

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

Date of decision : 20.04.2023

CWP No.27413 of 2015

Vaisakha Singh

....Petitioner

Versus

PRTC and another

....Respondents

CWP No.1842 of 2016

Amarjit Singh

....Petitioner

Versus

Pepsu Road Transport Corporation, Nabha

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Vikas Chatrath, Advocate
for the petitioner(s).

Mr. Anupam Singla, Advocate
for the respondents.

PANKAJ JAIN, J. (ORAL)

By way of present writ petitions, petitioners seek writ in the nature of certiorari quashing the impugned order dated 12th of May, 2015, Annexure P-1 (in CWP No.27413 of 2015) and impugned order dated 4th of March, 2015, Annexure P-1 (in CWP No.1842 of 2016) whereby the petitioners have been ordered to be retired on attaining the age of 58 year i.e. w.e.f. 31st of May, 2015 and 31st of March, 2015, respectively.

2. Reliance has been placed upon the Instructions issued by the State of Punjab dated 19th of November, 2014 whereby recognizing the right of the persons with disability under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, 'the 1995 Act'), a special concession was given to the persons with disability by extending their age of retirement in light of the obligation casted under Chapter VI of the 1995 Act. The claim of the petitioners is being resisted on the ground that the respondent-Corporation is an independent autonomous statutory Corporation and any Instructions issued by State of Punjab do not become *ipso facto* applicable on the Corporation and are subject to acceptance thereof. Thus the Instructions of November, 2014 extending the age of superannuation would be applicable to the Corporation and its employees only from the date the same were adopted vide order dated 22nd of January, 2016. The specific stand of the Corporation has been culled out in the written statement in the following terms :

“4. That it is pertinent to mention here that the matter with regard to enhancement of retirement age of disabled employees was placed before the BoD of the Corporation in the 225th meeting held on 04.06.2015, wherein, the following decision was taken by the BOD :-

“The Board desired that before the matter is considered by the board the matter may be referred to the Directors of Disinvestment for seeking clarification.”

That in pursuance to the decision of the BOD, the Corporation sent a letter dated 08.07.2015 to the director, Directorate of Public Enterprises of Disinvestment, Government of Punjab for seeking clarification with regard to enhancement of retirement age of disabled employees of the Corporation from 58 years to 60 years. The matter was examined on 15.07.2015 with Directorate of Public Enterprises of Disinvestment and it was informed by the said department that the clarification be obtained through Administrative Department of the Corporation as the said department do not directly deal with the Boards/Corporation. Accordingly, a letter dated 17.07.2015 was written to the Principal Secretary, Department of Transport, Government of Punjab, being the Administrative Department of the respondent Corporation, to seek clarification from the concerned department that whether the corporation is required to enhance the retirement age of disabled employees from 58 years to 60 years.

5. That the Corporation had not received any reply from the Government of Punjab on the issued in hand and the matter was again placed before the BoD in 226th meeting held on 29.09.2015 and the BoD has decided as under :-

“The matter was discussed in detail and it was decided that as and when the reply is received from the Administrative Department (Transport Department), Managing Director and Chairman may take a decision in this regard and the Board may be informed in the next meeting.”

6. That thereafter, another letter dated 02.11.2015 was written to the Department of Transport, Government of Punjab informing that as of now, the case with regard to enhancement of retirement age of the disabled employees has not been implemented in the Corporation and the Corporation will implement the directions to be received from the Administrative Department.

7. That the Administrative Department vide letter dated 10.12.2015 has recommended to implement the instructions of the Government of Punjab in the respondent corporation in terms of the instructions dated 06.11.2015 received from the Department of Disinvestment. Hence, the Circular dated 19.11.2014 (Annexure P-3) was adopted by the respondent corporation vide order dated 22.01.2016. Since, the petitioner stands retired prior to the adoption of the Circular dated 19.11.2014 (Annexure P-3), which was to effective w.e.f. 22.01.2016, therefore, the petitioner is not entitled to the benefit of the aforesaid circular. A copy of the order dated 22.01.2016 is

appended herewith as **Annexure R-1**.

3. Mr. Chatrath, Advocate representing the petitioners has argued that the stand taken in the present writ petitions is in contradiction to the stand taken by the Corporation in the case of another employee namely Narinder Kumar. Narinder Kumar who was also permanent physically disabled approached this Court by way of CWP No.22742 of 2015 titled as 'Narinder Kumar vs. State of Punjab and others' on the strength of same circular dated 19th of November, 2014 seeking extension of retirement age from 58 to 60 years. In the said writ petition the Corporation in the light of decision taken by Board of Directors in its meeting held on 29th of September, 2015 admitted the claim of the employee and granted him extension of 2 years w.e.f. 31st October, 2015. It has been submitted that the petitioners cannot be discriminated and thus they would also be entitled for the same relief.

4. Faced with the situation, Mr. Singla submits that at the most the adoption of the Circular dated 19th of November, 2014 could be w.e.f. the date of decision taken by the Board of Directors i.e. 29th of September, 2015 and the same cannot be extended to any period of time *ante* the same.

5. I have heard counsel for the parties and have gone through

records of the case.

6. In order to appreciate the argument being raised by counsels it will be apt to peruse the decision taken by Board of Directors which reads as under :-

225.9	Regarding enhancing the retirement age limit of handicapped employees from 58 to 60 years in respect.	
	The matter was taken up with Directorate of Disinvestment through the Administrative Department vide this office letter No.191 dated 17.7.2015. The reminder was also issued vide this office letter No. 339 dated 21.9.2015 but no reply has been received so far.	The matter was discussed in detail and it was decided that as and when the reply is received from the Administrative Department (Transport Department), Managing Director and Chairman may take a decision in this regard an the Board may be informed in the next meeting.

7. A bare perusal of thereof would reveal that even in the meeting held on 29th of September, 2015 the Managing Director was authorized to take decision after reply has been received and the said reply from the Administrative Department was received only on 10th of December, 2015. Thus the plea being raised at the behest of respondent-Corporation that the Narinder Singh's case being after the decision to adopt the Circular dated 19th of November, 2015 cannot be accepted. Once, the Corporation itself has extended the relief under Circular dated 19th of November, 2014 to an employee who retired after 19th of November, 2014 but before 22nd of January, 2016, this

Court does not find that there is any justification to deny the same relief to the petitioners who also retired during the same period of time.

8. Trite it is that Article 14 of the Constitution of India is attracted also in relation to the implementation of judicial decisions. If one Court has determined any controversy in relation to one set of employees it is impermissible for State to contend that the said decision would be applied only to the applicants thereof and not to others although they are similarly situated. Reference can be made to the law laid down by Apex Court in the case of **Videndra Kumar and others vs. Union of India and others, 1981(3) SCC 30**, wherein it has been held that :-

“If a large number of other persons similarly situated have been promoted as Charge man Grade II after, completing two years of service, there is no reason why the appellants should also not be similarly promoted after completing the same period of service.”

In the case of **K.L. Shephard and others vs. Union of India and others, (1987) 4 SCC 431** Apex Court held as under :-

“19. The writ petitions and the appeals must succeed. We set aside the impugned judgments of the Single Judge and Division Bench of the Kerala High Court and direct that each of the three transferee banks should take over the excluded employees on the same terms and conditions of employment under the respective

banking companies prior to amalgamation. The employees would be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period. We leave it open to the transferee banks to take such action as they consider proper against these employees in accordance with law. Some of the excluded employees have not come to Court. There is no justification to penalise them for not having litigated. They too shall be entitled to the same benefits as the petitioners.”

9. Same has been held in **Gopal Krishna Sharma vs. State of Rajasthan (1993) Suppl. 2 SCC 375** and **Lt. Governor of Delhi v. Const. Dharampal (1990) 4 SCC 13** as well.

10. The similar question arose before this Court in the case of **Swaran Singh Jawanda vs. State of Punjab and others, 2017(3) S.C.T. 539**. The Court framed the following issues :-

“7. From the pleadings and the rival contentions of the parties, the questions that arise for determination in the present writ petition are:-

- i) Whether the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is applicable to Punjab Urban Planning and Development Authority?
- ii) Whether the instructions dated 19.11.2014 (P-7) issued under Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 are applicable to Punjab Urban Planning and Development Authority?”

The same were answered as under :-

“10. The PWD Act, 1995 has its integral objective to provide Equal Opportunities to the disabled by the appropriate government. Once a beneficial provision/relaxation has been declared under Section 33 of the PWD Act 1995, for the disabled persons by granting them enhancement of age of retirement by two years from 58 to 60 years by the Government of Punjab, then the same will have applicability mutatis mutandis to the employees of the Punjab Urban Planning and Development Authority in absence of specific provision made in the service Regulations 1999 or any other Regulations of Punjab Urban Planning and Development Authority. In the given peculiar facts and circumstances, any such declaration of limited applicability only to Government Employees and not to employees of establishment would be against the spirit of the provision of Section 33 of the PWD Act itself as would also amount to inequality of opportunity by the State and against the spirit of the PWD Act as also the constitutional right of the disabled person working in the establishment under the Government of Punjab.

In view of the above, the provisions of government of Punjab instructions dated 19.11.2014 issued under Section 33 of the PWD Act 1995 would be applicable mutatis mutandis to the Punjab Urban Development and Planning Authority and the employees working therein.

Accordingly the findings are that the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act 1995) is applicable on Punjab Urban Planning and Development Authority and the instructions dated 19.11.2014 (P-7) issued under Section 33 of the PWD Act 1995, are applicable to Punjab Urban Planning and Development Authority; and hence the instant writ petition stands allowed and impugned letter dated 29.12.2014 (P-14) and Order dated 05.01.2015 (P-16) are quashed being against the statutory provisions and instructions applicable to the Punjab

Urban Planning and Development Authority.”

11. In the present case, the issue is even more in favour of the petitioners as the decision in Narinder Singh's case (supra) was on account of concession given by employer itself.
12. In view of the above, the present writ petitions are allowed. Impugned Orders, Annexure P-1 (in both writ petitions) are set aside. However in order to balance out the equities the petitioners will be entitled for monetary benefits only from the date of filing of the present writ petitions i.e. 21st of December, 2015 and 27th of January, 2016, respectively. All consequential benefits be released to the petitioners within a period of 12 weeks from the date of receipt of certified copy of this order.
13. A copy of this order be kept on the file of other connected case.

April 20, 2023
Dpr

(PANKAJ JAIN)
JUDGE

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