

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

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IN VIRTUAL COURT

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CWP No. 13413 of 2020 (O & M)

Date of decision : 22.12.2020

Anil Kumar Gupta

.....Petitioner

Vs.

**National Bank for Agriculture and Rural Development, Mumbai and
others**

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Amar Vivek, Advocate, for the petitioner

Mr. Deepinder Singh, Advocate, for respondents No.1 to 3

Rajbir Sehrawat, J. (Oral)

CM No. 13972 of 2020 :

This is an application for impleading the Union of India as a necessary and proper party respondent in the present petition.

Since the main case itself is being decided now, therefore, the present application has been rendered infructuous.

CM No. 13289-CWP of 2020 :

This is an application filed by the applicant/respondents No.1 to 3 for seeking permission to place on record the written statement on behalf of respondents No.1 to 3 along with photocopies of Annexures R-1 and R-2.

For the reasons mentioned in the application, the same is allowed.

Reply along with Annexures R-1 and R-2, is taken on record.

CM No. 13956-CWP of 2020 :

This is an application filed by the petitioner for seeking permission to place on record the instructions, regarding enhancement of age of retirement, as Annexures P-10 and P-11.

For the reasons mentioned in the application, the same is allowed.

Documents Annexures P-10 and P-11 are taken on record.

Main Case :

This petition has been filed under Articles 226/227 of the Constitution of India for seeking issuance of a writ in the nature of certiorari for setting aside the impugned order dated 25.8.2020 (Annexure P-9), whereby the respondents have declined the claim of the petitioner for extension of two years service, being disabled, by raising the age of superannuation from the age of 60 years to 62 years, along with all consequential benefits, in terms of instructions and policies laid down under the Rights of Persons with Disabilities Act, 2016 (in short 'the Act') and further for a direction not to retire the petitioner on attaining the age of 60 years i.e. on 31.12.2020.

The brief facts of this case, as pleaded in the writ petition are; that the petitioner is serving as Manager Grade-B with the respondent Bank. The petitioner is having a physical disability upto the extent of 90% being paraplegic. The said disability has duly been certified by the competent medical authority. The respondent bank is an autonomous body and a statutory corporation; funded by the Government of India. The Act provides the benefits to physically disabled persons so as to remove their difficulties and to bring them at par with ordinary human beings. The age of retirement, as prescribed

with the respondent bank, is 60 years. However, the petitioner being a physically handicapped person, deserves to be shown special consideration and therefore, the respondent bank deserves to be directed not to retire the petitioner upto age of 62 years. With these essential arguments, the present petition has been filed.

While arguing the case, learned counsel for the petitioner has submitted that since the provision of the Act are intended to alleviate the position of the persons having physically handicap; and to make the life easier for them, therefore, the Act has cast a duty upon the concerned Government authority to frame policies and to create facilities; as well as; the provisions; for the benefits of the persons covered under the Act. Hence, extending the age of retirement for the persons with physical disability, would be in consonance of the intent and purposes of the Act. Rather, this is the mandate cast upon the authorities by the provisions of the Act. The counsel has relied upon the provisions as contained in Section 47 of the Act to buttress his arguments.

The counsel for the petitioner has relied upon the judgment rendered by the Division Bench of this Court in **LPA No. 1719 of 2011** titled as **State of Punjab v. Bhupinder Singh**, decided on 25.9.2012 and has argued that it has been observed by the Division Bench that the persons with physical disability are the responsibility of the society and therefore, it is the responsibility of the Government to make special provisions for this category of persons. Accordingly, it was directed by the Division Bench in that judgment that the policy of extension of age of retirement from 58 years to 60 years, which was provided only for blind persons, be extended to the persons with all the disabilities, as contemplated under the Act.

The counsel has also relied upon the judgment of the Supreme Court in the case of **'Bhagwan Dass v. Punjab State Electricity Board, 2008 (1) SCC 579'** to contend that the Hon'ble Supreme Court has also observed that to ensure the benefits of social justice visit the persons with disability; even if the Court has to travel an extra mile, then the Court should not hesitate in doing that. Accordingly, the Supreme Court had ordered that the respondent in that case would not discriminate with the petitioner in that case so as to oust him from service only because he had turned blind while in service.

The counsel has also relied upon the instructions issued by the Government of India, which has been attached by the respondents at Annexure R-2 and has contended that vide these instructions, the Government of India had extended the age of retirement of the employees from 58 years to 60 years; and has made a provision for retention of medical and scientific specialists even beyond 60 years but upto age of 62, years by considering the case of those categories on case to case basis. The said instructions were also made applicable to the autonomous bodies created by or under the Government of India. Hence, even as per the said instructions, the respondent is under an obligation to consider the case of petitioner for retention in service beyond the age of 60 years; keeping in view the particular facts of the medical condition of the petitioner. Extending his arguments, it is submitted by the counsel that once there is a provision for consideration of a case of extension of age of superannuation on case to case basis, then keeping in view the mandate of the Act, the respondent should be directed to consider the case of the petitioner as well, for extension of age of his superannuation from 60 years to 62 years.

On the other hand, the counsel for the respondent has submitted

that the age of superannuation of the employees/officers of the respondent bank is fixed as 60 years. There is no provision for extension of age of retirement of any category of the employees of the respondent. Still further, it is submitted that the argument of the counsel for the petitioner that the age of retirement deserves to be extended for the category of physically handicapped in view the provisions of Act, is not sustainable in law. There is no provision in the Act which mandates upon the authority concerned to raise the age of superannuation for physically disabled employees. The intent and purpose of the Act is only to prevent discrimination with persons with disability only on account of their disability; as well as; to ameliorate their condition and to facilitate their functioning while they are in service. Hence, the respondents are under no legal obligation to enhance the age of retirement either for the petitioner or for the category of physically handicapped under the provisions of the Act. So far as the instructions referred to by the counsel for the petitioner are concerned, it is submitted by the counsel for the respondents that the said instructions are very specific to say that no person shall be retained in service beyond the age of 60 years except in case of medical and scientific specialists. The category of medical and scientific specialists constitute altogether a different category and is a class in itself in view of their specialized functioning, skills and knowledge. For those reasons only the Central Government has made provision for the extension of age of retirement for these two categories; for two years. But the petitioner is not falling in either of the abovesaid categories mentioned in the instructions. Beyond that, the instructions do not even provide for any discretion with the respondent bank to extend any age of superannuation for any other category. Hence, the

respondent bank has not made any provision for extension of age of superannuation for any category of its employees. The petitioner is also bound to retire on completion of age of superannuation as per the rules. There has been no discrimination with the petitioner on account of his disability. The full benefit of the Act and the other provisions relating to persons with disability have already been extended to him during his service tenure. Hence, it is submitted that the present petition deserves to be dismissed.

Heard the counsel for the parties.

Before proceeding further, it is appropriate to refer the relevant provisions of the Act. Sections 19, 20, 21 and 47 of the Act are reproduced as under :-

19. Vocational training and self employment – (1) The appropriate Government shall formulate schemes and programmes including provision of loans at concessional rates to facilitate and support employment of persons with disabilities especially for their vocational training and self employment.

(2) The schemes and programmes referred to in sub section (1) shall provide for -

- (a) inclusion of person with disability in all mainstream formal and non formal vocational and skill training schemes and programmes;
- (b) to ensure that a person with disability has adequate support and facilities to avail specific training;
- (c) exclusive skill training programmes for persons with disabilities with active links with the market, for those with developmental, intellectual, multiple disabilities and autism;
- (d) loans at concessional rates including that of microcredit;
- (e) marketing the products made by persons with disabilities; and
- (f) maintenance of dis-aggregated data on the progress made in the skill training and self-employment, including persons with disabilities.

20. Non-discrimination in employment.—(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.

21. Equal opportunity policy.—(1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.

(2) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be.

“47. Human resource development – (1) Without prejudice to any function and power of Rehabilitation Council of India constituted under the Rehabilitation Council of India Act, 1992, the appropriate Government shall endeavour to develop human resource for the purposes of this Act and to that end shall -

(a) mandate training on disability rights in all courses for the training of Panchayati Raj Mamebers, legislators, administrators, police officials, judges and lawyers;

- (b) induct disability as a component for all education courses for schools, colleges and University teachers, doctors, nurses, para-medical personnel, social welfare officers, rural development officers, asha workers, anganwadi workers, engineers, architects, other professionals and community workers;
 - (c) initiate capacity building programmes including training in independent living and community relationships for families members of community and other stakeholders and care providers on care giving and support;
 - (d) ensure independence training for persons with disabilities to build community relationships on mutual contribution and respect;
 - (e) conduct training programmes for sports teachers with focus on sports, games, adventure activities;
 - (f) any other capacity development measures as may be required.
- (2) All Universities shall promote teaching and research in disability studies including establishment of study centres for such studies.
- (3) In order to fulfill the obligation stated in sub section (1), the appropriate Government shall in every five years undertake a need based analysis and formulate plans for the recruitment, induction, sensitization, orientation and training of suitable personnel to undertake the various responsibilities under this Act.”

A bare perusal of the above said provision of the Act shows that the Act cast an obligation upon the State authorities to remove discrimination only on the basis of physical disability of a person during the service tenure. Besides this; the provisions also provide for extending certain extra benefits like; reservation of the posts, providing special training and providing facilities at the workplace, which are required for due purpose of duties by the persons with disability and so as to bring these employees at par with the other employees of the organization. However, this Court does not find any

provision either in the abovesaid Sections or any other part of this enactment, which cast a mandate upon the employer to extend the age of superannuation of employees with disability. Hence, this Court does not find any substance in the argument of the counsel for the petitioner that to fulfill the mandate of the Act the respondent is required to extend the age of retirement for its employees with disability.

Although the counsel for the petitioner has referred to the judgments of this Court in case of **Bhupinder Singh** (supra), as well as, of the Hon'ble Supreme Court in the case of **Bhagwan Dass** (supra), however, this Court does not find any parallel between those cases and the present case. In case of **Bhupinder Singh** (supra), this Court was dealing only with removal of discrimination amongst the persons with different kind of disabilities and had issued a direction to extend the benefit of increased age of superannuation, which was provided for one category of persons with disability only, to the other persons with other disabilities; as contemplated under the Act. Therefore, this judgment, essentially, related to removal of discrimination within the category of persons with physical disability. In that case, the Court had not issued any direction for making fresh provision for a different age of superannuation for employees/persons with disabilities. The said benefit had already been provided for under the instructions of the competent authority. So far as the judgment of the Hon'ble Supreme Court is concerned, the essence of that judgment is only to ensure the removal of discrimination qua the employee who might have got some disability during service tenure. Even that judgment does not require the competent authority to extend the date of retirement for the persons with physical disabilities.

Regarding the instructions issued by the Government of India, this Court finds substance in the argument of learned counsel for the respondents that under these instructions itself, the age of retirement provided by the Government of India is 60 years. Not only this, there is a positive stipulation in the instructions that no persons shall be permitted to continue in service beyond the age of 60 years, except the specified categories of medical and scientific specialists. Therefore, read as it is, the instructions do not permit the respondent bank even to extend the date of superannuation for the categories of employees with disability. Although there is no challenge to the validity of these instructions, yet this Court also does not find any discrimination with the persons with disability on account of separate and extended date of retirement having been provided to medical and scientific specialists. It is obvious and well established fact that scarcity of medical specialists is felt everywhere. Same is the situation with the persons with scientific specialization, who acquire a particular level of scientific expertise with long working experience. It is only with a view to retain the benefit of the experience of these specialists categories that the benefit of two extra years seems to have been granted to these categories. Therefore, this provision of ensuring two years extra service for the category of medical and scientific specialists is not for benefit of those categories, rather, it is for the benefit of the establishment and the society at large. No other category can claim parity with these categories on any other ground whatsoever. Needless to say that even without consideration on parity with these two categories, there would not have been any reason to prevent the Government of India to provide any extra year of service to the persons with disability, had it been so considered appropriate by the Central Government.

However, the instructions do not make any provision for extended age of superannuation for any other category. Hence, the petitioner cannot derive any benefit on account of the said instructions as well.

There is another aspect involved in the matter. The essence of the claim of the petitioner is that the respondent bank be directed to make a provision for extended age of superannuation for the persons with physical disabilities. As observed above, this Court does not find any statutory basis under the provisions of the Act for issuance of any such direction. But for such a statutory mandate, the matter would, essentially, lay in the discretion of the policy making Government authority. This Court would refrain from issuing any direction to the authorities to frame any particular policy in a particular manner.

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

(RAJBIR SEHRAWAT)
JUDGE

22.12.2020

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No