

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CIVIL WRIT PETITION NO.2201 OF 2020
DATE OF DECISION: JANUARY 28, 2020

Daljit Kaur

.....Petitioner

VERSUS

State of Punjab and Ors.

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASI

Present: Ms. A.P.S. Guliani, Advocate
for the petitioner.

Ms. Monica Chibber Sharma, Sr. DAG, Punjab.

AUGUSTINE GEORGE MASI, J. (ORAL)

Petitioner has approached this Court challenging the action of the respondents in not granting her extension after she attained the age of 58 years, being physically disabled, would entitle her to continue in service till the age of 60 years as per the Punjab Government Instructions dated 01.01.2019(Annexure P-7).

Counsel for the petitioner contends that the petitioner was appointed to the post of Clerk and it is during her service that she was promoted to the post of Junior Assistant. She was serving with the respondents and was also granted the benefit of handicapped allowance by the Government of Punjab regularly. Punjab Government Circular dated 19.11.2014 (Annexure P-5) was issued keeping in view Section 33 of "The Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act 1995" (herein after referred as the 1995 Act) vide which the retirement age was enhanced from 58 years to 60 years. Thereafter, as per the latest instructions also two years extension, the petitioner is entitled to, as per the circular dated 01.01.2019(Annexure P-7) which benefit has

been denied to the petitioner as she has been retired from service on 31.08.2019 on

attaining the age of 58 years, whereas, she is entitled to the benefit of continuing in service till 60 years of age.

On being asked by this Court with regard to the handicap, it has been stated that four fingers of the right hand of the petitioner have been amputated because of which she has been assessed as 40% permanent partial disabled and therefore is orthopaedically handicapped as per the Medical Certificate dated 22.11.1989(Annexure P-3). He therefore contends that the petitioner is entitled to the said benefit. Assertion has also been made that the petitioner has submitted a representation dated 13.8.2019 (Annexure P-8) to the Additional Deputy Commissioner (Development), Feteahgarh Sahib-respondent No.4 who had responded by asserting that the petitioner is not covered under the 1995 Act as she does not fall in any categories specified in Section 33 of the said Act (Annexure P-9). This, counsel submits is not sustainable in the light of the Punjab Government instructions referred to above. He further asserts that the 1995 Act stands repealed with the coming into force of "The Rights of Persons with Disabilities Act, 2016" (herein referred to as the 2016 Act). He therefore contends that the response which have been received in pursuance to the representation of the petitioner is unsustainable as the claim of the petitioner has been wrongly considered under the already repealed Act.

Counsel was thereafter called upon to substantiate the contention with regard to the disability of the petitioner with reference to the 2016 Act, as he had made a reference to the definition Section 2 (r) of 2016 Act to contend that the petitioner fulfills the bench-mark, which has been specified i.e. she has 40% disability as per the certificate issued to her and therefore, would fall within the definition of the "person with disability". This contention of the learned counsel for the petitioner cannot be accepted in the light of the definition given of a

specified the disability which has been provided for in the schedule. The disability, which the petitioner is asserting is not so provided in the schedule, which has been appended along with the Act.

Learned counsel for the petitioner further tried to bring the disability of the petitioner under Physical Disability Clause A, sub Clause (a) (ii). But this disability which is being sought to be relied upon for getting the benefit under the 2016 Act would not be applicable to the case of the petitioner as the same relates to leprosy cured person, which admittedly petitioner is not. The disability, therefore, which the petitioner has, would not be covered under the provisions of the Rights of Persons with Disabilities Act, 2016.

In view of the above, finding no merit in the present writ petition, the same is dismissed.

28th January, 2020
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(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: No