

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**LPA-1438-2019 (O&M)
in CWP-13978-2018
Date of decision:07.02.2023**

DAVINDER SINGH BAJWA

... Appellant

Versus

STATE OF HARYANA AND OTHERS

... Respondents

**CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO,
HON'BLE MRS. JUSTICE SUKHVINDER KAUR.**

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Sunil Hooda, Advocate for the appellant.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

M.S. RAMACHANDRA RAO, J. (ORAL)

The appellant was employed in the Public Health Engineering Department of the State of Haryana. While working as Chief Engineer in January, 2014 when he was on official duty he met with an accident which caused 70% disability.

The State of Haryana had issued instructions on 21.04.2008 that those employees who have suffered disability of more than 70% and above, the retirement age would be extended from 58 years to 60 years. Though the appellant had filed several representations to defer his case to PGIMS, Rohtak to access his disability, his case was not referred.

Thereafter, he filed CWP No.11632 of 2018 which was disposed of on 09.05.2018 with a direction to the Engineer-in-Chief to forward his case to the Director, PGIMS, Rohtak within 05 days.

The Medical Board then submitted a report on 18/21.05.2018 that the appellant had 80% visual disability, but he be ordered to be retired at the age of 58 years vide order dated 16/18.05.2018.

This was challenged in CWP No.13978 of 2018 by the appellant. Initially the order dated 16/18.05.2018 directing the appellant's retirement on attaining the age of 58 years was stayed on 30.05.2018.

However, ultimately the Writ Petition filed by the appellant was dismissed by the learned Single Judge on 05.07.2019.

The learned Single Judge in the impugned order held that the Department is not mandatorily required to retain a person blindly if he is suffering from disability more than 70% beyond the age of 58 years; that the position of a Chief Engineer would require an incumbent to discharge multifarious tasks like inspections in the field, monitoring of IT related applications designs, drawings and specifications etc.; and the disability suffered by the appellant would be a great impediment and hindrance in the discharging official duties in consonance with the PWD Code.

Challenging the same this appeal is filed.

Learned counsel for the appellant contended that the view taken by the learned Single Judge is erroneous for the reason that the respondent-Department had obtained a clarification from the Chief Secretary, State of Haryana; in his clarification Annexure P-26 dated 07.02.2019, the Chief

Secretary, State of Haryana had recorded the position that persons having physical disability to the extent of 80%, where such employees possess minimum degree of disability to the extent of 70% or above, would have their retirement age raised from 58 years to 60 years. He also mentioned that the case of the appellant would be covered in Rule 143-1 of the Haryana Civil Service (General) Rules 2016 and instructions dated 31.01.2006, 28.03.2006, 21.04.2008 and 25.02.2015.

Counsel further relied on expert opinion (Annexure P-27) of the Medical Board to which the appellant has been referred to by the State of Haryana, wherein it was held by the Medical Board that the appellant would be fit to perform the duties of Chief Engineer as provided in the PWD Code of the Haryana Government.

Learned counsel for the appellant further contended that when this appeal had come up before the Division Bench on 30.08.2019, a Division Bench of this Court directed that the appellant would be allowed to continue in service till the next date of listing or till he attains the age of 60 years whichever is earlier, and that pursuant to the same the appellant continued to discharge the duties of a Chief Engineer up to 31.05.2020.

Learned counsel contends that a Division Bench of this Court in a judgment dt.21.02.2013 in CWP No.837 of 2005 had held that where interim orders are directed by a Court, and under the umbrella of the same if a party continued to work in a particular position and had retired from the said post, he should be paid the retiral benefits as if he had retired on the said post on attaining the age of superannuation fixed without going into the validity of the orders impugned in the Writ petition.

Learned State Counsel however refuted the said contentions and supported the order of the learned Single Judge.

Having regard to the opinion of the Medical Board as well as the opinion of the Chief Secretary which are placed on record, which are not refuted by the learned State Counsel and having regard to the fact that the appellant had continued in service till he attained the age of 60 years on 31.05.2020, and also judgment dt.21.02.2013 in CWP No.837 of 2005, we are of the opinion that it is not necessary to go into the merits of the matter and the validity of the orders impugned in the Writ petition at this stage.

Therefore, the appeal is allowed and retiral benefits shall be paid to the appellant treating him as having retired at the age of 60 years as a Chief Engineer after deducting amounts, if any, already paid, within two months. No costs.

All pending CMs, if any, shall stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

07.02.2023
Sonia

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