235 2023:PHHC:166936

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-17139-2017
Date of decision : 17.10.2023

Gurskander Singh and others ...Petitioners

Vs.

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Dinesh Maurya, Advocate for
Mr. D.S.Dalee, Advocate
for the petitioners.

Mr. T.P.S.Walia, AAG, Punjab
for respondent Nos.1 to 4.

Mr. Arun Gosain, Advocate
for respondent Nos.5 and 6.

***

DEEPAK MANCHANDA, J.(Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the order dated 13.02.2017(Annexure P-11) passed by respondent No.3 vide which the claim of the petitioners seeking enhancement in retirement age from 58 to 60 years has been denied/declined. Further, prayer in the writ petition is for implementing the Policy of the Punjab Government as contained in letter No.1/7/2002/08/V.V.(PEFD)S.O.-1/261-78 dated 27.02.2013 (Annexure P-1).

2. The facts as pleaded in the petition are that the petitioners, who were employees of the Milkfed/Milk Union, Sangrur, on attaining the age of superannuation i.e. 58 years, retired on 31.03.2015, 30.11.2014 and 31.10.2014

respectively, vide order(s) dated 31.03.2015 (Annexure P-6), 28.11.2014 (Annexure P-7) and 31.10.2014 (Annexure P-8) passed by respondent No.6.

3. Earlier, the petitioner No.1 and five other similarly situated employees of the Milkfed/Milk Union approached this Court by way of filing CWP No.4064 of 2015 with a prayer for issuance of a writ in the nature of mandamus directing the respondents to implement the policy of Punjab Govt. and guidelines in toto in their respective Organizations which are covered under the Punjab Civil Service Rules, with a further prayer to stay the retirement of the employees of Milkfed/Milk Unions of Punjab till the pendency of the writ petition. The said writ petition was disposed of vide order dated 09.03.2015 (Annexure P-9) with the following orders:-

> *“ xx xx xx xx*
>
> *I feel that seeking of written statement in this case would unnecessarily delay the matter and in the peculiar facts of the case, direct the Registrar, Co-operative Societies, Punjab to consider the resolution by the Board of Directors of the Punjab State Co-operative Milk Producers' Federation Limited, with regard to enhancement of retirement age of its employees from 58 years to 60 years and then take a final decision thereupon within three months from the date of receipt of a certified copy of this order.*
>
> *The present writ petition stands disposed of in terms of aforesaid directions.”*

4. Yet another writ petition bearing CWP No.10046 of 2015 was filed by the present petitioners and two others for issuance of a writ in the nature of mandamus directing the respondents to implement the policies of the Punjab Govt. dated 27.02.2013 and 28.08.2014 and the guidelines (Annexures P-1 and P-2 therein) in toto in their respective organizations with further prayer to set aside the order of Financial Commissioner dated 05.03.2015 (Annexure P-14, therein) and to direct the respondent No.6 to implement the option given

by the petitioner No.1. The said writ petition was disposed of vide order dated 24.10.2016 (Annexure P-10) directing the respondents to reconsider the case of the petitioners afresh and pass a speaking order as to how the claim of the petitioners has been rejected within a period of two months and in case, the presence of the petitioners was required, they might be given opportunity of hearing.

5. In pursuance of the directions of this Court dated 24.10.2016 (Annexure P-10), respondent No.3/Registrar, Cooperative Societies passed the speaking order dated 13.02.2017 (Annexure P-11), rejecting the claim of the petitioners finding no justification to permit extension in service after retirement to the employees of Milk Union, Sangrur, which is impugned in the present writ petition. Hence this writ petition.

6. Learned counsel for the petitioners submitted that the case of the petitioners is fully covered under the policy/letter dated 27.02.2013 (Annexure P-1) of the Punjab Government as these were to apply to all those employees, who were to superannuate after the date of the instructions dated 27.02.2013, therefore, he prays for quashing of the impugned order dated 13.02.2017 (Annexure P-11) and to issue necessary directions to respondents to implement the policy of extension/enhancement of retirement age of the petitioners beyond 58 years.

7. Learned State counsel while referring to the preliminary objections of the reply filed on behalf of respondent Nos.1 to 4 submits that permission for extension in service after retirement of the employees of the Milk Union, Sangrur has been rightly denied vide impugned order dated 13.02.2017 (Annexure P-11) based upon the report of the Managing Director,

Milkfed dated 03.02.2017 to the effect that the Milk Union, Sangrur is running in losses and it is totally a sick unit finding it very difficult to carry on its business. Moreover, as per instructions of the Government of Punjab vide their letter dated 27.02.2013, referred to in the impugned order, extension is not to be given to the employees of those organizations, who got grant-in-aid from Government of Punjab. Since the Milk Union, Sangrur has received grant-in-aid from the government, therefore, the employees of the Union are not eligible to be granted extension even in view of the said government instructions dated 27.02.2013. Further, while referring to para 2 of the preliminary objections it has been contended that respondent No.6 as a Society in terms of Section 30 of the Punjab Cooperative Societies Act, 1961, is not amenable to writ jurisdiction and therefore, the present writ petition is liable to be dismissed on this ground as well. He further submits that the petitioners stood retired on attaining the age of superannuation i.e. 58 years vide orders (Annexure P-6 to P-8) and have already attained the age of 60 years even prior to the filing of the present writ petition. Hence, prayed for the dismissal of the writ petition.

8. I have heard learned counsel for the parties and gone through the case file carefully.

9. To proceed further, it would be useful to refer to salient features of the instructions dated 27.02.2013 (Annexure P-1), which are as under :

> *"4. Now the finance department has received the cases of various boards and corporation vide which they have sought direction of govt. and many of their boards/corporation's has sought permission to grant one year extension in service to their employees.*
>
> *(a) This decision will be applicable to those, who had made provisions for the modifications of their Bye laws/governing rules to implement, Punjab Civil Service Rules or the employees of those organizations*

whose retiring age is like that of Punjab Government.

(b) By taking approval from to heir administrative department, boards/corporations can gave one years extension to their employees at their own level.

(c)Before giving extension to the employees Boards/ Corporations should keep following points in their minds:-

(i) The one year extension will be applicable to all the employees and no policy of pick and choose will be adopted as the Punjab Government has given one year extension to all their employees

(ii) In those Organizations where diminishing cadre has been declared in specific category, this extension will not be given to the employees of those cadres or where there is surplus staff in any category.

(iii)In those organizations where this extension affects the financial condition of that organization this extension will not be given.

(iv) This extension will not be given to the employees of this organizations, who got Grant in aid from Punjab Govt.

This extension will be applicable to their employees/officers whose retirements date is due after the issuance of this letter."

10. A perusal of the above instructions clearly provide that the above instructions are applicable to those Boards/Corporations, who have made provisions in their bye-laws and service rules to adopt Punjab Civil Services Rules or those Boards/Corporations, in which the age of retirement is at par with the State Government. It further provides that the extension of one year service shall not be granted in case where financial position of those Boards/Corporations is effected by granting one year extension in service, the extension, if to be granted, has to be in respect of all employees and no pick and choose policy is to be adopted and that the concerned Institution is not receiving any grant-in-aid from the Government.

11. Further, a perusal of Annexure R-1 i.e. the comments of

respondent Nos.5 and 6 regarding CWP-10046-2015 shows that the Milk Union/Milkfed submitted its proposal to the Government/respondent No.3 that it is not in a position to give the benefit of one year extension in service to its employees as the Milk Union is under financial loss. The relevant contents of the proposal are as under:-

> ***"A. Milk Union Sangrur***
> *xxxxxxx*
> *iii. Due to heavy cumulative losses, Milk Union Sangrur is facing serious shortage of working capital and in order to carry out the day to day activities, this Milk Union has taken Short Term Loans from the Bank which was Rs.13.00 Crore as on 31.03.2016.*
> *iv. Most of the employees of Milk Union Sangrur are at the fag end of service and are drawing very high salary which is making financial health of this Milk Union from bad to worse. As such it is not in the organization to extend the retirement age from 58 years to 60 years as the new entrants are cheaper and more educated.*
> ***B. Milkfed Punjab***
> *xxxx*
> *iii. Milkfed has its own service rules which have the provision to retire every employee on the completion of 58 years of age and there is no provision of any extension therein. In many cases milkfed differs from the rules applicable to the employees of Punjab Govt.*
> *iv. Milkfed is taking loans from different sources and as on 31.03.2016, there was loan of Rs.12.49 Crores got from NABARD for up gradation of processing units. Recently Milkfed has received sanction from National Cooperative Dairy Federation of India for the loan of Rs.32 Crores out of which Rs.4.80 Crore are grant in aid."*

12. Apart from above, a reading of impugned order shows that the respondent No.3 rejected the claim of the petitioners after considering the

report of the Managing Director, Milkfed wherein it has been stated that the Milk Union Sangrur is running in losses and cumulative loss as on 31.03.2016 was Rs.38.04 Crores. Further, as per Instructions dated 27.02.2013 (Annexure P-1), extension is not to be given to the employees of those organizations, who got Grant-in-aid from Govt. of Punjab and since Milk Union, Sangrur has received grant-in-aid from the Govt, therefore, employees of the Union are not eligible for extension. Further, if grant of extension affects the financial condition of organization, the same may not be given and Milk Union, Sangur is in huge losses and further extension will add to the establishment expenses.

13. In the case of ***"D.C. Aggarwal Vs. 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."

14. In a recent case "***P. Venugopal Vs. 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."

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

16. In view of above, it is apparent that the impugned order dated 13.02.2017 (Annexure P-11) is a conscious decision, which has been taken after considering the report of the Managing Director, Milkfed (respondent No.5) which did not find the financial position of the respondent no.6 (Milk Union, Sangrur) sound enough to grant extension in service, in the light of the condition –(iii) of para 4(c) of the letter of the Government of Punjab dated 27.02.2013 (Annexure P-1). Moreover, grant of extension in service after retirement is not justified as the same cannot be said to be vested right of an employee.

17. In view of the above, at this belated stage, this Court is not inclined to accept the prayer made in the writ petition and to interfere with impugned order 27.02.2013 (Annexure P-1) passed by the respondent No.3 in the case of petitioners.

18. Resultantly, finding no merits in this petition, the same is dismissed.

(DEEPAK MANCHANDA)
JUDGE

17.10.2023
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No