

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21273-2016

DECIDED ON: July 17th, 2023

Smt. Harbans Kaur and others

.....Petitioners

VERSUS

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr.Gurcharan Dass, Advocate, for the petitioners.

Mr.Vikas Arora, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J

1. The petitioners are the wife and children of deceased Karnail Singh, who was a physically challenged class IV employee in the Employment Exchange Department with the State of Punjab. He expired on 05.02.2015. The petitioners are claiming the in-service benefits and retiral benefits of said deceased.

2. Brief facts required to be noticed are that Karnail Singh was appointed on 26.06.1975 as a physically handicapped person with 40% disability. He was promoted as Senior Asstt. while in service and as his date of birth was 29.01.1956, he attained the age of 58 years in January 2014.

3. The Govt. of Punjab raised the age of retirement of employees of State Government who were blind from 58 to 60 years vide Circular dated 16.02.1996 (Annexure P-3) but did not enhance of other bodily challenged persons. One Bhupinder Singh preferred a Writ Petition No.7233 of 2010 concealing the said Circular dated 16.02.1996 (Annexure P-3) and this Court held the said Circular to be discriminatory *viz a viz* for the other bodily challenged persons. This Court further directed to treat the Circulars modified

to the extent of benefit of enhancement of age to all categories of disabled Govt. employees as specified under Section 2(1) of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter to be referred to 'the Disabilities Act, 1995) in *tune and spirit* of the Act.

4. The said judgment was taken upto Supreme Court in Civil Appeal No.8855 of 2013 and the Supreme Court directed the Circular to be applicable on all the categories of disabled Govt. employees. The State issued a new circular on 19.1.2014 (Annexure P-6) enhancing the age of retirement of all handicapped persons from 58 to 60 years.

5. The deceased Karnail Singh had, in the meanwhile, requested the Govt. of Punjab to extend his service for one year and extension was granted to him to serve upto 31.01.2015. The extension was granted based on a Policy of the State Govt. of Punjab whereby extension could be granted to Govt. Employees for a period upto two years after retirement.

6. The petitioners claim that Karnail Singh had submitted an application on 27.01.2015 (Annexure P-9) to grant him benefit of the Circular issued by the State Govt. dated 19.11.2014 (Annexure P-6) in terms of the judgment of the Supreme Court and continue him in service upto age of 60 years. The petitioners submit that the respondents wrongfully rejected his claim and resultantly he was not given benefit and should be deemed to be continued in service till his date of retirement. Petitioners, therefore, claim that the respondents be directed to treat Karnail Singh to be deemed to be in service as on the day when he expired i.e 05.02.2015 and the petitioners be given all consequential benefits of the deceased Karnail Singh having been deemed to have expired in service. The petitioners have claimed that the application for seeking compassionate appointment was wrongly rejected on the premise that

the deceased had attained superannuation on January 2014 and on the day when he expired, he could not be said to be in service and the petitioners cannot be said to be dependents of a deceased Govt. employee dying while in service. The petitioners also claim actual salary upto the date of death and also Death-cum-Gratuity and other retiral benefits accordingly.

7. *Per contra*, learned counsel for the respondents submits that deceased Karnail Singh attained superannuation in January 2014 and the State Govt. Circular was issued in November 2014 extending age of a disabled category employee to 60 years, the Circular would not be applicable in his case. Learned counsel submits that the Circular dated 19.11.2014 (Annexure P-6) issued by the State only has a prospective effect. The same has been issued in compliance of the direction of the Supreme Court whereby the earlier Circular was held to be discriminatory in terms of Rule 33 of the Disabilities Act, 1955. Learned counsel further submits that as the Circular dated 19.11.2014 (Annexure P-6) was not made retrospective, benefit under the said Circular of enhancing age cannot be deemed to be applicable to those employees who attained superannuation prior to the said date.

8. Learned counsel has further pointed out that the services of the petitioner were not extended in terms of the Circular dated 19.11.2014 (Annexure P-6) but were extended in terms of a separate policy decision of the State Govt. whereby generally an employee's services could be extended by two years. He points out that Karnail Singh, husband of petitioner no.1, had only prayed for one year extension and thereafter he prayed it to be cancelled in January 2015. But since there being no provision for cancelling the extension after the same has already been granted, the deceased was required to continue till culmination of the extension period of one year. It is further submitted that the deceased expired on 05.02.2015 whereas the extension

ended on 31.01.2015 and therefore on 05.02.2015, petitioner no.1's husband stood superannuated.

9. Having noticed the aforesaid aspects, this Court finds that the petitioner no.1's husband Karnail Singh had attained superannuation age as per the existing rule prevalent as on 31.01.2014 but he was granted extension of service upto 31.01.2015. Before 31.01.2015, the respondents had enhanced the age of disabled Govt. employees to 60 years. Thus, the petitioner, who was in service (though by extension) had a right to continue in service upto the age of 60 years. Extension of service became inconsequential in terms of judgment of the Supreme Court and the consequent Circular of the State Govt. On the date when he expired i.e as on 05.02.2015, he would be deemed to be in service and the petitioner's wife and the other dependents of the deceased were entitled to receive the retiral benefits of the deceased disabled employee which included benefit of compassionate appointment and Death-cum-retirement Gratuity and other retiral benefits upto the date of death. His salary was also required to be considered upto the said date. The question of retrospectivity of the Circular dated 19.11.2014 (Annexure P-6) is not required to be gone into as the facts of the present case clearly reveal that the petitioner no.1's husband was already in service when the circular was issued.

10. There is another aspect to the present case.

11. Infact this Court had already granted the relief of extension of age to all disabled employees upto 60 years vide its judgment passed in **CWP No. 7233 of 2010, decided on 25.05.2011 (Annexure P-5)**, titled **Bhupinder Singh v. State of Punjab and others**, lest the State Govt. challenged the said judgment upto Supreme Court in **State v. Bhupinder Singh's case (supra)** and the said judgment was upheld. Thus, the judgment passed by Supreme Court would become applicable from the date the judgment was rendered by

this High Court. In fact, the State Govt. was not required to issue a new circular as the earlier circular dated 16.02.1996 (Annexure P-3) had been made applicable on all disabled persons by the Supreme Court. The circular issued on 19.11.2014 (Annexure P-6) would therefore, be treated as clarificatory alone.

12. The action of the State Govt. in issuing a circular in 2014 would not nullify, the benefit already granted by this Court in 2011 and therefore, the disabled employee would be deemed to be entitled for benefit of age upto 60 years in terms of the judgment dated 25.05.2011 (Annexure P-5) and circular dated 16.02.1996. The petitioner no.1's husband was in service as on 25.05.2011 and petitioner no.1's husband Karnail Singh would be deemed to be entitled for continue in service upto the attaining the age of 60 years after the pronouncement of judgment of this Court dated 25.05.2011 (Annexure P-5). The judgment passed by this Court on 25.05.2011 has to be treated as judgment in rem and not in personam. Therefore, the benefits have to be made applicable to the disabled employees of the State. Denial of the relief by the respondents to the dependents of the deceased is therefore found to be arbitrary and unjustified.

13. Accordingly, writ petition is allowed and it is directed that the respondents shall release the pension and retiral benefits to the petitioners treating deceased Karnail Singh to be deemed in service upto the age of his death i.e 05.02.2015.

14. The counsel for the petitioners informs that no pension or retiral benefits were released to the petitioner no.1-wife nor any family pension has been released to the petitioners. The same shall now be released. More than seven years have passed away. The arrears shall be calculated along with interest @ 9% per annum. Who-ever is nominated by petitioner no.1, would

also be entitled for consideration for compassionate appointment as the deceased would be deemed to be in service on the date when he expired.

15. The respondents shall also release the Death-cum-Gratuity amount to the petitioner no.1-wife of the deceased along with interest @ 9% per annum.

16. No order as to costs.

July 17th ,2023
mamta

(SANJEEV PRAKASH SHARMA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No