

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-12848-2008(O&M)

Date of decision:-06.01.2019

Capt. A.S.Wilkhu

.....Petitioner

vs.

State of Haryana and others

....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Gunjan Mehta, Advocate
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

Mr. Pawan Sharma, Advocate
for respondents No. 2 and 3.

RITU BAHRI, J.(Oral)

The petitioner is seeking writ of mandamus directing the respondents not to retire him on attaining the age of 58 years keeping in view notification dated 30.11.2006 (Annexure P-1) whereby the superannuation age is raised from 58 years to 65 years.

On notice of this petition, written statement has been filed by respondents No. 2 and 3 and a specific stand has been taken that the petitioner was appointed with the erstwhile Hissar Aviation Club, Hissar which was subsequently merged with the Haryana Institute of Civil Aviation w.e.f. 01.04.1999. The control of Hissar Civil Aviation Club, Hissar, Kalka Civil Aviation Club, Kalka and Pinjore Civil Aviation Club, Pinjore has come to the control of the respondents and it is a Society registered under the Societies of Registration Act, 1860. It has an independent identity and is not under the direct control of Civil Aviation Department, Haryana. The

service condition of the petitioner alongwith other staff is governed by the Civil Services Rules, which is applicable to State of Haryana as approved by the general body of the institute in its meeting held on 26.10.1999. The relevant portion of the minutes are as under:-

“The members also approved the grant of other allowances to the Staff of Haryana Institute of Civil Aviation as applicable to State Govt. from time to time. The State Govt. Civil Services Rules are also to be followed wherever no such rule exists in Haryana Institute of Civil Aviation.”

As per the Civil Services Rules, the retirement age in Haryana is 58 years and as per the order dated 27.07.2008 (Annexure R-2) the petitioner has retired on 31.08.2008 after attaining the age of sueprannuation. It is further stated that notification dated 30.11.2006 (Anneuxre P-1) issued by the Haryana Government Civil Aviation Department cannot be made applicable in the case of the petitioner. As per theses instructions, the extension of service till the age of 65 years is applicable for the post of Senior Executive Pilot and Junior Pilots of Civil Aviation, Department, Haryana. However there is no post of Senior Executive Pilot and Junior Pilots in the Haryana Insitute of Civil Aviation.

The relevant portion of notification dated 30.11.2006 is as under:-

“No.2/22/2006-ICA.-The Governor of Haryana is pleased to raise the superannuation age of the Senior Executive Pilot and Junior Pilots of Civil Aviation Department, Haryana from 58 years to 65 years with immediate effect subject to the following terms and conditions:-”

Respondents No. 2 and 3 are independent registered society and they have taken conscious decision to adopt Civil Services Rules of

Haryana for its employees. Moreover, the petitioner was working for the post of Chief Gliding Instructor and has been rightly retired as per order dated 01.08.2008 (Annexure R-2) on attaining the age of 58 years on 31.08.2008. He has also been released all retiral benefits.

The State of Haryana in its separate written statement filed on behalf of Civil Aviation Department has reiterated the same stand taken by respondents No. 2 and 3.

Since it is not the case of the petitioner that he has ever worked as Pilot with respondents No. 2 and 3, the writ petition is dismissed.

Pending application, if any, also stands dismissed.

06.01.2020
Divyanshi

(RITU BAHRI)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No