

2023:PHHC:056641

Mr. G.S.Madaan, Advocate for the petitioners
in CWP-6894-2023

Mr. Vikas Mohan Gupta, Addl. AG, Punjab
Mr. Vikas Arora, AAG, Punjab

ANIL KSHETARPAL, J

1. A batch of 20 connected writ petitions (details whereof are given at the foot of the judgment) having common issue, has come up for disposal. Learned counsel representing the parties are ad idem that this bunch of writ petitions can conveniently be decided by a common judgment.

2. After having heard and analyzed the arguments of the learned counsel representing the parties at length and while going through the paperbook, this Court is called upon to decide the following question:-

“Whether the retirement age of the employees of the Punjab Government suffering from “disabilities” is 60 or 62 years?”

3. In substance, the petitioners in all the writ petitions pray that their retirement age is 62 years in view of the judgment passed in CWP-25972-2015 (**Dr. Jagjivan Singh vs. State of Punjab and others**) decided on 03.08.2016. The petitioners, in majority of cases of this batch, after attaining the age of 60 years are leading a retired life, whereas in some cases, on account of the interim order, the petitioners are still in service.

4. In order to comprehend the controversy involved in the present writ petitions, some relevant facts, in brief are required to be noticed, which are as follows:-

The Parliament enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 in order to grant not only equal opportunities to the persons suffering from disabilities but to ensure the protection of their rights and full participation. The aforesaid Act was replaced by the Right of Persons with Disabilities Act, 2016. The petitioners herein are/were employees of the Punjab Government. As per rule 3.26 of the Punjab Civil Services Rules, Vol.I, Part I, Chapter III, the retirement age of Group A, B and C employees is 58 years whereas it is 60 years in the case of Group D employees. Rule 3.27 of the Rules starts with a non-obstante provision. It is provided that the date of retirement of a Government employee, other than a Group D employee, who is suffering from any of the disabilities, shall be the date on which he attains the age of 60 years instead of 58 years. Rule 3.27 of the Rules is extracted as under:-

“3.27. Notwithstanding anything contained in rule 3.26, the date of retirement of a Government employee (other than a Group „D" employee), who is suffering from any of the disabilities viz., blindness or low vision, hearing impairment, locomotor disability or cerebral palsy, shall be the date on which he attains the age of 60 years instead of 58 years: Provided that whenever an appointing authority has reason to believe that such a Government employee is mentally or physically unsuitable to discharge the duties of the post held by him, it shall require him to appear before a Civil Surgeon for a medical check-up and his continuance in the Government service beyond the age of 58 years, shall be subject to being declared fit on such medical check-up.

Explanation 1.– (i) The term “disabilities” used in this rule shall have the same meaning as defined in

Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Central Act 1 of 1996); and (ii) The expression "a Government employee, who is suffering from any of the disabilities" means a Government employee who is suffering from not less than forty per cent of any of the disabilities mentioned in this rule as certified by the medical authority specified by the Government.

Explanation 2.—(i) 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 60 years, retire on the last day of that month, which will be a working day; and (ii) 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."

5. Learned senior counsel representing the petitioners has filed a written note of his submissions with the gist of his arguments, which reads as under:-

Arguments on behalf of the petitioner(s)

"A. Employees working on any of the posts namely Class A, B, C or D, are to be treated at par with Class IV/Blind Employees since all disabled employees are in an equally disadvantageous position and no discrimination can be done amongst the disabled people, as also held in Bhupinder Singh's case supra, which attained finality since the SLP filed subsequent thereto was dismissed as also Dr. Jagjivan's Case supra.

B. Provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995:

a. Section 2 (i) defines disability and reads as:- "(i) "disability" means- (i) blindness; (ii) low vision; (iii) leprosy-cured; (iv) hearing impairment; (v) locomotor disability; (vi) mental retardation; (vii) mental illness."
b. Section 2 (t) defines persons with disability and reads as:- "(t) "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority."

C. Chapter VI deals with the employment. Section 32 requires the appropriate Govt. to identify the posts in the establishment which can be reserved for the persons with disabilities. It also requires periodical review of the list of posts identified. Section 33 makes reservation of 3% for three categories of persons suffering with disabilities.

D. Section 38 of the Act provides for formulation of schemes for ensuring employment of persons with disabilities by the appropriate govt. and local authorities.

E. Section 47 further prevents discrimination in Govt. employment.

Provisions of the Rights of Persons with Disabilities Act, 2016:

a. Section 2 (r) defines "persons with benchmark disability"- person with benchmark disability" means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;

b. Section 2 (s) defines "person with disability"- (s) 'person with disability" means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;

c. Section 3 provides for Equality and Non-discrimination.

d. Section 20 provides as follows-

(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment: Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service: Provided that, if an employee after acquiring disability is not suitable for the post he was

holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.

e. Section 33 and Section 34 provide for reservation in posts.

f. Section 2 (zc) r/w the Schedule provides for a list of specified disability.

D. The Petitioner(s) herein are seeking parity with the following employees:

S.No	Name	Extension
1.	Gurmail Singh	Class IV employee-1 year from 01.07.2017 to 30.07.2018 vide letter dated 05.07.2017
2.	Jarnail Singh	1 year extension from 60 to 61 years from 01.08.2017 to 31.07.2018 vide letter dated 28.07.2017
3.	Balbir Singh	1 year extension from 31.07.2017 to 31.07.2018 under 3% quota
4.	Tarsem Singh	1 year extension from 01.10.2017 to 30.09.2018 from 60 to 61 years vide order dated 18.10.2017
5.	Piara Ram	2 year extension; from from 01.05.2016 to 30.04.2017 and then from 01.05.2017 to 30.04.2018
6.	Khajan Singh	1 year extension from 60 to 61 years from 01.06.2017 to 31.05.2018 vide letter dated 29.03.2017
7.	Dharampal	2 year extension; first from 01.11.2016 to 31.10.2017 and then from 01.11.2017 to 31.10.2018
8.	Bir Singh	1 year extension from 60 to 61 years vide letter dated 14.09.2017
9.	Gopal Dutt	Class IV employee-1 year extension from 61 to 62 years from 01.10.2017 to 30.09.2018

6. Learned senior counsel representing the petitioners also relies upon the following judgments in support of his submissions:-

1. **UOI vs. National Federation of the Blind (2013) 10 SCC 772**
2. **Bhupinder Singh vs. State of Punjab, 2011 (4) SCT 55**
3. **Dr. Jagjivan Singh vs. State of Punjab, 2016 (4) SCT 421**
4. **State of Kerala vs. Leesammamma Joseph, 2021 (9) SCC 208**
5. **Sh.M.L.Patil (since deceased through LRs) vs. State of Goa & Another, 2022 (3) SCT 113**
6. **Govt. of India and another vs. Ravi Parkash Gupta and another, 2010 (7) SCC 626.**

7. On the other hand, learned State counsel, apart from referring to the Punjab Civil Services Rules submits that the Government vide a conscious decision dated 22.05.2017 has provided that the retirement age of the blind employees as well as physically handicapped employees is 60 years. He further submits that the judgment passed in **Dr. Jagjivan Singh's case (supra)** is in the peculiar facts of the case because at that time the Government had given option to the employees to seek extension in service for a period of 2 years. Hence, the judgment in **Dr. Jagjivan Singh's case (supra)** is distinguishable.

8. As regards argument that there cannot be any discrimination amongst the disabled employees, it may be noticed that as per the instructions issued on 22.05.2017, the retirement age of persons with disabilities is 60 years which is uniform and there is no distinction between persons suffering from visual disability or physically disabled employees. Hence, there is no substance in the argument of the learned counsel.

9. This Court has carefully read the judgment passed by a Co-ordinate Bench in Dr. Jagjivan Singh's case (supra). That judgment was passed when the Government itself had decided to enable the employees to opt for 2 years extension in service to all the State employees uniformly. In that context, the learned Single Judge in **Dr. Jagjivan Singh's case (supra)** held that the employees suffering from disability are entitled to continue upto the age of 62 years. Moreover, the instructions issued on 22.12.2014 enabled employees suffering from visual disability were held entitled to continue to serve upto the age of 62 years whereas the persons from other disabilities were sought to be retired at the age of 60 years. The Court while relying upon the judgment passed in **Bhupinder Singh's case (supra)** allowed the writ petition. Furthermore, the attention of the Bench was not drawn to Rule 3.27 of the Rules. Subsequently, the instructions were issued on 22.05.2017. Hence, the judgment in **Dr. Jagjivan Singh's case (supra)** does not help the case of the petitioners. Learned counsel has also referred to the judgment passed in **Bhupinder Singh's case (supra)**. In this case, the Court held that restricting the benefit of enhancement of the retirement age only to blind persons tend to discriminate between different categories of persons suffering from disabilities. Thus, the State was directed to uniformly extend the benefit of enhancement of retirement age to all categories of the disabled Government employees. Though the aforesaid judgment has been upheld in the Letters Patent Appeal as well as the Special Leave Petition, however, it does not lay

down anything about the privilege of the Govt employees suffering from ‘disabilities’ to continue in service upto the age of 62 years.

10. Learned senior counsel representing the petitioners also relies upon the judgment passed in **National Federation of Blind’s case (supra)**. This was passed in an appeal arising from the judgment of the Delhi High Court. It was held that the computation of 3% reservation for persons suffering from the disabilities is based on total number of vacancies in the cadre strength. However, the enhancement of the retirement age was neither directly in issue nor decided.

11. The next judgment relied upon by the learned senior counsel representing the petitioners is **Leesamma Joseph’s case (supra)**. In that case, the Supreme Court held that the persons suffering from disabilities have right to reservation in the promotions. Similarly, in **M.L.Patil’s case (supra)**, the Supreme Court was considering the question of arrears of pension and the date from which such arrears shall be payable. In **Ravi Prakash Gupta’s case (supra)**, it was held that delay in identification of post cannot be used as a tool to deny benefits of reservation under Section 33 of 1995 Act. Question of backlog vacancies was also decided. Thus, it is evident that in none of the judgments of the Supreme Court in cases including **National Federation of Blinds, M.L.Patil, Leesamma Joseph and Ravi Prakash Gupta cases** are applicable to the facts of the present cases.

12. At this stage, it will be appropriate to trace the history of instructions issued by the State of Punjab from time to time. On 01.08.1977, a decision was taken to grant the benefit of liberal re-

employment after the normal age of retirement upto the age of 60 years. On 16.03.1995, once again similar benefit for the blind State Government employees was re-instated. On 19.11.2014, the Punjab Government decided to implement the decision of the Supreme Court in **Bhupinder Singh's case (supra)**. On 21.11.2014, an explanation regarding extension of the service period of the employees suffering from disabilities was issued while clarifying that blind and physically handicapped employees, whose retirement age is already 60 years, the extension of 2 years is not to be given to them. Thereafter, on 22.12.2014 another clarification was issued. On 22.05.2017, instructions, as already noticed were issued, the operative part whereof reads as under:-

“I have been directed to look into the notification No.GSR 57/Const./Ar.309 Amd/2015 dated 30.10.2015 and instructions No.22/2/12-3 Finance Personnel 2/471 dated 20.09.2013 of Finance Department and have been instructed to say that according to these Rules/Instructions the employees or Punjab Government have been granted extension of 1 year to 1 year service on the basis of 1 year aforesaid circular but however, as per circular No.22/2/12-3FP2/350090/1 dated 21.11.2014 and circular no.22/2/12-3FP2/1 & 3 dated 22.12.2014, according to these circulars, the blind employees and physically handicapped employees, the retirement age of these employees has already been made as 60 years and according to the aforesaid circular/Rules the extension in service of two years (1+1) which is optional and the same cannot be extended to those employees.

2. The government while considering the entire matter has decided that the employees who came to be appointed under 3% physically handicapped quota, the circular/rules as issued by the

Finance Department as aforesaid the optional extension in service would be given to them only during their service.

3. The aforesaid instruction would be applicable immediately.

4. These instructions would be followed as it is forthwith.”

13. The petitioners have also challenged the correctness of the decision taken by the Government on 25.05.2017.

14. It is evident from reading of clause (b) that there is no substantive argument. Similar is the position with regard to the argument under clause (c). Learned senior counsel has failed to draw the attention of the Court to any provision in the 2016 Act or the Rules framed thereunder, which entitles the Punjab Government employees suffering from disabilities to seek extension of service beyond the age of 60 years. As regards the argument under clause (d), it may be noticed that discrimination is positive concept and cannot be used to perpetuate illegalities. It has been laid down that if someone has been wrongly extended the benefit, it cannot be cited as a precedent for claiming similar benefit by others. Guarantee of equality before law under the Article 14 is a positive concept and cannot be enforced in a negative manner. If any illegality or irregularity is committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of the Courts for perpetuating the same illegality or irregularity (**Ref. Chandigarh Administration UT vs. Jagdish Singh (1995) 1 and Union of India vs. M.V.Sarkar SCC 745, (2010) 2 SCC 59**)

15. Not only the service rules framed under the proviso to Article 309 of the Constitution of India but also the instructions issued on 22.05.2017 leave no iota of doubt that beyond the age of 60 years, the extension in service is not provided. Also, there is no discrimination between the employees suffering from visual and other disabilities. Thus, there is no occasion for the Court to issue direction to continue the petitioners in service upto the age of 62 years.
16. Keeping in view the aforesaid discussion, the result is inevitable. Consequently, all the writ petitions are dismissed.
17. Judgment in CWP-6894-2023 was reserved on 20.04.2023 and the controversy involved in this case is the same as in the aforesaid cases. Hence, the same is also dismissed in the same terms.
18. All the pending miscellaneous applications, if any, are also disposed of.

21.04.2023
rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

Sr. No.	Case no.	Parties name
1.	CWP-12524-2022	Devinder Singh vs. State of Punjab and others
2.	CWP-6894-2023	Balvir Singh vs. State of Punjab and another
3.	CWP-27258-2019	Bahadar Singh and another vs. State of Punjab and others
4.	CWP-34420-2019	Jit Singh vs. State of Punjab and others
5.	CWP-9797-2018	Sarabjit Singh and others vs. State of Punjab and others
6.	CWP-18173-2019	Paramjit Singh Randhawa vs. State of Punjab and others
7.	CWP-4408-2020	Surinder Kumar vs. State of Punjab and

		another
8.	CWP-30968-2019	Sucha Singh vs. State of Punjab and others
9.	CWP-10227-2021	Seera Singh and anther vs. State of Punjab and others
10.	CWP-15785-2020	Tilak Raj Khanna vs. State of Punjab and others
11.	CWP-7540-2018	Jasbir Singh @ Jasvir Singh vs. State of Punjab and others
12.	CWP-24745-2017	Satish Kumar Sharma vs. State of Punjab and others
13.	CWP-27955-2018	Balvir Singh vs. State of Punjab and others
14.	CWP-24851-2017	Rajinder Singh vs. State of Punjab and another
15.	CWP-27606-2017	Madan Lal vs. Punjab State Power Corporation and others
16.	CWP-15802-2022	Nirmal Singh vs. State of Punjab and others
17.	CWP-27992-2017	Iqbal Singh vs. State of Punjab and others
18.	CWP-20665-2021	Paramjit Singh vs. State of Punjab and others
19.	CWP-17303-2022	Himat Singh vs. State of Punjab and another
20.	CWP-9798-2018	Inder Singh and others vs. State of Punjab and others

21.04.2023
rekha

(ANIL KSHETARPAL)
JUDGE