

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

CWP-7196-2023

Date of decision: 11.05.2023

JASWANT SINGH**..Petitioner****Versus****STATE OF PUNJAB AND OTHERS****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Krishan Singh Dadwal, Advocate
for the petitioner.

Mr. Vishnav Gandhi, DAG, Punjab.

ANIL KSHETARPAL, J.

1. The petitioner primarily challenges the correctness of order passed on 17.03.2023, passed by the Principal Secretary, Government of Punjab, Department of Agriculture and Farmers Welfare, Punjab, while granting permission to extend the period of service of Sh. Gurvinder Singh, Director, Agriculture and Farmers Welfare Department, Punjab, for a period of 6 months beyond the normal age of superannuation i.e. 58 years.

2. He prays for the following substantive reliefs:-

“i. To issue a writ in the nature of certiorari for quashing the order dated 17.3.2023 (Annexure P-10) passed by respondent no. 3, whereby, the respondent no. 5 has been granted the extension in service for 6 months after recalling his order of retirement dated 28.02.2023 as the same is against the instructions dated 02.03.2020 (Annexure P-11), which is beyond the provisions of law, unjust, arbitrary;

ii. Further to issue a writ in the nature of mandamus directing the respondent nos. 1 to 4 to complete the service record of the petitioner and further to constitute departmental promotion committee for consideration of the claim of the petitioner for promotion to the post of director as well as to give current duty charge keeping in view the provisions of The Punjab Agricultural (Group A)

Service Rules 2013 (Annexure P-2) and as amended vide government notification dated 09.01.2020 namely Punjab Agricultural (Group A) (Amendment) Service Rules 2020 (Annexure P-3) as well as instructions dated 14.12.2016 issued by respondent no. 2 (Annexure P-1), wherein, the petitioner is eligible for holding the CDC charge to the post Director as well as further regular promotion, which stand already elaborately explained in the representation dated 27.02.2023 submitted to respondent no. 2 (Annexure P-9), but the same has not been adhered to, which shows the capricious behavior on the part of the respondent no.3, especially when in the similar circumstances, one employee namely Gurvinder Singh was given the same relief as claimed for by the petitioner as in his case the departmental promotion committee was convened two months prior to his becoming eligible under the Punjab Agricultural (Group A) Service Rules 2013 (Annexure P-2) and as amended vide government notification dated 09.01.2020 namely Punjab Agricultural (Group A) (Amendment) Service Rules 2020 (Annexure P-3) as is evident from departmental promotion committee proceedings dated 07.12.2021 (Annexure P-4), thus there exists no reason for the implement of the same procedure and practice in the case of the petitioner and by not doing so, the respondents are acting arbitrary and the same is violative of Articles 14 and 16 of the Constitution of India;”

3. The petitioner is working as a Joint Director, Agriculture (Hydrology). He was not eligible for the promotion to the post of Director on 17.03.2023, however, now he has become eligible for the promotion to the post of Director, Agriculture. The minimum experience of working as Joint Director is 2 years to be considered eligible for promotion as Director.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

5. The learned counsel representing the petitioner contends that the order passed on 17.03.2023 is illegal, unjust and improper as it depicts the non-application of mind. He submits that the petitioner could be given the current duty charge to the post of Director as was the practice in the past.

He further submits that respondent no.5 retired on 28.02.2023, whereas, he has been granted extension vide order dated 17.03.2023.

6. On the other hand, the learned counsel representing the State of Punjab has submitted that as per proviso to Rule 3.6 of Punjab Civil Services Rules, Volume I (Part I), the State Government is entitled to extend the period of service of a government employee beyond the retirement age in the public interest for the reasons to be recorded. He submits that the Principal Secretary has already recorded sufficient reasons which read as under:-

“2. That to complete the on going important works in department and to implement the policies, keeping in view the ability and experience of Sh. Gurvinder Singh while withdrawing his order of retirement dated 28.02.2023, the services of the officer is extended to further 6 months.

3. These are issued as per the orders of Hon’ble Chief Minister of Punjab.”

7. This Court has considered the submissions while evaluating the arguments of the learned counsel representing the parties.

8. Rule 3.26 of Punjab Civil Services Rules, Volume I (Part I), Chapter III, reads as under:-

3.26. *(a) Except as otherwise provided in this rule, the date of retirement of a Government employee shall be as follows, namely:-*

(i) fifty-eight years in the case of Group ‘A’, ‘B’ and ‘C’ employees; and

(ii) sixty years in the case of Group ‘D’ employees;

Provided that if the State Government is of the opinion that it is necessary and expedient so to do in public interest, the Service of a Government employee or a class of Government employees, may be extended for a period of two years on yearly basis, subject, however, to giving an option within a period of three months before the date of retirement by the Government employee, who seeks extension:

Provided further that a Government employee, who is already on extension, shall also give fresh option

within a period of one month from the date of publication of these rules:

Provided further that no Government employee, shall be retained in Service, after the completion of his extended period of Service. However under exceptional circumstances, if the State Government considers it necessary and expedient so to do in public interest, it may extend the Service of a Government employee beyond the aforesaid limit, for the reasons to be recorded, in writing.

(b) Notwithstanding anything contained contrary in these rules or any other rules for the time being in force, during the extended period of Service under clause (a), the Government employee shall be entitled to pay equal to the pay last drawn by him, on attaining the age of fifty-eight years or sixty years including an employee, who is already on extension, as the case may be:

Provided that the Government employee, whose Service is extended, shall not be entitled to, –

(i) promotion;

(ii) the benefit of Assured Career Progression;

(iii) an annual increment; and

(iv) any revision of pay made by the State Government:

Provided further that the pay of the Government employee already on extension, who has been given promotion or the benefit of Assured Career Progression during the extended period till the issue of this notification, shall be protected and he shall be given the retiral benefits on the basis of his protected pay.

(c) A member of the Punjab Civil Services (Judicial Branch) or the Superior Judicial Service shall be required to retire on attaining the age of sixty years if High Court is satisfied of his continued utility to the judicial system, subject to evaluation of his potential by making an objective assessment of his work, conduct and integrity and also keeping in view the reputation acquired by him as a Judicial Officer and has passed an order in this regard, otherwise the Judicial Officer will retire at the age of fifty eight years.

Explanation:–*The decision to enhance the age of superannuation for the officers of the Punjab Civil Services (Judicial Branch) and of Superior Judicial Service has been taken in pursuance of decision of the Supreme Court dated the 24th August, 1993 in Review Petition No. 249 of 1992 in Writ Petition No. 1022 of 1989 and shall be applicable in consonance with guidelines laid therein.*

(d) Notwithstanding anything contained in this rule a Government employee whose date of birth falls on any day of month other than the first of that month, shall on

attaining the age of superannuation determined in accordance with the provision of clause (a), (b) or (c) as the case may be, retire on the last day of that month, which will be a working day.

Explanation.—*A Government employee whose date of birth is the first of the month shall retire on the afternoon of the last day of the preceding month.*

Note 1.—*Omitted.*

Note 2.—*Military Officers serving in Civil employ shall cease to be in such employ on reaching the age of 58 years.*

Note 3.—*Clauses (a) and (b) of this rule apply to all Government employees to whom these rules as a whole apply, whether they be holding temporary or permanent posts substantively or in an officiating capacity. When a Government employee holding a permanent post substantively is officiating in another post, this rule should be applied according to the character of the post in which he is officiating and not according to the character of the permanent post held substantively by him.*

Note 4.—*Omitted.*

Note 5.—*Regarding the day of attaining a specified age, see rule 2.5.*

Note 6.—*This rule is applicable to re-employed personnel and the rules in Chapter VII of Volume II of these rules are subject to the conditions laid down in this rule. Rule 7.17 of Volume II of these rules, however, from the nature of its concession and conditions puts the re-employment of a person in receipt of a superannuation or retiring pension in a special class outside this rule and subject to the conditions stated in that rule itself which must be observed with every renewal of sanction.”*

9. As per the 3rd proviso to Rule 3.26 (a), the State Government under the exceptional circumstances is entitled to extend the service of a government employee in public interest by recording the reasons in writing. It is evident from reading of the order dated 17.03.2023 that the Principal Secretary while passing the order has noted the reasons for grant of extension beyond the retirement age for a further period of six months. This order has been passed with the concurrence of Hon’ble Chief Minister of Punjab. In such circumstances, there is no merit in the submission of the

learned counsel representing the petitioner that the order is not supported by reasons.

10. As regards argument of the learned counsel representing the petitioner with regard to the current duty charge, it may be noted that it depends upon the subjective satisfaction of the competent authority and it will not be appropriate for this Court to issue a writ directing the respondents to hand over the current duty charge.

11. With respect to the argument of the learned counsel representing the petitioner that the petitioner has now become eligible, it may be noted that respondent No.5 has only been granted extension in the service for a period of six months particularly when no other officer was eligible to be promoted to the post of Director, Agriculture.

12. The learned counsel representing the petitioner has also sought issuance of a writ directing the respondent to hold meeting of the Departmental Promotion Committee forthwith. It is for the government to take a decision as to when the meeting of the Departmental Promotion Committee will be held. As of now, respondent No.5 continue to work as a Director.

13. Keeping in view the aforesaid facts, no ground to issue the writ as prayed for, is made out.

14. Dismissed.

15. All the pending miscellaneous applications, if any, are also disposed of.

May 11th, 2023

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No