217 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.14053 of 2017 (O&M)
Date of decision : 23.02.2023

Nek Chand ...... Petitioner

versus

State of Punjab & ors. ...... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

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Present :- Mr. Munish Jolly, Advocate for the petitioner.

Mr. Rajesh Mehta, Addl. A.G., Punjab

Ms. Monica Chhibber Sharma, Advocate
for respondents No.2 to 4.

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PANKAJ JAIN, J. (ORAL)

Petitioner is aggrieved of the order dated 26.05.2017 (Annexure P-5) whereby he has been ordered to retire w.e.f. 30.06.2017 (AN) on attaining the age of 60 years. Petitioner further claims writ in the nature of mandamus directing the respondents not to retire petitioner on 30.06.2017 and grant him two years extension in the light of instructions dated 08.10.2012 (Annexure P-6) and that dated 22.05.2017 (Annexure P-7).

Petitioner was in service of respondents No.2 to 4-PSPCL. Owing to his disability he was entitled for extension in the age of superannuation beyond 58 years. The claim of the petitioner is based upon instructions issued by State of Punjab dated 08.10.2012 and 22.05.2017.

Respondents-Corporation in their written statement claimed that since the instructions being relied upon by the petitioner were never adopted by the Corporation, the same will not be binding upon them and thus the petitioner cannot be granted any extension beyond 60 years. The issue with respect to the applicability of the instructions issued by the State on the autonomous Corporations came up for consideration before the Division Bench of this Court in CWP No.11994 of 2013, titled as ***Lal Chand Goyal Vs. Punjab State Agricultural Marketing Board & ors.,*** decided on 10.02.2014 wherein the Division Bench held as under :-

> *"The question of grant of extension in service beyond the age of superannuation has been considered by Hon'ble the Supreme Court in various cases. The common thread in all these decisions is that there is no legal right vested in an employee to seek extension in service beyond the age of superannuation. It is a discretion available to every employer, every management and State to exercise discretion keeping in view public interest. It has also been stated that the extension in service is not conferment of benefit or privilege on the Officer. Hon'ble the Supreme Court in the case of* ***State Bank of Bikaner & Jaipur v. Jag Mohan Lal, 1989 Supp (1) SCC 221, at page 224*** *held as under:*
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> > *"9. It seems to us that the High Court has misconstrued the legal right claimed by the respondent. The right to get extension of service beyond the age of superannuation has received consideration of this Court in several cases. In State of Assam v. Basanta Kumar Das. after reviewing almost all the earlier decisions [Kailash Chandra v. Union of India; B.N. Mishra v. State of U. P and State of Assam v. Premadhar], this Court said: (SCR p. 165 : SCC p. 467, paras 16 and 18)*
> > *"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 exercise of the discretion of the Government....*
> > *The fact that certain persons were found fit to be continued in service does not mean that others who were not so found fit had been discriminated against. Otherwise the whole idea of continuing only efficient people in service even after they had completed 55 years*

becomes only meaningless."

10. What do we have here in this case to distinguish those principles or not to apply those principles? In our opinion, there is none. In the scheme provided herein the respondent or any other officer of the Bank has a legitimate right to remain in service till he attains the age of superannuation. But beyond that age, he has no such right unless his service is extended by the Bank. The further rights of parties are regulated by the proviso to Regulation 19(1). It reads:

"Provided that the competent authority may, at its discretion, extend the period of service of an officer who has attained the age of 58 years or has completed thirty years' service as the case may be, should such extension be deemed desirable in the interest of the Bank."(emphasis supplied)

11. Look at the language of the proviso and the purpose underlying it. The Bank may in its discretion extend the service of any officer. On what ground? For what purpose? That has been also made clear in the proviso itself. It states "should such extension be deemed desirable in the interest of the Bank". The sole purpose of giving extension of service is, therefore, to promote the interest of the Bank and not to confer any benefit on the retiring officers. Incidentally the extension may benefit retired officials. But it is incorrect to state that it is a conferment of benefit or privilege on officers. The officers upon attaining the age of superannuation or putting the required number of years of service do not earn that benefit or privilege. The High Court has completely misunderstood the nature of right and purpose of the proviso. The proviso preserves discretion to the Bank. It is a discretion available with every employer, every management, State or otherwise. If the Bank considers that the service of an officer is desirable in the interest of the Bank, it may allow him to continue in service beyond the age of superannuation. If the Bank considers that the service of an officer is not required beyond superannuation, it is an end of the matter. It is no reflection on the officer. It carries no stigma."

In the case of ***D.C. Aggarwal v. State Bank of India, (2006) 5 SCC 153, at page 164, Hon'ble the Supreme Court ,*** *held as under:*

"29. The argument of 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 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 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.5 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: (SCC p. 225, para 12)

"12. 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."

30. 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.

31. It appears to us that these principles were not kept in mind by the learned Single Judge when he interfered with the discretion of the respondent Bank not to grant an extension to the appellant. The Division Bench has, however, rightly applied the legal principle stated in Jag Mohan Lal and found that there was no such right vested in the appellant to demand an extension beyond the age of fifty-eight years. Further, in the facts and circumstances of the case, the Division Bench found that the extension had been refused for good reasons and was not liable to be interfered within its writ jurisdiction. We agree with this reasoning of the High Court."

In a recent case ***P. Venugopal v. Union of India, (2008) 5 SCC 1, at page 8,*** *the same view was reiterated:*

"8. It is true that in establishments like AIIMS, there is an age of

superannuation governing the length of service of its officers and employees. Such age of superannuation may be suitably altered by way of reducing the age so as to affect even the serving employees under appropriate circumstances and no exception can be taken to such course of action. 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 was expressed by this Court in State Bank of Bikaner and Jaipur v. Jag Mohan Lal. In this case, at AIR para 12, this Court observed as follows: (SCC p. 226, para 13)

"13. … 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 '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 of arbitrariness in the matter of giving extension of service to retiring persons."

In the light of the above discussion, it has to be held that the instructions dated 27.02.2013 (Annexure P-6) and the order dated 26.03.13 (Annexure P-7) are legal and valid. No direction or mandamus is liable to be issued to the respondent-Board to grant the benefit of extension of one year service to the petitioner beyond the age of superannuation."

Similar is the view of Apex Court in the case of ***Punjab State Co-operative Milk Producers Federation Ltd. & anr. Vs. Balbir Kumar Walia***

& ors, (2021) 8 SCC 784 wherein it was held that the decisions involving financial implications on Boards & Corporations are better to be left within domain of Corporations & Boards as they have to depend on either their own resources or seek grant from Government observing as under :-

> *"32. The Central or State Government is empowered to levy taxes to meet out the expenses of the state. It is always a conscious decision of the government as to how much taxes have to be levied so as to not cause excessive burden on the citizens. But the Boards and Corporations have to depend on either their own resources or seek grant from the Central/ State Government, as the case may be, for their expenditures. Therefore, the grant of benefits of higher pay scale to the Central/State Government employees stand on different footing than grant of pay scale by an instrumentality of the State."*

In view of the aforesaid law laid down no relief can be granted to the petitioner. Resultantly, this writ petition is dismissed.

Since the main case has been decided, the pending civil miscellaneous applications, if any, also stand disposed off.

(PANKAJ JAIN)
JUDGE

23.02.2023
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No