

357

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-432-2017 (O&M)

Date of Decision:07.12.2023

DAULAT SINGH

.....Petitioner

V/s.

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Krishan Daaria, Advocate for the petitioner.

Mr R.K. Kapoor, Addl. A.G., Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioner by way of this Writ Petition has prayed for directing the respondents to extend his retirement age upto 62 years and has also prayed for quashing of the order dated 31.12.2016 (Annexure P-10) whereby he was retired from service on attaining the age of 60 years.

2. Learned counsel for the petitioner submits that the petitioner was a physical disabled person and he is entitled for continuation of service upto the age 62 years in terms of the judgment passed by this Court in the case of Dr. Jagiwan Singh Vs. State of Punjab in CWP-25972-2016 decided on 03.08.2016 wherein the circulars of the Government of Punjab were interpreted to mean that for disabled person, the retirement age would be 62 years. Learned counsel for the petitioner submits that in terms thereto the petitioner was entitled for the said benefit. He has also submitted that the judgment passed in the case of Dr. Jagiwan Singh (Supra) was upheld as the LPA filed against the same was dismissed as withdrawn. Therefore, it has attained finality.

3. Learned State counsel submits that the judgment passed in the case of Dr. Jagjiwan Singh (Supra) is distinguishable on the facts of the present case as the said judgment has relied upon the benefits granted to one Bhajan Chand who was working as a Lecturer (Music) and was allowed to retire at the age of 62 years.

4. Learned counsel submits that the circular issued by the State Government was not examined by the Court. The age of retirement of all handicapped persons was enhanced to 60 years from 58 years vide circular dated 21.11.2014. It was also clarified that the earlier instructions issued on 08.10.2012 and 20.09.2013 was with respect to granting extension of 1/2 years. However, such extension was not to be given to the employees who had already been given enhancement of age of 60 years for retirement.

5. I have carefully considered the submissions of the learned counsel for the parties.

6. In Punjab Government Service, this Court finds that the retirement age for all employees is 58 years. However, upon moving application, the service of the Government employee may be extended by one year or two years, as the case may be. Thus, the persons belonging to general category, who is not a Class IV employee and who is not a handicapped person, may be granted extension of service from 58 years upto 59 or 60 years of age.

7. For the intervening period of two years, the age of retirement for all employees was enhanced upto 60 years. However, vide order dated 19.11.2014, the retirement age of general category persons were again reduced to 58 years extendable upto one or two years on their options.

8. So far as the physically handicapped, hearing impaired as well as blind persons under the Cadre of Class IV employees are concerned, a circular was issued on 22.12.2014 enhancing their retirement age upto 60 years, however, the benefit of option for extension of service for further one or two years was not made available to such category of persons beyond 60 years.

9. This Court notices that in the case of Dr. Jagjiwan Singh (Supra), the aforesaid aspect was not noticed. The said judgment was passed only on the ground of parity. It failed to take into consideration that after the year 2014, the services could not be extended of any person beyond the age of 60 years. The judgment would therefore, be *per incuriam* as has been held by the apex Court in the case of Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa; (2015) 2 SCC 189. The relevant extract of the said judgment is reproduced as under:-

“46. Before I consider the correctness of the aforementioned decisions, it would be necessary to elaborate upon the concept of ‘per incuriam’. The latin expression per incuriam literally means ‘through inadvertence’. A decision can be said to be given per incuriam when the Court of record has acted in ignorance of any previous decision of its own, or a subordinate court has acted in ignorance of a decision of the Court of record. As regards the judgments of this Court rendered per incuriam, it cannot be said that this Court has “declared the law” on a given subject matter, if the relevant law was not duly considered by this Court in its 13 Page 14 decision. In this regard, I refer to the case of State of U.P. v. Synthetics and Chemicals Ltd., (1991) 4 SCC 139, wherein Justice R.M. Sahai, in his concurring opinion stated as follows:

“40. ‘Incuria’ literally means ‘carelessness’. In practice per incuriam appears to mean per ignoratium. English

courts have developed this principle in relaxation of the rule of stare decisis. The ‘quotable in law’ is avoided and ignored if it is rendered, ‘in ignoratium of a statute or other binding authority’. ...”

10. It is further be noticed that no person has a right for seeking extension in service. If the ordinary age of retirement is 58 years or 60 years as is available for the disabled persons, they do not have any right to claim extension. Even if they have opted for extension of their services, the State Government may refuse such extension for various reasons which may be available on record. As no vested right is available, Writ Petition for enforcing such extension in service would not lie.

11. In the circumstances, prayer made by the petitioner to extend his retirement age beyond the age of 60 years is found to be without basis. The Writ Petition is accordingly **dismissed**.

12. All the pending applications in this Writ Petition stand dismissed.

December 7, 2023

Ess Kay

**[SANJEEV PRAKASH SHARMA]
JUDGE**

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>