum rather supports the impugned decision.

In Gurmeet Singh Randhawa's case (*supra*), this Court was dealing with withdrawal of grant of extension in service after the date of retirement. The writ petitions were dismissed and it was held that withdrawal of grant of extension in service after the date of retirement is not a right but only as a concession, which can be withdrawn at any time. Principles of natural justice are attracted only where some vested or legal right is affected. No prejudice can be said to be caused on account of withdrawal of such concession without notice. While referring to Rule 3.26 of Punjab Civil Services (Punishment and Appeals) Rules, 1970, it has been observed that the right of an employee was only for the substantive service till the age of 58 years and the instructions validly provided not to grant extension to the persons charge sheeted and against those where major penalty had been proposed. In para 6, it has been observed as under:-

*“6. A Coordinate Bench of this Court in the case of **Iqbal Mohammad** (*supra*) had examined the issue threadbare including the issue that the curtailment of the extension period was not violative of the principles of natural justice, on account of the fact that the extension of service itself was a concession. It was accepted that the extension was under the discretion of the employer and it could be unilaterally withdrawn and the instructions had been issued, in public interest, whereby employees who are facing*

disciplinary action for major penalty could be relieved by way of a policy decision taken. The argument that curtailment of extension in service was bad in law being in violation of the principles of natural justice was rejected on the ground that once the extension was by concession, it could be unilaterally withdrawn. The relevant portion of the judgment reads as under:

“Principles of natural justice would be attracted to the facts of a case, where some legal right is adversely effected, but in the facts of the case in hand, once the Apex Court has, through a catena of judgments (some of which have been referred to earlier), held that an employee has no right, much less a vested or legal right to continue beyond the age of superannuation, then curtailment of such period would not attract the principles of natural justice and the same can be done through a unilateral decision taken by an employer.

The extension in service in the case of the petitioners has been curtailed on the ground that they face departmental action which could entail major penalty. It is admitted by the petitioners that at the time, the orders impugned by them were passed, they were all facing disciplinary action which could lead to the imposition of a major penalty. Their cases are thus covered by the instructions impugned by them. In view of such admission, I fail to understand what prejudice has been caused to the petitioners on account of non-issuance of a notice to them before ordering them to be relieved. The extension of service, as observed earlier, is by way of a concession given by an employer to its employee and any concession so granted can be unilaterally withdrawn. That being so, there is no question of violation of principles of natural justice for curtailment of period of extension of service already granted.”

The above mentioned judgments are applicable to the facts of the present cases, where the petitioner is an employee of CITCO and is challenging order dated 22.09.2016(P-32), vide which the benefit of 02 years of extension in service after the age of 58 years has been denied to the employees of CITCO. It is not in dispute that State of Punjab has exempted its commercial organizations like (a) Milkfed (Verka) (b) Sugarfed (Punjab

State Federation of Cooperative Sugar Mills Ltd) (c) Punjab School Education Board (d) PUDA etc from the application of notification of extension of service beyond the age of superannuation (58 years). Hence, the petitioner who is an employee of CITCO cannot claim benefit of extension of service. Moreover, the financial burden on CITCO is 4,10,00,000 per months that comes out to Rs.48 crore per annum. The total salary burden of 36 relieved employees is Rs.18,62,861/- approx per month (Annexure R-3). Further, CITCO is facing the problems of lack of professionalism and loss and salary.

In view of the discussion made above, the present writ petitions are dismissed.

26.02.2019

G Arora

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>