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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-3073-2018 (O&M)
Date of Decision: 04.07.2023

DEVINDER SHARMAPetitioner

V/s.

STATE OF PUNJAB AND OTHERSRespondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA.

Present: Mr. S.K. Rattan, Advocate,
for the petitioner.

Mr. Vishnav Gandhi, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J (Oral)

1. The petitioner has preferred this Writ Petition under Article 226/227 of the Constitution of India for the issuance of a Writ in the nature of *mandamus* directing the respondents to extend the date of retirement of the petitioner upto 62 years as a disabled person with 60% disability.
2. The background facts of this case are that the petitioner has only one kidney as his right kidney was transplanted and as per Rules the petitioner is 60% permanent disabled.
3. As per the provisions of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as “the Act of 1995”), the petitioner was eligible to obtain the requisite facilities, concessions and benefits after he survived on one single kidney i.e. w.e.f. 05.06.2003. The petitioner was accordingly promoted under the handicapped cadre as a Lecturer (History).

4. The State Government decided to enhance the age of retirement of all employees with disabilities under the Act of 1995 from 58 years to 60 years.

5. The employees other than blind preferred a Writ Petition before this Court and this Court held that all the different various categories of disabled persons would be entitled for age enhancement in terms of Section 2(1) of the Act of 1995.

6. LPA was preferred by the State which came to be rejected on 25.09.2012. The State thereafter assailed the said order before the Hon'ble Supreme Court, however, the SLP was dismissed on 16.09.2014. The retirement age, thus, of all physically handicapped employees was raised from 58 to 60 years. Accordingly, the petitioner was granted extension of his age, firstly, for one year and then again for another year vide orders dated 19.02.2016 and 23.02.2017 respectively.

7. On reaching the age of 60 years on 28.02.2018, the petitioner claimed for extension in terms of the amended Rules of superannuation from 60 to 62 years.

8. While no individual order was passed in favour of the petitioner, this Court in CWP-25972-2015, titled as *Dr.Jagjivan Singh Vs. State of Punjab and Others* held that the age of retirement of all disabled category of employees was required to be enhanced upto the age of 62 years. The Court was of the view that the enhancement granted by the State Government only to the blind categories of employees is discriminatory and all the employees falling under the different categories of the disability would be entitled for enhancement of age upto 62 years.

9. As has come on record in the reply, the State Government vide their order passed in the year 2011 withdrew the circular enhancing the age of 62 years to the blind employees. The said circular was withdrawn vide order dated 23.08.2011, however, as pointed out by the learned counsel for the petitioner the same was not given the retrospective effect.

10. The petitioner in the meanwhile having completed the age of 62 years attained the superannuation on 28.02.2020 but he was not granted the increments for the period he served after attaining the age of 58 years upto 62 years. His pension was also fixed as if he had retired at the age of 58 years.

11. Learned counsel for the petitioner submits that since the petitioner continued to serve upto the age of 62 years in terms of the circulars and judgments and interim order passed by this Court, there was no occasion to withhold the increments to the petitioner or to withhold other retiral benefits due to him. He was entitled to pension after his pay fixation been done after the age of 62 years.

12. Per contra, learned State counsel submits that the extension was not granted beyond 60 years to the petitioner and he, therefore, cannot claim his continuity of service upto the age of 62 years solely on the basis of the judgment passed by this Court in relation to some other employees. The petitioner, therefore, is neither entitled to arrears of increments for the said period nor is he entitled for any other benefit of enhancement of pension.

13. I have considered the submissions of the learned counsel for the parties and perused the material on record.

14. Having noticed the aforesaid facts, this Court finds that the age of retirement has been enhanced by the State Government initially from 58 to 60 years for all employees including blind and thereafter they issued a circular enhancing the age of retirement of blind employees alone upto 62 years.

15. The question of enhancing the age of retirement of blind employees alone, leaving out the other disabled categories of employees was the subject matter of examination before this Court in CWP-25972-2015 wherein it was held as under:-

*“In the present case, the petitioner retired at the age of 60 years whereas he was entitled for extension of his age upto the age of 62 years like one Bhajan Chand, who was blind. Moreover, the controversy in hand is squarely covered by **National Federation of Blind's case** (supra) wherein it was held that the benefit of reservation under the Disability Act, 1995 cannot be confined to Class C and D posts. It is applicable to all Group A, B, C and D posts and as such, the classification made by the respondent-State is contrary to provisions of the Disability Act, 1995.*

*Accordingly, in view of the facts and law position as discussed above, the present writ petition is allowed and the respondents are directed to consider the case of the petitioner in view of **National Federation of Blind's case** (supra) by granting the extension by one year as mentioned in the circulars issued by the State Government by granting benefit to Class III and IV employees as it was held in said judgment that the benefit cannot be restricted to Class C and D posts only but it is applicable to all the Groups. The necessary exercise be done within a period of two months from the date of receipt of certified copy of this order. In case, the petitioner is found to be entitled, the necessary benefits be granted within one month thereafter. In case, any*

adverse order is passed, the petitioner is at liberty to challenge the same.”

16. The said order of the Division Bench of this Court was passed in terms of the judgment passed by the Division Bench of this Court in *Bhupinder Singh Vs. State of Punjab and Others*; 2011 (4) SCT 55. It also relied upon the judgment passed in the case of *Union of India and Another Vs. National Federation of the Blind and others*; 2013(4) SCT 807. The order was subsequently modified by this Court while deciding application i.e. CM-10346-CW9-2016 and directed grant of extension for two years instead of one year to the petitioner vide order dated 30.08.2016. The relevant portion of the order is reproduced as under:-

“Application is allowed and judgment dated 03.08.2016 is modified to the extent that the respondents are directed to consider the case of the petitioner by granting the extension for two years (one year + one year), meaning thereby, the petitioner be allowed to continue in service upto the age of 62 years.”

17. It seems that the said judgment was relied upon and *status quo* was granted to the petitioner when his age was not extended above 60 years and in terms of the order passed by this Court, he continued upto the age of 62 years. The contention of the respondents, therefore, is not sustainable as it was a duty of the respondents to have passed orders for similarly situated all employees who were of disabled category to extend their age of retirement to 62 years as observed by this Court (*supra*).

18. Admittedly, the petitioner served upto the age of 62 years and he, therefore, is entitled for the service benefits which accrued to him on

account of his performing of duties with the State. Accordingly, he would be entitled to receive increments for the extended period i.e. 58 years upto the age of 62 years. His pension would accordingly be revised on the basis of last pay drawn after including the increments which he will get for the said period upto the age of 62 years. The pension be accordingly revised and other retiral benefits would also be accordingly calculated in terms of the aforesaid.

19. The Writ Petition is accordingly allowed and the respondents are directed to release the increments for the period from the date the petitioner has attained the age of 58 years upto the age of 62 years when he has attained superannuation as a disabled employee.

20. The arrears shall be calculated accordingly, the pension shall also be calculated accordingly and released including all other retiral benefits within a period of 3 months.

21. Since the petitioner was already receiving pension, this Court does not deem it appropriate to grant benefit of interest to the petitioner.

22. No costs.

July 4, 2023

Ess Kay

[SANJEEV PRAKASH SHARMA]

JUDGE

Whether speaking / reasoned : *Yes*

Whether Reportable : *Yes*