

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(118)

CWP-12332-2021

Date of Decision : July 12, 2021

Sadhna Mittal

.. Petitioner

Versus

Chaudhary Devi Lal University, Sirsa and another .. Respondents

(Through Video Conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Paramjit Singh Jammu, Advocate, for the petitioner.

HARSIMRAN SINGH SETHI J. (ORAL)

Present petition has been filed for setting aside the order dated 31.05.2021 (Annexure P-5) by which the claim of the petitioner for the grant of extension in service beyond the age of 60 years, has been declined.

Learned counsel for the petitioner argues that though the petitioner is working as Assistant Professor on contract basis with the respondent-University but the petitioner is entitled to continue in service beyond the age of superannuation either on re-employment or by the grant of extension.

On being asked, as to under what regulations of the University, the petitioner is claiming the re-employment or extension in service beyond the age of superannuation as a matter of right, learned counsel for the petitioner submits that the UGC regulations envisage the same wherein, the power has been given to the Vice-Chancellor of the Central University to enhance the age of superannuation from 65 years to 70 years.

Learned counsel for the petitioner further submits that keeping in view the vacant positions and fitness of the teachers, the University is well within its rights to grant the re-employment on contract basis even after the age of 65 years.

Learned counsel for the petitioner concedes that as of now, the University has its own statutes and rules governing the service, the age of superannuation is 60 years, which the petitioner has already attained.

I have heard learned counsel for the petitioner and gone through the record with his able assistance.

Nothing has been pointed out as to how, once the University has its own regulations and statutes to govern the service conditions of the employees employed in the University, the same will be superseded by the UGC rules being cited. Furthermore, a bare perusal of the rule reproduced by the petitioner relates to the Central University only and admittedly the respondent-University is not the Central University and hence, the reliance being placed by the petitioner upon the UGC regulations is totally misplaced.

Nothing has been pointed out to show that the employees of the respondent-University are being retired at the age of 65 years and not at the age of 60 years as being claimed by the petitioner.

Not only this, learned counsel for the petitioner has conceded that as of now, the age of superannuation in the respondent-University is 60 years and the grant of extension/re-employment is at the discretion of the University in case, the Executive Council recommends the re-employment or extension of any teacher. It is a settled principle of law that where there is a discretion upon the employer to grant the extension or re-employment to

the employee, there is no jurisdiction with the Court to interfere with the said jurisdiction of employer and issue a direction to employer so as to direct the continuance of an employee beyond the age of superannuation.

Once it is not a right to claim extension in service, no writ can be issued on the asking of the petitioner. It is only a right of enforceable and not the discretion which the employer has.

The Hon'ble Supreme Court of India in **Writ Petition (Civil) No.656 of 2007 titled as P. Venugopal versus Union of India, decided on 08.05.2008** has held that the Courts have no power to direct the grant of extension to an employee and it is within employer's discretion to grant extension. The relevant paragraph of the judgment is as under:-

“7. xxx xxx xxx xxx xxx xxx

Similarly under the Service Rules, there may be provision for extension of service after the attainment of the age of superannuation and it is well settled that in the event of refusal by an employer to grant an extension, the employee cannot justifiably claim to be deprived of any right or privilege. The view taken is that the employer has a discretion to grant or not to grant such extension having regard to the interest of the employer or the establishment. This view is expressed by this Court in the [Case of State Bank of Bikaner and Jaipur and Ors. vs. Jag Mohan Lal \(AIR 1989 SC 75\)](#). In this case, at para 12, this Court observed as follows :

"The Bank has no obligation to extend the services of all officers even if they are found suitable in every respect. The interest of the Bank is the primary consideration for giving extension of service. With due regard to exigencies of service, the Bank in one year may give extension to all suitable retiring officers. In another year, it may give extension to some and not to all. In a subsequent year, it may not give extension to any

one of the officers. The Bank may have a lot of fresh recruits in one year. The Bank may not need the services of all retired persons in another year. The Bank may have lesser workload in a succeeding year. The retiring persons cannot in any year demand that "extension to all or none". If we concede that right to retiring persons, then the very purpose of giving extension in the interest of the Bank would be defeated. We are, therefore, of opinion that there is no scope for complaining arbitrariness in the matter of giving extension of service to retiring persons."

Hon'ble Supreme Court of India in **SLP No.22475 of 2012 titled as Yogesh Mahajan versus Prof. R.C. Deka, Director, All India Institute of Medical Sciences decided on 31.01.2018** has held that contract employee has no statutory right for renewal of contract from time to time. The relevant paragraph of the said judgment is as under:-

"It is settled law that no contract employee has a right to have his or her contract renewed from time to time. That being so, we are in agreement with the Central Administrative Tribunal and the High Court that the petitioner was unable to show any statutory or other right to have his contract extended beyond 30th June, 2010. At best, the petitioner could claim that the concerned authorities should consider extending his contract. We find that in fact due consideration was given to this and in spite of a favourable recommendation having been made, the All India Institute of Medical Sciences did not find it appropriate or necessary to continue with his services on a contractual basis. We do not find any arbitrariness in the view taken by the concerned authorities and therefore reject this contention of the petitioner".

The Hon'ble Supreme Court of India in **Civil Appeal Nos. 959-960 of 2000 titled as D.C. Aggarwal (Dead) by LRs versus State Bank of**

India and another, decided on 27.04.2006 has held that extension in service cannot be claimed as a right and the Court cannot issue any such directions. The relevant paragraph of the said judgment is as under:-

“25. The argument for the learned counsel for the appellant proceeded on a misapprehension of the manner in which extension of service is to be granted. In [State Bank of Bikaner and Jaipur and others v. Jag Mohan Lal](#) (hereinafter "Jag Mohan Lal") this Court had occasion to point out that a rule under which extension of service can be granted beyond the normal age of retirement, does not invest a legal right in the employee to be granted such an extension. The very same regulation as in this case was interpreted in [Jag Mohan Lal](#) (supra) and it was pointed out therein that the sole purpose of giving extension of service is to promote the interest of the bank and not to confer any benefit or favour on retiring officers. It was pointed out that it was not a conferment of a benefit or privilege on officers. Merely because the officer has put in the requisite number of years of service, that does not earn him/her that benefit or privilege. This Court observed:

"The Bank, however, is required to consider the case of individual officers with due regard to (i) continued utility; (ii) good health; and (iii) integrity beyond reproach of the officer. If the officer lacks one or the other, the Bank is not bound to give him extension of service. In this case, the Bank has shown to the High Court that the case of the respondent was considered and he did not fit in the said guidelines. The High Court does not sit in an appeal against that decision. The High Court under [Article 226](#) cannot review that decision."

If the bank considers that the continuance of services of an officer is desirable in the interest of the bank, it may allow him to continue beyond the age of superannuation. If the bank considers that the service of the officer is not required beyond the age of superannuation, that is the end of the matter.

Further, non-extension of service is no reflection on the calibre of the officer and it carries no stigma.”

The Hon'ble Supreme Court of India in **Civil Appeal No.3175 of 1986 titled as State Bank of Bikaner and Jaipur and others versus Jag Mohan Lal, decided on 13.09.1988** has held that the authorities have no obligation to extend the service of all the officers even if they are found suitable in every respect. The relevant paragraph of the said judgment is as under:-

“12. It was however, argued for the respondent that the Bank falls within the concept of State' for the purpose of enforcement of fundamental rights. The Bank, therefore, cannot extend the service of some and reject the case of others similarly situated. The concept of [Article 14](#) of the Constitution is relied upon. The argument in our opinion, proceeds on a wrong premise. 'The Bank has no obligation to extend the services of all officers even if they are found suitable in every respect. The interest of the Bank is the primary consideration for giving extension of' service. With due regard to exigencies of service, the Bank in one year may give extension to all suitable retiring officers. In another year, it may give extension to some and not to all. In a subsequent year, it may not give extension to any One of the officers. The Bank may have a lot of fresh recruits in One year. The Bank may not need the services of all retired persons in another year. The Bank may have lesser PG NO 1033 work load in a succeeding year. The retiring persons cannot in any year demand that "extension to all or none". If we concede that right to retiring persons, then the very purpose of giving extension in the interest of the Bank would be defeated. We are, therefore, of opinion that there is no scope for complaining arbitrariness in the matter of giving extension of service to retiring persons.”

A Co-ordinate Bench of this Court in **CWP No.25444 of 2014**

titled as Roshan Lal versus State of Haryana and others, decided on 18.10.2016 has held that right of extension in service is not a legal right but it is a benefit and Government servant has no right to continue in service beyond the age of superannuation and in case, he or she is retained beyond that age, it is only the discretion of the Government. The relevant paragraph of the said judgment is as under:-

*“8. In judgment of **State Bank of Bikaner and Jaipur and others vs. Jag Mohan Lal, 1989 AIR (SC) 75**, it was held by Hon'ble the Apex Court that right of extension in service is not a legal right but it is a benefit, however, this benefit is not a concession but is a privilege, to which, an officer is entitled to after years of hard work in the respondent-Bank. The right to get extension of service beyond the age of superannuation was considered in case **State of Assam vs. Basanta Kumar Das, 1973 (1) SLR 921**. In said judgment, decisions rendered in cases **Kailash Chandra vs. Union of India, AIR 1961 SC 1346**, **B.N. Mishra vs. State, (1965) 1 SCR 693** and **State of Assam vs. Pramadhar, (1971) 1 SCR 503**, were discussed. It was held that a Government servant has no right to continue in service beyond the age of superannuation and in case he or she is retained beyond that age, it is only the discretion of the government. It was further held that in case certain persons were found fit to be continued in service, it does not mean that the others, who were not found fit, had been discriminated. The whole idea is of continuing only the efficient people in service in stead of pleading long length of service. Hon'ble the Apex Court in Basanta Kumar Das's case (supra) has held as under:-*

“A Government servant has no right to continue in service beyond the age of superannuation and if he is retained beyond that age it is only in the exercise of the discretion of the Government.”

Keeping in view the above, the claim of the petitioner i.e. the grant of re-employment or extension beyond the age of superannuation provided under the statutes governing the university employees is the sole discretion of the University and it is the employer only, who has to decide on the said issue keeping in view the various aspects and the Court has no jurisdiction to direct the University to grant extension merely on the asking of an employee and that too without any plausible ground for the same.

Keeping in view the above, no interference is called for in the impugned order dated 31.05.2021 (Annexure P-5) wherein, the services of the petitioner who was working on contract basis has been discontinued on attaining the age of superannuation.

Accordingly, the present writ petition is dismissed.

July 12, 2021

harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No