222 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7885 of 2020
DATE OF DECISION : 18.03.2021

Rajinder Singh **…Petitioner**

versus

State of Haryana and others **…Respondents**

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sanjeev Malik, Advocate,
for the petitioner (s).

Mr. Manoj Kumar Taya, AAG, Haryana.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

Grievance of the petitioner, at the relevant time serving as Head Electrician, arises out of impugned order dated 31.03.2020 (Annexure P-1), whereby he has been retired from service with effect from 31.12.2019, allegedly by giving a complete short shrift to Rule 143 of Haryana Civil Services (General) Rules, 2016(for brevity, HCS Rules, 2016). Petitioner states that despite having full knowledge of his disability as certified vide Medical Certificate dated 25.03.2020 (Annexure P-11), issued duly by Medical Board, PGIMS, Rohtak, whereby he was diagnosed with 75% disability in both the ears, the same was not taken into consideration.

2. Before adumbrating the case further, for ready reference relevant extract of Rule 143, *ibid*, is reproduced as under :

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*"**143 Retirement on superannuation***

(1) Except as otherwise provided in these rules every Government employee shall retire from service on afternoon of the last day of the month in which he attains the age of retirement prescribed for him or for the post held by him in substantive or officiating capacity as the case may be However a Government employee whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the prescribed age. The age of retirement on superannuation is fifty eight years for all groups of employees except the following for whom the same is sixty years

(i) Differently-abled employees having minimum degree of disability of 70 and above (Emphasis supplied)

(ii) Blind employees

(iii) Group-D employees and

(iv) Judicial Officers

No Government employee shall be retained in service after attaining the age of superannuation except in public interest and in exceptional circumstances without the approval of Council of Ministers.

xxx xxxx xxx

***Note 3** A Government employee who becomes disabled while in service shall bring to the notice of his Head of Department minimum three months before attaining the age of 58 years. He shall be got examined from a Medical Board of the Post Graduate Institute of Medical and Science Rohtak to be headed by its Director. On receipt of medical report from the Board the appointing authority or the Head of Department whichever is higher shall take a final decision to grant or not to grant the extension in service to such physically disabled employee."*

2. A perusal of the above, leaves no manner of doubt, that persons serving with certain disabilities have been given special status on humanitarian grounds. Their age of retirement has been relaxed by two years i.e 58 years to 60 years. The only issue that survives for adjudication before this Court is whether or not petitioner suffers from genuine disability?

3. Qua being differently abled, positive stand taken in writ petition vide paras no.4 to 6 is that petitioner was first diagnosed with disability in the year

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2014, while he was in service. Vide a letter dated 09.05.2014 (Annexure P-3) Civil Surgeon, Jind intimated to General Manager, Haryana Roadways, Jind that the petitioner was diagnosed as below :

> *“ Deafness which is bilateral (Right Ear >100% and left ear 74% in total is 80% Eighty percent deaf*.”

4. Apart from the above intimation, 3 months prior to turning 58 years, the petitioner also represented the department that he continues to suffer from the aforesaid disability. He therefore, sought relaxation to continue upto 60 years, as per law. The said representations dated 29.08.2019 and 08.11.2019 are contained at Annexures P-6 and P-7, respectively. The receipt of aforesaid letter by the Civil Surgeon and the representations of petitioner are not denied by the department. However, what is controverted is that the petitioner ought to have intimated the department 03 months prior to his retirement that he continues to suffer from the said disability as per Note 3 of Rule 143, ibid. Petitioner did not do the needful, therefore, he is not entitled to relaxation. The stand of the department, I am afraid, flies in the face of internal communication addressed dated 23.01.2020 and 27.01.2020 of the department itself. As is borne out from Annexures P-8 and P-9 respectively. Same would reveal that the department continued to be aware that the petitioner was indeed suffering from the disability. It was in this background that the petitioner was also referred before the Medical Board, PGIMS in March 2020, by the department on its own volition.

5. Pursuant thereto, medical examination of the petitioiner was conducted by the Board constituting of 5 super specialists Physicians who reported vide Annexure P-11 dated 25.03.2020 as below:-

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"A medical board of the following officer was constituted to examine Sh. Rajinder Singh, Head Electrician. The medical board meeting held on 20.03.2020.

1.	*Director, PGIMS Rohtak*	*Chairman*
2.	*Medical Superintendent PGIMS Rohtak*	*Member*
3.	*Dr. Aditya Bhargava, Sr. Prof. & Head Deptt. Of ENT*	*Member*
4.	*Dr. Jagal Singh, Prof. Deptt. Of ENT*	*Member*
5.	*Dr. Vijay Kalra, Assoc. Prof. Deptt. Of ENT*	*Member*

Patient Sh. Rajinder Singh, Head Electrician have been examined clinically, radio logically and audio logically by the members of the medical board. Patient gives history of decreased hearing both ears since childhood. On examination bilateral tympanic membranes show grade four retraction. On left side small central perforation is present. HRCT bilateral temporal bones done on 13.02.2020 vide No. 2339 was reported as bilateral CSOM with mastroiditis. As per audio logical reports, at present patient has 75% (Seventy Five Percent) hearing disability both ears. As there is no response on PTA, whether hearing disability is temporary or permanent cannot be commented.

In case opinion required by the Court/ Inquiry Officer Dr. Vijay Kalra, Assoc. Prof. Deptt. of ENT is authorized to express opinion on behalf of the board."

Notwithstanding the above report from Medical Board that the petitioner is suffering from 75% disability, the impugned order dated 31.03.2020 was passed much to the chagrin of petitioner, as a bolt from the blue, leaving him high and dry. He was retired retrospectively, with effect from 31.12.2019.

6. Having heard learned counsel for the petitioner, I am of the view that the stand taken by Mr. Manoj Kumar Taya, Assistant Advocate General, Haryana, relying on Rule 143 is totally misplaced on the face of record, which is irrefragable, in as much as, the own communications of the department convey knowledge of disability. The department officials cannot get out of the same by taking a contrary stand before this Court.

7. The writ petition had been resisted as per the defence taken in the written statement primarily on the ground that as per Note 3 of Rule 143 of HCS

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Rules, 2016, if an employee disabled while in service, he has to bring the same to the notice of Dead of Department before attaining the age of superannuation. Further he has to himself got examined from a Medical Board of PGIMS, Rohtak headed by its Director and it is only after receiving the medical report from Board, a decision with regard to grant of extension in service to such a physical disabled employee is to be taken. It is stated in the written statement that petitioner submitted his request for extension in service on 08.11.2019(his slated date of superannuation i.e. 58 years was 31.12.2019). It is, thus, conceded that aforesaid request was made within requisite three months. However, the department itself asked its General Manager, Haryana Roadways, Jind to write to Civil Surgeon, Jind to get the medical examination of the petitioner conducted from PGIMS, Rohtak and issue the medical certificate qua the same. According to department, time till 31.03.2020 was granted to the petitioner to submit the requisite report. In compliance thereof, the General Manager requested the Civil Surgeon to get the medical examination of the petitioner conducted from PGIMS, Rohtak. However, no report was submitted and two reminders dated 10.02.2020 and 27.02.2020 were issued to General Manager, Haryana Roadways Jind for sending the medical certificate of the petitioner issued by PGIMS, Rohtak. When no report was received, Director, State Transport Haryana passed the impugned order dated 31.03.2020 retiring the petitioner on attaining the age of 58 years as per Rule 143 of HCS Rules, 2016 with effect from 31.12.2019. However, the requisite report was received by the Department on 10.04.2020 and prior thereto the petitioner had already been retired from service.

8. A perusal of the written statement and the defence taken therein reveal that it is not disputed that petitioner is disabled, but since the report submitted by

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the PGIMS, Rohtak was received on 10.04.2020, beyond the stipulated time provided by the Director, State Transport, Haryana i.e. 31.03.2020 and, therefore, the petitioner was not held to be entitled for grant of regularization as per Note 3 of Rule 143 *ibid.* Said stand taken by the Department does not stand the judicial scrutiny in as much as the Department was throughout well aware of the disability of the petitioner coupled with the fact that delay if any caused in submission of medical report is attributable to Department itself for having wasted the time in useless correspondence which is nothing but usual red tapism. Petitioner being a mere electrician is not expected to run around from one desk to another chasing the inter-departmental correspondence when all he had to do was to make a formal request within three months of his superannuation to seek benefit of regularization in view of his disability. Needful was done by him well within time and a perusal of Note 3 reveals that it is for the department to get him examined from Medical Board as the words used are "he shall be got examined from medical Board" and Note 3 further envisages that on receipt(by the Department) of the medical report from the Board, final decision is to be taken qua extension by the Department. The defence taken by the Department is being noted only to be rejected for the reasons already noted hereinabove.

9. As regards entitlement of the petitioner to get benefit qua disability, the position in law is no more *res integra.* Speaking for this Court my learned brother Amol Rattan Singh, J. in CWP No. 13267 of 2013 decided on 16.01.2015 titled as "Kharaiti Lal v. State of Haryana and others", observed as below :

> *"Thus, the decision to be taken by the competent authority, to continue a person in service till the age of 60 years, or to retire him at the age of 58 years, would only be dependent upon as to whether the Medical Board headed by the Director, PGIMS, Rohtak, certifies to the effect that the employee is 70% or more physically disabled or not.*

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Beyond that, the competent authority has no jurisdiction to refuse to continue an employee up to the age of 60 years, if he has been certified to be physically disabled to the extent of 70% or more."

10. An intra-court appeal filed against the aforesaid Single Bench judgment was also dismissed. No Special Leave Petition thereafter was filed and the same has since attained finality.

11. I see no ground as to why the petitioner be also not accorded the similar benefit in terms of the Single Bench Judgment, *ibid,* as also for the other reasons stated herein above. The writ petition is allowed. The respondents are directed to restore the services of petitioner as on 30.12.2019 with continuity of service within two weeks of his approaching the competent authority with web print of the instant order, failing which, he shall be paid full salary on expiry of two weeks, until the date his services are restored. However, for the period the petitioner did not work, he shall be entitled to 50% of his emoluments and salary by way of compensation. Compensation is being awarded by taking an equitable view that petitioner though throughout available but was made to sit at home for no fault of his. The arrears of salary/ compensation arising out of this order shall be paid within 60 days from the date of receipt of web print of this order along with interest @ 6% per annum.

9. Disposed of in above terms.

MARCH 18, 2021 **(ARUN MONGA)**
Shalini/ Jiten **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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