

IN THE HIGH COURT OF PUNJAB AND HARYANA ATCHANDIGARH

CWP-21883-2020

Date of Decision: December 23, 2020

JASPAL KAUR

..... PETITIONER(s)

Versus

STATE OF PUNJAB AND OTHERS

..... RESPONDENT(s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. D.R. Sharma, Advocate for the petitioner.

Ms. Simran Grewal, Asst. A.G., Punjab,
for respondents no.1 and 2.

Mr. Dharam Vir Sharma, Sr. Advocate with
Mr. Tushar Sharma, Advocate
for respondent no.3.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

The petitioner is being discharged from service w.e.f. 31.12.2020, on attaining the age of 58 (Annexure P-1). It is not in dispute that the petitioner initially joined as a Clerk with the respondents on 14.01.1997 on daily wages. Thereafter, she was appointed on contract basis w.e.f. 28.03.2006. The petitioner claims to be suffering from 60% disability. Reference has been made to the disability certificate dated 28.07.2004 (Annexure P-3). The petitioner has continued working on the said post since then. However, now she is being discharged from service w.e.f. 31.12.2020 as she is going to attain the age of 58. The petitioner claims to be entitled to continue on contract basis till the age of sixty (60) in terms of the provisions

of the Rights of Persons with Disabilities Act, 2016 as well as the applicable Rules, Regulations and instructions. It is submitted by learned counsel for the petitioner that she does not claim regularization or any other benefits, but merely seeks extension in service as has been granted to similarly situated employees. Work and conduct of the petitioner is stated to be good and to the satisfaction of her superiors, thus she should not be discharged from service only due to her attaining the age of fifty eight.

Learned counsel for the petitioner has referred to Rule 3.27 of the Punjab Civil Services Rules Volume 2, which reads as under:-

“Notwithstanding anything contained in Rule 3.27 the date of retirement of a Government employee (other than a Group ‘D’ employee), who is suffering from any of the disabilities viz., blindness or low vision, hearing impairment, locomotor disability or cerebral palsy, shall be the date on which he attains the age of 60 years instead of 58 years.”

It is not in dispute that as per instructions dated 03.10.2019, 4% reservation has been provided for recruitment in terms of Section 34 of the Rights of Persons with Disabilities Act, 2016 (for short ‘the Disability Act’). It is specifically mentioned in the said instructions that the same shall be applicable to all modes of recruitments done in the State of Punjab, including posts/vacancies filled under contract basis or by outsourcing.

It is vehemently argued by learned counsel for the respondent-Board that as the petitioner is a contractual employee, she has no vested right to continue in service. There is no quarrel with the settled proposition that a contractual employee indeed has no vested right to continue in service.

However, peculiar facts of the present case, are that the petitioner is sought

to be discharged only and solely on the ground that she is attaining the age of 58 years on 31.12.2020. As per Rule 3.27, it is clearly provided that date of retirement would be 60 years instead of 58 years in case of a person suffering the disability as are specifically mentioned therein. Doubtlessly, the petitioner who is admittedly working on a group C post, is not being superannuated but nevertheless discharge of her services is solely on the ground of her attaining the age of superannuation.

Learned counsel for the respondent-Board is unable to deny that services of the employees similarly situated as the petitioner have been extended uptill 31.03.2021 and the petitioner is being discharged w.e.f. 31.12.2020 as she is due to attain the age of 58 years. There is no complaint regarding the work and conduct of the petitioner and neither is there a specific denial of the disability suffered by the petitioner. Learned counsel for the respondent-Board however submits that the medical disability certificate could not be verified nor the petitioner had not secured appointment on the basis of disability. Learned counsel for the petitioner, at this stage, submits that the certificate was submitted way-back in the year 2004 but it was never kept on record by the Department as the petitioner was working on a daily wage basis. The petitioner, it is submitted, is ready and willing even as on date, to submit for any medical examination by any Board etc. as per the asking of the Department.

It would be useful to refer to Section 20 of the Disability Act at this stage, which is reproduced as hereunder:-

Section 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 conductive 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.

Benefit under the Act would clearly be available to the petitioner though circumscribed within the parameters of contractual employment. Reference in this respect can be made to a decision of a Division Bench of Allahabad High Court in ***Managing Director, UP SRTC Vs. Suresh 2019(5) AIR 25130*** as well as ***Gulab Singh Vs. State of Haryana 2017(4) RSJ 110***. As per Section 20(4) it is clear that even if disability has been acquired by an employer during the course of employment, benefit has to be afforded to the said employee. The petitioner

cannot be non-suited merely on the ground that employment was not secured on the basis of disability and the benefits as available due to disability are thus not to be afforded.

Learned counsel for the respondent-Board has raised a specific plea that the disability certificate Annexure P-3 could not be verified, though there is no specific denial of the petitioner's disability. Keeping in view the facts and circumstances of the case, it is directed that the medical certificate Annexure P-3 be verified and if required, petitioner be medically examined to determine the disability as claimed. In case, it is found that petitioner is indeed suffering from the disability, which would entitle her to the benefit as claimed, necessary action shall be taken by the respondents to afford extension of service to the petitioner as afforded to similarly situated employees vide Annexure P-5. Needless to say the entire exercise be carried out by the respondent-Board before 31.12.2020.

The petition is accordingly disposed of.

23.12.2020

Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No