IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19938-2020 (O&M)
Date of decision : 02.12.2020

Jagdamba Devi ...Petitioner

Versus

The Chandigarh Administration and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Hitender Kansal, Advocate for the petitioner.

Ms. Madhu Dayal, Advocate for CITCO.

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ANIL KSHETARPAL, J.

The petitioner was appointed as a Peon on 19.05.1993, in Chandigarh Industrial and Tourism Development Corporation Limited (in short "CITCO"). She is due to retire on attaining the age of superannuation, i.e. 58 years on 30.11.2020. Through the writ petition, the petitioner claims that she is entitled to retire on attaining the age of 60 years and not at the age of 58 years. The entire case of the petitioner is based upon the Office Memorandum/Circular, issued by the Chandigarh Administration on 30.03.2020, adopting the communication of the Government of Punjab, Department of Finance, issued on 02.03.2020. She claims that since the State of Punjab has, while amending the Punjab Civil Service Rules, notified that the retirement age of Group 'D' employees would be 60 years which has been adopted by the Chandigarh Administration, therefore, she is entitled to continue in the service.

Pursuant to supply of an advance copy of the writ petition, Ms.

Madhu Dayal, Advocate, has appeared for CITCO and taken a stand that the respondent-Corporation is an independent and autonomous body and not bound by all the decisions taken by the Administration. Hence, she submits that the Corporation has taken a conscious decision, not to adopt the aforesaid Circular. She relies upon judgment in ***Suresh Chandra Singh and others Vs. Fertilizers Corporation of India Ltd. and others, (2004) 1 SCC 592***.

This Court has heard learned counsel for the parties at length and with their able assistance perused the paper book.

In the considered view of this Court, the question which needs adjudication is "Whether it is appropriate for the court to direct a Public Sector Undertaking to increase the retirement age of its employees, who are governed by the service rules made by their employer, after adopting and implementing a decision of the appropriate Government in this regard unless the Circular/Office Memorandum, specifically, makes it mandatory?"

The services of the employees of CITCO including that of the writ petitioner are governed by Chandigarh Industrial and Tourism Development Corporation Limited Service Regulations, 2011 (hereinafter to be referred as "Regulations of 2011") whereas the employees of the Chandigarh Administration are governed by Union Territory Chandigarh Employees Rules, 1992 & the Punjab Civil Service Rules. Regulation 11 of the Regulation notified by CITCO, provides that its employees shall retire on attaining the age of 58 years. Regulation 20 provides that the matters for which no provision has been made under these Regulations, the provisions of such other Rules, Regulations, Guidelines and Instructions, on the subject, as are applicable to the corresponding employees of the Administration, shall apply mutatis mutandis to the employees of the Corporation as may be approved by the Managing Director. It would be appropriate to extract Regulation 11, 19 and 20 of the Regulations of 2011, which are read as under:-

> *"**11. Resignation, Superannuation and Voluntary Retirement:***
>
> ***11.2 Superannuation***
>
> *(a) Every employee shall retire on the last day of the month when he attains the age of fifty-eight years;*
>
> *Provided that an employee whose date of birth is the first of the month shall retire from service on the afternoon of the last day of the preceding month, on attaining the age of 58 years.*
>
> *(b) The power to re-employ an employee who has attained the age of superannuation shall be exercised by the appointing authority provided that in respect of Group "A" categories of employees prior approval of the Chairman shall be sought, in accordance with the guidelines/instructions of the Administration.*
>
> ***19. Overriding effect, Saving and Interpretation.***
>
> ***19.2 Saving**: Where these regulations are silent, the provisions of Civil Service Rules and instructions of the Administration as applicable to its employees shall apply to the employees covered by these rules.*
>
> ***19.3 Interpretation**: If any doubt or difficulty arises in interpreting these regulations or giving effect to them or if any lacuna, inconsistency or anomaly is discovered in their application, it shall be open to the Board of Directors to issue general instructions not inconsistent with the Act and the rules/regulations made there under or any instructions issued by the Administration from*

time to time to the extent it is applicable to the Corporation for the purpose of removing doubt, difficulty, lacuna, inconsistency or anomaly.

20. <u>Matters not provided in the Regulations</u>: *In matters for which no specific provision has been made in these regulations or any other regulations made by the Corporation, the provisions of such other regulations, guidelines and instruction on the subject as are applicable to the corresponding employees of the Administration, shall apply mutatis mutandis to the employees of the Corporation as may be approved by the Managing Director."*

The State of Punjab took a decision to amend Rule 3.26(a) of Punjab Civil Services Rules, Volume I, Part I vide decision dated 02.03.2020. The amended Rules, read as under:-

"3.26 (a) Except as otherwise provided in this rule, the date of retirement of a Government employee shall be as follows, namely:-

(i) fifty-eight years in the case of Group 'A', 'B' and 'C' employees; and

(ii) sixty years in the case of Group 'D' employees;

Provided that if the State Government is of the opinion that it is necessary and expedient so to do in public interest, the service of a Government employee or a class of Government employees may be extended and governed in the following manner, namely:-

(A) the Government employees, belonging to Group 'A', 'B' and 'C' service, who are working on the second year of optional extension in service i.e. who have already attained the age of fifty-nine years and who are availing the second year of optional extension in service, or whose second year of optional extension in service is

scheduled to start from the 1st day of April, 2020, shall retire on the 31st day of March, 2020, and the Government employees belonging to Group 'D' service and the Persons with Disabilities who are working on the second year of optional extension in service after attaining the age of sixty-one years, or whose second year of optional extension in service is scheduled to start from the 1st day of April, 2020, shall retire on the 31st day of March, 2020;

(B) the Government employees, belonging to Group 'A', 'B' and 'C' service, who are working on the first year of optional extension in service i.e. who have already attained the age of fifty-eight years and who are availing the first year of optional extension in service, or whose first year of optional extension in service is scheduled to start any time till the 1st day of September, 2020, shall, upon opting for such extension, retire on the 30th day of September, 2020, and the Government employees belonging to Group 'D' service and the Persons with Disabilities who are working on the first year of optional extension in service after attaining the age of sixty years, or whose first year of optional extension in service is scheduled to start any time till the 1st day of September, 2020, shall, upon opting for such extension, retire on the 30th day of September, 2020; and

(C) the Government employees, belonging to Group 'A', 'B' and 'C' service, who after attaining the age of fifty-eight years are on the first year of optional extension in service and whose first year of optional extension in service is scheduled to end before the 30th day of September, 2020, shall retire in accordance with clause (d), when he completes the first year of optional extension in service, and the Government employees

> *belonging to Group 'D' service and the Persons with Disabilities who after attaining the age of sixty years are on the first year of optional extension in service and whose first year of optional extension in service is scheduled to end before the 30th day of September, 2020, shall retire in accordance with clause (d), when he completes the first year of optional extension in service:*
>
> *Provided further that under exceptional circumstances, if the State Government considers it necessary and expedient so to do in public interest, it may extend the service of the Government employee beyond the aforesaid limit, for the reasons to be recorded, in writing."*

The Administrator, Union Territory, Chandigarh, adopted the decision of the Punjab government and it was communicated, vide communication dated 30.03.2020, operative part, whereof, is extracted as under:-

> *"I am directed to address you on the subject noted above and to state that in pursuance of the Government of India, Ministry of Home Affairs, Notification No.14012/2/88-CHD dated 13.01.1992, the Administrator, Union Territory, Chandigarh is please to adopt following communication of Government of Punjab, Department of Finance in respect of the employees of Union Territory, Chandigarh (Copies Enclosed) on the same terms and conditions as mentioned therein:-*
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> *(i) Notification No.G.S.R.21/Const./Art.309/Amd. (9)/ 2020 dated 02.03.2020.*
>
> *(ii) Letter No.22/2/2012-3FP2/263-267 dated 02.03.2020."*

Learned counsel for the petitioner contends that as per Clause 63 of the Articles of Association of the Corporation, the Board of Directors, shall be bound by the directives issued by the Administrator, from time to time and previously, the Corporation had been adopting the decision of the Union Territory, with regard to extension in the service beyond the date of superannuation, at par with the decision of the Chandigarh Administration. Other Boards and Corporations, under the Chandigarh Administration, have already adopted the Circular issued on 30.03.2020 by the Chandigarh Administration and as such, the petitioner is also entitled to continue in the service.

On the other hand, as noted above, Ms. Madhu Dayal, Advocate, has opposed the prayer. She has stated that the Corporation has taken a conscious decision not to implement the Circular as noted above.

On careful analysis of arguments of learned counsel for the parties, this Court, now, proceeds to adjudicate the question. It is not in dispute that the respondent-Corporation has framed its own Service Rules i.e. Regulations of 2011. The Regulations of 2011, itself, provides that the retirement age of the employees of the Corporation would be 58 years. However, the appointing authority shall have the power to re-employ any employee. It may be relevant to note that this case is not of extension of an employee in service beyond the age of superannuation. The petitioner claims that since Punjab Civil Service Rules, referred to above, have been amended by the Punjab Government and this decision has been adopted by the Chandigarh Administration, therefore, the Group 'D' employees, of the respondent-Corporation are automatically entitled to continue in service upto the age of 60 years. In other words, it is claimed that the retirement age of Group 'D' employees is now 60 years and not 58 years. In the considered view of this Court, the argument of learned counsel, for the petitioner, has two fundamental errors. First, the Corporation has made its own Regulations for regulating the service of its employee. Neither the validity, whereof, is under challenge nor the competence of the Board of Directors to frame Regulations is under challenge. Still further, there is no decision of the Corporation, to adopt the decision of the Chandigarh Administration, which in turn, adopts the decision of the Punjab Government. In the absence of amendment in the Regulations, the retirement age of the employees of the Corporation shall continue to be 58 years. It is not the case of the petitioner that the respondent-Corporation has implemented the decision, qua some of the employees. In the absence thereof, the petitioner has no case to make.

Secondly, on careful reading of the Circular, issued by the Chandigarh Administration, it is apparent that the Administrator, Union Territory, Chandigarh, had adopted the communication of the Government of Punjab. There is no direction issued by the Administrator that all Boards and Corporations will have to mandatorily amend their own Service Rules/Regulations. In the absence of such specific directions, it is always open to the Corporation, which is an autonomous body, to take its own decision. The employees of the Corporation, at present, are governed by the Regulations, as they exist. In fact, Ms. Madhu Dayal, Advocate, has made a statement that the Corporation has taken a conscious decision not to implement the aforesaid Circular or amend its own Regulation. In these circumstances, the Public Sector Undertaking or Boards or Corporations, which are autonomous Organizations, cannot be said to be bound by the same. The employees of the Corporation are not the employees of the Chandigarh Administration. The Board/Corporation/Public Sector Undertakings are not the Departments of the Government. The employees, of the Corporation, are not holding the post under the State. Still further, an identical issue has already been decided by Hon'ble the Supreme Court in Suresh Chandra's case (Supra). In that case, employees of the Fertilizers Corporation of India, which was making losses, had come to the Court. In fact, the aforesaid case was on a better footing because with regard to certain employees working in the Fertilizer Corporation, the age was extended whereas for the remaining employees, the age was not extended. However, the Supreme Court upheld the decision on the ground that those government employees are on deputation with the Fertilizers Corporation. It was held that autonomous Corporations/Boards/Organizations are not mandatorily bound to follow all the Office Memorandums. The Supreme Court highlighted the distinctions between different types of Memorandums and held that certain Memorandums are only advisory. Still further, a reference can be made to another judgment of the Supreme Court in ***Prahlad Sharma Vs. State of Uttar Pradesh and others, (2004) 4 SCC 113***. The Supreme Court held that Public Sector Undertakings are neither the Departments of the Government nor are the servants, appointed under it, are holding their post under the State. Therefore, reliance, on the Government Circular is misconceived.

Still further, Regulation 20 of Regulations of 2011, clearly provides that if the Regulations, framed by the CITCO, does not make any specific provision on a particular matter then only the provisions of such other Service Rules, Regulations, Guidelines and Instructions, on the subject, as are applicable to the corresponding employees of the Administration, shall apply mutatis mutandis, to the employees of the respondent Corporation, as may be approved by the Managing Director. In the present case, the Regulations of 2011, as extracted above, do make a specific provision, therefore, it is the Regulations framed by the Corporation which would be binding unless amended.

Next argument of learned counsel, with reference to Clause 63 of the Articles of Association, is considered and rejected because Clause 63, does not lay down that all the decisions, taken by the Administrator, shall mutatis mutandi, be applicable to the employees of the Corporation. Still further, if the Administrator wanted that Group 'D' employees, of the Corporation, should also retire on attaining the age of 60, the Administrator could have passed a specific order in that regard. In absence thereof, merely because the Circular has been forwarded to all the Boards and Corporations, it would not, ipso facto, be sufficient to hold that it is binding and the Corporation is bound to amend its own Regulations. The Administrator has only adopted the Communication, received from the Government of Punjab, which in turn, amends the Punjab Civil Service Rules. With regard to the retirement age, the employees of the Corporation are not governed by the Punjab Civil Service Rules. Hence, there is no force in the argument of the learned counsel for the petitioner.

Next argument, of the learned counsel, is with reference to decision taken by other Boards and Corporations. Although, no supportive document has been produced, however, the same is liable to be rejected because in the case of other Boards and Corporations, a specific decision, if any, may have been taken by the Board of Directors whereas in the present case, the decision to the contrary has been taken, as informed by the learned counsel representing the CITCO.

Last argument of the learned counsel is with reference to a decision to grant extension to certain employees in the year 2013, vide a Circular (Annexure P-8). On careful perusal of the letter, it is apparent that the Chandigarh Administration, while issuing the Circular, specifically clarified that the Boards/Corporations/Autonomous Body under the control of the Chandigarh Administration, keeping in view of the situation at that time, had directed that the employees of the Boards/Corporations/Autonomous Bodies, shall be brought at par with other employees of the Union Territory. It was specifically directed that the employees shall be entitled to an extension in service for six months. However, as noticed above, the Administrator has not issued any specific directions in this regard this time.

Keeping in view the aforesaid facts, this Court does not find it appropriate to issue any direction to the CITCO to amend its Regulations.

Accordingly, the present writ petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the aforesaid judgment.

02.12.2020 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

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