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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-5507-2023 (O&M)
DECIDED ON: 18.12.2023

SUBHASH CHANDER

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Deepkaran Dalal, Advocate for
Mr. Amandeep Singh Mar, Advocate
for the petitioner.

Ms. Dimple Jain, DAG, Haryana.

Mr. Surender Saini, Advocate
for respondent No.1.

Mr. Satyam Tandon, Advocate
for respondents No.2 and 3.

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SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Articles 226/227 of the Constitution of India has been invoked for issuance of a writ in the nature *Certiorari* for quashing the impugned order dated 04.01.2023 (Anneuxre P-13) whereby, departments are asked to send no due certificate in respect of the petitioner with further prayer for issuance a writ in the nature of *Mandamus* directing the respondents to allow the petitioner to continue in service till 30.04.2025 which is the actual date of retirement and also restraining the respondents from giving effect to the impugned order dated

04.01.2023 (Annexure P-13).

2. The case of the petitioner is that he was appointed on regular basis vide appointment letter dated 03.11.2001. Since Sirsa Coop Sugar Mills Limited, Panniwala Mota, Distt. Sirsa went into losses and therefore the Govt. of Haryana took a decision to wind up/liquidate the said mill vide order dated 23.08.2006 and the Govt. also took a conscious decision that the liquidation process should be so concluded that the regular permanent staff of the mill do not lose their jobs. Accordingly, the office of Managing Director Sugarfed Haryana exercising the powers of Registrar Co- op Societies (Sugar Mills) Haryana passed the orders to adjust the regular permanent staff of the Mill against the vacancies in other Cooperative Sugar Mills of Haryana. The name of the petitioner was in the list of employees to be allotted /absorbed in the Hafed Sugar Mill Assandh. Since, Assandh Sugar Mill was not operational that time, he was temporarily sent to Gohana Sugar Mill. After, the Assandh Sugar Mill started operating, he reported for his duties in the Assandh Sugar Mill in the month of October, 2007. Thereafter, he was also paid the salary as per his last pay drawn in the sugar mill where he was working before joining the Assandh Sugar Mill. It was only when the clarification was sought from the highest authority in Hafed about his revision of pay as per revised pay scale granted to him in the previous sugar mill w.e.f 01.09.2007, Hafed decided to issue him fresh letter of appointment on 23.06.2008 i.e after about 8 months of his joining saying he would be considered as fresh appointee and would not be entitled to any past services. The petitioner was constrained to accept it that time on account of fear of losing job as he

has his family and children to support though there was no mention of age of retirement in the said letter. On 04.01.2023 without any prior information/notice, the petitioner came to know that all the concerned quarters are asked to issue no due certificate in respect of the petitioner alleging that he is going to retire on 30.04.2023 . Hence, the present petition.

3. It has been contended by learned counsel for the petitioner that as per Clause 12 of the appointment letter dated 03.11.2001, the petitioner was to retire at the age of 60 years and not 58 years. The petitioner was deputed in Gohana Sugar Mills firstly on account of winding up of Sirsa Sugar Mills as the same went into losses and then to Assandh Sugar Mills after it became operational. The department decided about the place where the employee was to be deputed and all the employees were allotted the sugar mills by the department itself without asking the choice of employees. Had the Sirsa Sugar Mill continued running or he was adjusted in other Sugar Mill, the petitioner would have retired at the age of 60 years. The assertion is that Sirsa Sugar Mills went into losses on account of no cane crushing in the last three seasons due to non-viability or non-availability of sugar cane in that area and not on account of the actions or any faults of petitioner and other employees and that's why the decision was taken by the department to adjust all the employees including the petitioner in other Sugar Mills in Haryana and the department is duty bound to fulfill all the conditions of appointment letter as well as other obligations towards the services of the petitioner. The action of the department is discriminatory as the employees who were adjusted in other

Sugar Mills are being retired at the age of 60 years whereas the petitioner is being retired at the age of 58 years, which is totally unfair on the part of department and liable to be struck down. It is further asserted that no age of retirement was mentioned in the Fresh offer of appointment of the petitioner which gave the impression in the mind of petitioner that the age of retirement would be 60 years as mentioned in the original letter of appointment as well as in the offer of appointment issued to other employees who were adjusted in other sugar mills. The action of the department is against the principle of natural justice and fair play, as neither any notice nor any prior information was given to the petitioner before reducing his age of superannuation.

4. Learned counsel for the respondents has contended that the petitioner has worked as Cane Development Inspector in the Sirsa Cooperative Sugar Mills Ltd. Panniwala Mota on the basis of appointment letter dated 03.11.2001 (Anneuxre P-1) but later on he was appointed in HAFED Sugra Mills Assandh as Cane Development Inspector (Group C) vide appointment letter dated 23.06.2008 (Annexure R-1) and perusal thereof, show that as per Clause 1 the petitioner would be considered as a fresh appointee and would not be entitled to any past services and his appointment would be exclusively for HAFED Sugar Mills Assandh. The date of birth of the petitioner is 10.04.1965 and in pursuance of the Rules, the petitioner was due to retire on 30.04.2023, as per the proviso of Section 15. Thus, the impugned letter dated 04.01.2023 (Annexure P-1) has rightly been issued by respondent No.2.

5. No other argument has been raised by either of the parties.

6. Heard learned counsel for the respective parties.

7. Admittedly, the petitioner was appointed on 03.11.2001 in the erstwhile Sirsa Sugar Mill on regular basis on the post of Cane Development Inspector and as per Clause 12 of his appointment letter, he was to retire at the age of 60 years but due to winding up of Sirsa Sugar Mill, as per decision of the government, the MD-cum-Registrar, Cooperative Societies (Sugar Mills) passed the order dated 28.11.2006 to adjust the regular permanent staff of the Mill in other co-operative Sugar Mills of Haryana. Later on the petitioner was appointed in HAFED Sugar Mills Assandh as Cane Development Inspector (Group C) vide appointment letter dated 23.06.2008 (Annexure R-1), which was duly accepted by him without any undue influence or coercion.

8. It would be relevant to reproduce Clauses 1 and 7 of the appointment letter dated 23.06.2008 (Annexure R-1), which reads thus:-

> "*1. You will be treated as fresh appointee and will not entitled to any benefit of past service and your appointment is exclusively for HAFED Sugar Mill, Assandh.*
>
> *2. XX XX XX XX XX XX XX XX.*
>
> *3. XX XX XX XX XX XX XX XX.*
>
> *4. XX XX XX XX XX XX XX XX.*
>
> *5. XX XX XX XX XX XX XX XX.*
>
> *6. XX XX XX XX XX XX XX XX.*
>
> *7. Your services will be governed by the Haryana State Supply and Marketing Cooperative Service (Common Cadre) Rules 1988 and as amended from time."*

8. From the afore-said clauses, it is crystallized that the petitioner's services will be governed by the conditions mentioned under HAFED Common Cadre Rules, 1988 and would be considered as a fresh

appointee and would not be entitled to any past services. Reliance can be placed upon Section 15 of HAFED Common Cadre Rules, 1988 wherein, it has been *inter-alia* mentioned that the age of retirement shall be the last day of the month in which he attains the age of 58 years. Hence, the petitioner is governed by the said Rules and as per these Rules, the age of retirement is 58 years except Class-IV employee, whose retirement age is 60 years.

9. Admittedly, there is no challenge to the provision of the Rules as well as to the appointment letter issued on 23.06.2008, which was accepted without any protest. At this stage, the petitioner cannot be allowed to take U-turn, as Law of Estoppel stops him.

10. In view of the discussions made hereinabove, the present petition stands dismissed being devoid of any merits and with no order as to costs.

(SANDEEP MOUDGIL)
JUDGE

18.12.2023
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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No