

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

CWP-6922-2020

Date of decision:-27.8.2020

Suresh Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

**CORAM: HON'BLE MR.JUSTICE H.S.MADAAN**

Present: Mr.Puneet Gupta, Advocate  
for the petitioner.

Ms.Anju Arora, Addl. A.G., Punjab.

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**H.S. MADAAN, J.**

Case taken up through video conferencing.

Petitioner – Suresh Kumar has filed the instant Civil Writ Petition under Articles 226/227 of Constitution of India against respondents – State of Punjab through Additional Chief Secretary, Department of Forest and Wildlife Preservation, Punjab, The Principal, Chief Conservator of Forests and The Conservator of Forests, North Circle, Punjab craving for issuance of an appropriate writ, order or direction to the respondents to grant 1<sup>st</sup> extension in service w.e.f. 1.2.2020 to the petitioner, who is eligible for the same as per instructions

dated 8.10.2012 (Annexure P-1) and had applied within time on the prescribed proforma and his case was duly recommended and certified.

Inter alia, in the writ petition, the petitioner has contended that he was initially appointed as Clerk in the respondent – Department on 12.8.1983 and was promoted as Senior Assistant in September, 2000 and then as Superintendent in May, 2011 and thereafter as Administrative Officer on 25.9.2017; his date of birth is 20.1.1962; the petitioner was to retire from service after attaining the age of superannuation on 31.1.2020. According to the petitioner, his work and conduct during his service career of 36 ½ years has been excellent and outstanding. Further it has been contended that, the Government of Punjab had issued a circular dated 8.10.2012 granting extension in service beyond the date of retirement of the Punjab Government employees of all groups i.e. Group A, Group B, Group C and Group D by one year requiring the employees to give their option, which was to be final and irrevocable; thereafter, the Government decided to grant the 2<sup>nd</sup> extension in service of 1 year from 59 to 60 years vide circular dated 20.9.2013; as per the instructions issued by the respondents certain categories of persons would not be considered for extension in service and furthermore those employees who are on extension of the 1<sup>st</sup> year or 2<sup>nd</sup> year in their service tenure and are covered under the situation mentioned in the instructions dated 30.4.2015, their cases will be reviewed i.e. Persons against whom decision had been taken to issue charge sheet under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules or against whom charge sheet had been issued; persons upon whom major penalty stood imposed which was still

effective till the date of superannuation; persons upon whom major penalty had been imposed in the last three years prior to the date of superannuation and persons against whom the competent authority had granted the prosecution sanction in a criminal/vigilance case or where the Court of competent jurisdiction had framed the charges; later on the Finance Department had issued clarification dated 7.5.2018 stating that if any case of corruption is being found against the officials/employees and it is found to be prima facie, even if the preliminary inquiry is pending in that regard, then the extension in service would not be granted in terms of instructions dated 8.10.2012 and 20.9.2013.

According to the petitioner, he had applied for extension in service for the 1<sup>st</sup> year w.e.f. 1.2.2020 to 31.1.2021 vide his option submitting it to Circle Office, Hoshiarpur, who forwarded it to the office of respondent No.2 on 17.10.2019; respondent No.2 recommended and forwarded the case of the petitioner to respondent No.1 on 17.12.2019 along with the certificate that no departmental/vigilance case was pending against the petitioner; the petitioner continued to discharge his duties even after 31.1.2020 till 3.3.2020; he was on leave on March 04 and 05, 2020 and was not allowed to attend the duty on 6.3.2020; on 4.3.2020, the petitioner submitted a detailed request letter to respondent No.1 requesting for issuance of grant of 1<sup>st</sup> extension since he had applied in time and his case stood duly recommended and there was nothing adverse against him but to not effect; the petitioner is yet to be paid his salary for the period 1.2.2020 till 6.3.2020; on 6.3.2020 when the petitioner was not allowed to attend the office, he made inquiries and came to know that an

order dated 3.3.2020 had been issued by respondent No.1, retiring the petitioner without any reference to his option for the 1<sup>st</sup> extension in service and without recording any reason in absolute violation of principle of natural justice; the order dated 3.3.2020 has not been communicated to the petitioner till date.

According to the petitioner, amendment of Rule 3.26 of Punjab Civil Services Volume 1 Part I is not applicable to the case of the petitioner since the amendment had been made on 2.3.2020 and is effective from that date. The case of the petitioner is prior thereto and extension in service cannot be denied to him on that ground. Both the amendment dated 2.3.2020 and instructions dated 2.3.2020 permit that any person who is availing or opting for the 1<sup>st</sup> extension in service, which is “scheduled to start any time till the 1<sup>st</sup> day of September, 2020 shall, upon opting for such extension, retire on the 30<sup>th</sup> day of September, 2020”. According to the petitioner he has been retired retrospectively, which is not permissible under the law.

Feeling aggrieved, the petitioner filed the present writ petition.

On notice the respondents appeared and filed written reply making preliminary submissions contending that Rule 3.26 has since been amended. The amended Rule being as under:

*“3.26 (a) Except as otherwise provided in this rule, the date of retirement of a Government employee other than a Group-D Government employee shall be the date on which he attains the age of 58 years and the date of retirement of a Group-D Government employee shall be the date on which he attains the age of 60 years:*

*Provided that if the State Government is of the opinion that it is necessary or expedient in public interest so to do, the service of a Government employee or a class of Government employees, may be extended beyond the date of retirement for a period not exceeding two years, after getting an option from the concerned Government employee or the Government employees, as the case may be.*

*Provided further that a Government employee must not be retained in service after the period of service extended under this clause, except in exceptional circumstances with the previous sanction of the competent authority in public interest for reason to be recorded in writing.”*

Thus, the Rule makes it clear that extension in service is prerogative of the State Government and this relief cannot be claimed as a right by an employee. Under the circumstances, the petitioner had no right to continue on extension because after date of superannuation extension in service is to be granted purely at the discretion of the employer/Government. In support of that contention, judgment titled State of **Assam and another etc. Versus Sasanta Kumar Dass etc.** reported as AIR 1973 SC 1252 and a judgment by Division Bench of this Court titled **Lal Chand Goyal Versus Punjab State Agricultural Marketing Board and others**, CWP No.11994 of 2013 decided on 10.2.2014 have been referred to.

It is further contended that though the petitioner had applied for extension on 11.10.2019 and his request was processed and was under consideration of the Government ,when he had filed the writ petition. It is contended that date of birth of the petitioner happened to be 20.1.1962, as such he was to be retired from service after attaining the age of

superannuation on 31.1.2020 regarding which the petitioner was well aware, being Administrative Officer having full control over the office, however, he did not bring this fact to the notice of the higher authority and continued to discharge his duty on his post, even after 31.1.2020 till 3.3.2020 without getting any permission from the competent authority. The competent authority has disallowed his attendance on 2<sup>nd</sup> March and 3<sup>rd</sup> March, 2020, when this fact came to the notice of the department, the petitioner was immediately retired from service vide order dated 3.3.2020 w.e.f. 31.1.2020. Such act and conduct of the petitioner debars him from seeking extension. The Punjab Government in order to generate employment for the youth of the State vide its decision dated 2.3.2020 had scrapped the policy of granting extension in service to its employees after retirement approving the proposal to reduce the retirement age of government employees from 60 to 58. On merits, the material assertions in the writ petition have been controverted, in the end praying for dismissal of the writ petition.

I have heard learned counsel for the parties besides going through the record.

First of all coming to the conduct of the petitioner. In para No.2 of the petition, the petitioner has given his date of birth as 20.1.1962 submitting that he was to retire from service after attaining the age of superannuation on 31.1.2020. If that was so, then how and for what reason he continued on that post till 3.3.2020. It is for him to explain since there is no order by the Government, granting him extension in service. The petitioner could not have continued in service for such a time in such a

manner. The reason given by the respondents in the written reply that the petitioner was looking after the administrative matters in the office and he being a responsible officer should have demitted office on 31.1.2020 but he did not do so and rather continued working up to 3.3.2020. There is a lapse on the part of other officers (officials) of the department also but for that reason the petitioner cannot get any advantage by default. The period of his service from 1.2.2020 up to 3.3.2020 has admittedly not been regularized so far. Simply for the reason that he continued attending office up to 3.3.2020 does not bestow any valuable right upon him to ask for salary and other consequential benefits during that period. He was rightly retired from service w.e.f. 31.1.2020 and no fault can be found with the order passed in that regard. The impugned order retiring the petitioner from service w.e.f. 31.1.2020 narrates the true factual position and it cannot be said that the petitioner has been retired from service retrospectively. Attending office and working as Administrative Officer after 31.1.2020 till 3.3.2020 was totally unauthorized, wrong, illegal and unjustified. He cannot claim any benefit for such services rendered.

Such type of employee is certainly not entitled to extension in service. Of course, it is for the Government to see whether extension in service is to be granted to an employee or not and certainly an employee cannot insist that he be granted extension in service, though the Government does not desire to grant extension to such an employee. Of course, grant of extension to employees in an arbitrary manner adopting pick and choose policy cannot be approved of i.e. Government cannot grant extension to some employees or refuse the same to others without

any justifiable reason but then discretion to do so always rest with the Government and it cannot be taken away.

As regards application of the petitioner seeking extension, the same was still under process and final order in that regard had not been passed, when the petitioner without waiting for final order to be passed on his application and make the request to the concerned authorities in that regard opted to seek judicial intervention by way of filing the present writ petition. The policy granting extension to the employees has since been scrapped by the Punjab Government statedly for providing more job avenues to the unemployed youth in the State. Rule 3.26 of Punjab Civil Services has since been amended. The Government in view of the conduct of the petitioner in omitting to demit the office on 31.1.2020 and thereafter attending office and marking his presence in an unauthorized manner has not accepted the request of the petitioner for grant of extension. No fault can be found with action of the Government in doing so. Rather if the petitioner is granted extension in service as claimed by him that would amount to putting pressure on his wrong and illegal acts discussed earlier in the judgment.

As regards the judgments passed by Division Bench of this Court in CWP No.11994 of 2013 in case titled **Lal Chand Goyal Versus Punjab State Agricultural Marketing Board and others** and other connected petitions and judgment passed by Co-ordinate Bench of this Court in CWP No.25972 of 2015 in case titled **Dr.Jagjivan Singh Versus State of Punjab and others**, referred to by learned counsel for the petitioner, those do not come to rescue of the present case due to different

facts and circumstances and the context in which such observations have been made.

Finding no merit in the civil writ petition, the same stands dismissed.

27.8.2020

Brij

**(H.S.MADAAN)**

**JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**