

**CM-15483-CWP-2023 in/and
CWP-17942-2017 2023:PHHC:139425 1
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**(103) CM-15483-CWP-2023 in/and
CWP-17942-2017
Date of Decision : November 02, 2023**

Ram Avtar Singh .. Petitioner

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.S. Sangwan, Advocate, for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-15483-CWP-2023

As prayed for, the application is allowed.

Affidavit dated 06.09.2023 (Annexure A-1) is taken on record.

CWP-17942-2017

1. Present writ petition has been filed challenging the order dated 07.03.2017 (Annexure P-6) by which, the petitioner has been retired on attaining the age of superannuation with effect from 31.03.2017.
2. Certain facts may be mentioned for the correct appreciation of the issue in hand.
3. Petitioner claims that he is a physically handicapped employee and is relying upon a certificate dated 07.10.1986 (Annexure P-1) to claim that he has 70% disability.

4. It may be noticed that after the issuance of the certificate being relied upon by the petitioner, the petitioner was recruited as a Patwari in the year 1996 in the General Category. Upon completion of the Patwari training, the petitioner was duly appointed as a Patwari and since then he was working with the respondent-Department. Keeping in view the date of birth of the petitioner, the petitioner was to attain the age of superannuation i.e. 58 years, on 31.03.2017. Keeping in view the said fact, order dated 07.03.2017 (Annexure P-6) was passed by the respondents that the petitioner will stand retired from service on 31.03.2017, which order was complied with by the petitioner and he stood retired.

5. After a period of five months of the retirement, the present petition was filed claiming that the petitioner is a disabled person and hence, was entitled to continue in service upto the age of 60 years and his service period has been curtailed by the respondents by retiring him at the age of 58 years.

6. Upon notice of motion, the respondents have filed the reply stating that during the service career, the petitioner never raised any claim that he is a disabled employee at any given point of time and rather he was appointed also in General Category. It was further submitted that the assertion of the petitioner that he had submitted the disability certificate dated 07.10.1986 (Annexure P-1) for the consideration of the Department while in service was also incorrect.

7. No replication has been filed to controvert the averments made in written statement.

8. I have heard learned counsel for the parties and have gone through the record with their able assistance.

9. In the present petition, the claim of the petitioner is for continuing in service upto the age of 60 years claiming the benefit of disability certificate dated 07.10.1986 (Annexure P-1). The stand taken by the respondents is that the said disability certificate was never given by the petitioner during his service career at any given point of time for the consideration of the Department so as to claim the benefit of same so as to continue in service upto the age of 60 years. The said averment has gone un rebutted.

10. Only the affidavit of the petitioner is his own assertion that he had given the said certificate to the respondents but nothing has come on record as to on what occasion, the said certificate was submitted by the petitioner to support the claim.

11. Further, it may be noticed that the impugned order was passed on 07.03.2017 (Annexure P-6) informing the petitioner that he will retire from service from 31.03.2017. The petitioner never raised a grievance before the Department before he retired on 31.03.2017. Rather the present petition was filed after five months of his retirement, which goes to show that the petitioner raised a claim before this Court for the first time after five months of the retirement.

12. It is a settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.2848 of 2021 titled as Shubhas Jain vs. Rajeshwari Shivam and others, decided on 20.07.2021*** that the High Court does not have the jurisdiction to decide the disputed question of fact. As per the settled principle of law settled by the Hon'ble Spureme Court of India, the disputed question of facts are to be decided before the Civil Court and the High Court does not have the jurisdiction to decide the same. The

relevant paragraph of the said judgment is as under:-

“26. It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts. It is not for the High Court to make a comparative assessment of conflicting technical reports and decide which one is acceptable.”

13. In the present case, the disputed question of fact arise as the petitioner is claiming that the petitioner had submitted the disability certificate Annexure P-1 before the respondents during his service career, which fact is being vehemently denied, hence, appropriate remedy before the petitioner is to prove the said fact before the Civil Court in case, he intends to get the benefit of the same.

14. The present petition is dismissed as the same is not maintainable before the High Court involving the disputed question of fact.

November 02, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes