

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

**CWP-9024-2014 (O&M)
Date of decision : 11.03.2019**

Suresh Kumar (since deceased) through LRs ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr.C.L.Premy, Advocate and
Ms. Amarjit Kaur, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

Mr. Vivek Chauhan, Advocate for respondent Nos.3 and 4.

JITENDRA CHAUHAN J. (ORAL)

This writ petition under Articles 226/227 of the Constitution of India has been filed for the issuance of a writ of Mandamus, restraining respondent Nos.2 to 4 from retiring the petitioner, a physically challenged person, at the age of 58 years.

It is contended that the petitioner is physically challenged person suffering disability to the extent of 50%. He was appointed as Panchayat Secretary in the Rural Development and Panchayat Department on compassionate grounds and further promoted as Panchayat officer. He has been availing all the benefits such as disability allowance etc. as per Government policy and instructions issued from time to time. Vide instructions dated 16.03.1995, the Government raised the retirement age of

the employees with visual disability from 58 to 60 years. Thereafter, the question of raising the age of similarly situated employees with other physical disabilities became subject matter before this Court in LPA No.1719 of 2011 titled as *State of Punjab and others Vs. Bhupinder Singh*, decided on 25.09.2012, and other connected matters, wherein, it was held that the all kinds of physical disabilities ought to be treated equally. Since, the petitioner was physically challenged and was on the verge of attaining the age of 58 years on 31.05.2014, he made representation dated 03.02.2014 to respondent No.2 and 4, to consider his case for raising the age of superannuation from 58 to 60 years. When no action was taken, he served a legal notice dated 18.04.2014 with a request to take a decision on the representation already submitted, but to no avail. Hence, the instant writ petition.

It is contended that the action of the respondents in denying the benefit of extension in service by two years to the petitioner being a handicapped person, is in contravention with the ratio of law laid down in *Bhupinder Singh's case (supra)*, on the basis whereof, necessary instructions were issued by the Personnel Department on 19.11.2014 (Annexure P-11). Learned counsel further submits that he has instructions to state that the petitioner shall not claim any salary for the period he did not actually work.

On the other hand, learned State counsel submits that instructions dated 19.11.2014 (Annexure P-11) were to be applied prospectively, whereas, the petitioner had already retired prior the issuance of said instructions.

Heard.

It is to be noticed that vide judgment dated 25.09.2009, passed in *Bhupinder Singh's case (supra)*, a Division Bench of this Court, held that all disabled persons falling within the definition of Section 2(I) of the Disability Act form one class and that there cannot be any sub-classification within this class. On the strength thereof, the petitioner, vide application dated 03.02.2014 (Annexure P-5), claimed benefit of raising retirement age from 58 to 60 years. His case was recommended by the Executive Officer-cum-Block Development and Panchayat Officer vide letter dated 24.03.2014 (Annexure P-7) and the matter was sent to the Director, Rural Development and Panchayats Department. When no action was taken by the competent authority, the petitioner served a legal notice dated 18.04.2014 (Annexure P-8), upon the respondents, which also remained undecided. In the meanwhile, the Department of Personnel, Government of Punjab, issued instructions dated 19.11.2014 (Annexure P-11) thereby increasing the age of retirement of all the disabled employees under Section 33 of the Act.

Thus, the stand of the respondent State that instructions dated 19.11.2014 (Annexure P-11) do not apply to the petitioner as he had already retired from service prior thereto, is misconceived as the petitioner had laid claim to the benefit in question well before his retirement on 31.05.2014 on attaining 58 years' of age. The law in this regard stood settled by this Court in *Bhupinder Singh's case (supra)*, therefore, no delay can be attributed to the petitioner.

In view of the above, the instant petition is allowed; the

petitioner is deemed to have been retired at the age of 60 years. His pension and other retiral benefits be re-fixed accordingly. The necessary exercise be concluded within a period of six weeks from the date of receipt of a certified copy of this judgement. The arrears be paid to the legal heirs of the petitioner within six weeks thereafter.

11.03.2019
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No