

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

CWP-11902-2021

Date of decision: November 02, 2021

Surender Singh

...Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Gourav Mohunta, Advocate and
Mr. Gaurav Gogna, Advocate for the petitioner.

Ms. Rajni Gupta, Additional AG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is to seek issuance of a Mandamus directing the respondents to extend the service of the petitioner till the age of 60 years in view of the instructions dated 31.01.2006 (Annexure P-1) and medical certificate dated 10.06.2021 (Annexure P-2) issued by the Board of PGIMS, Rohtak certifying 70% permanent physical disability of the petitioner and to take him back in service.

2. Learned counsel for the petitioner submits that the petitioner is 70% permanent physically disabled and in this regard, a medical certificate dated 10.06.2021 (Annexure P-2) has also been issued by the PGIMS, Rohtak. Petitioner has been relieved from service on 31.05.2020 on completion of 58 years of service, despite the fact that he had already moved an application dated 14.12.2019 (Annexure P-3) for extension of his service upto 60 years. Petitioner is thus entitled to continue in terms of instructions dated 31.01.2006 (Annexure P-1) until he attains the age of 60 years.

3. On the other hand, learned State counsel opposes the petition and submits that the petitioner is not entitled to the relief claimed in this petition.

4. I have heard learned counsel for the parties and gone through the case file.

5. A benevolent provision has been created vide Rule 143 of the Haryana Civil Services (General) Rules- 2016, which envisages that in case of any Group 'A' to Group 'D' employee suffering from any disability to the extent of 70% or more, he is entitled to extension in service from 58 years to the age of 60. Provided of course, the employee concerned makes a request at least 3 months prior to his superannuation, along with proof of disability which is to be got verified in accordance with the Rules.

6. Rule 143 *ibid* reads as under: -

“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;*
- (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.

Note 1.— *One eyed employee shall not be treated as blind or differently-abled person for the purpose of this rule.*

Note 2.— When a Government employee is due to retire on superannuation from service an office order shall be issued on 7th of the month in which he is going to be retired and a copy of every such order shall be forwarded immediately to the Principal Accountant General, Haryana. There is no need to re-instate a Government employee who is under suspension at that time.

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 beheaded 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) xxxx

(3) xxxx

Note.— The following authorities are competent to retain a Government employee after the age of superannuation:-

<i>Powers to retain a Government employee in public interest and in exceptional circumstances after the age of superannuation.</i>	<i>Administrative Department</i>	<i>Full powers subject to a maximum of two years with the approval of Council of Ministers”</i>
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7. Petitioner herein submitted his request on 14.12.2019, well before his date of superannuation when he was to turn 58 years i.e. on 31.05.2020. Pursuant thereto, he was duly examined at PGIMS, Rohtak vide Annexure P-2. Disability report certifies that he indeed suffers from 70% disability in his right wrist. Notwithstanding, vide speaking order dated 27.07.2021 (Annexure P-13) claim of the petitioner has been negated.

8. A perusal of the so-called speaking order reflects that, no reason, whatsoever, has been given as to why the petitioner is not entitled to the benevolent provision. Merely because Rule vests certain discretion in the

administrative authorities, his claim has been rejected saying that the petitioner is not entitled to any discretion. No cogent reason otherwise is coming forth. If the Rule is to be so interpreted, then every claim of a disabled person would perhaps meet the same consequences as that of the petitioner herein. Merely because the administrative authority does not wish to exercise its discretion for grant of extension, which is otherwise so envisaged in the Rule *ibidis* not a valid ground. In the premise, speaking order is not sustainable.

9. Had any reasons been given so as to reflect the mind of administrative authority not to exercise its discretion, this court would have had the opportunity to reflect on it. Merely because the petitioner was made to succumb to the *fate accompli* by applying for his pension, which in any case, the petitioner is entitled to on superannuation, it cannot be argued that the petitioner, at this stage, is not entitled to the benefit of extension of 2 years.

10. On a Court query to the learned counsel for the petitioner, he submits that the petitioner shall not claim any arrears of salary for the period he has been out of service. Petitioner to remain bound by the submission of the learned counsel for the petitioner.

11. As an upshot of the above discussion, order dated 27.07.2021 (Annexure P-13) is set aside. Services of the petitioner shall be restored w.e.f. 01.12.2021 and he shall be entitled to continue in service till attaining the age of 60 years in terms of Rule 143 *ibid*.

12. Petition is allowed in the aforesaid terms.

(ARUN MONGA)
JUDGE

November 02, 2021

mahavir

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No