

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

LPA-231-2017 (O&M)
Reserved on 17.04.2023
Date of Decision:03.05.2023

Kamal Dev Kalia

. . . . Appellant

Vs.

State of Punjab and others

. . . . Respondents

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

Present: Mr.Shashi Kumar Rattan, Advocate, for the appellant.

Mr.Abhay Pal Singh Gill, DAG, Punjab.

M.S. RAMACHANDRA RAO, J.

1. This appeal is preferred by the appellant challenging the judgment dt.07.12.2016 in CWP-25280-2016 passed by the learned Single Judge of this Court.

2. The appellant has a shortened Right Femur (Leg). He was appointed in Physically handicapped category as he was having “locomotor disability” and was covered by Section 2(i) (v) of the Disability (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 [for short ‘the 1995 Act’] . He had retired as Senior Assistant from the Education Department of the State of Punjab on 31.05.2013 on attaining the age of 58 years.

3. Before he retired on 31.05.2013, he claimed to be entitled to extension of two years as per the 1995 Act upto the age of 60 years and had given representations dt.03.12.2012 (P6), 01.01.2013 (P7) and 04.03.2013 (P8).

4. The respondents did not bother to send any reply or take a decision on any of his representations.

CWP-24930-2015

5. He then filed CWP-24930-2015 before this Court and sought a direction to the respondents to dispose of his representations, while also seeking pension and other pensionary benefits as per certain instructions issued by the Department on 19.11.2014 on the basis of a decision of this Court in *Bhupinder Singh Vs. State of Punjab and others*¹ (which judgment had been upheld in LPA-1719-2011 on 25.09.2012 and also by Supreme Court in Civil Appeal No.8855 of 2014 on 16.09.2014). He had given a legal notice dt.21.08.2015 (P11) prior to filing of the CWP and sought pension from the respondents placing reliance on the above decisions.

6. The said CWP-24930-2015 was decided on 30.11.2015. After referring to a decision of this Court in *Harbhajan Singh Vs. State of Punjab and others*², where this Court had held that no discrimination should be shown by the State to employees suffering from disabilities and it cannot deny relief in one case and grant benefit to another as it would be violative of Article 14 of the Constitution of India, a direction was given to respondent No.3 therein to take a decision on the legal notice dt.21.08.2015 within three months keeping in view the observations made in both the cases of *Bhupinder Singh* (1 Supra) as well as *Harbhajan Singh* (2 Supra).

7. The respondent No.3 then passed an order on 23.05.2016.

The respondent No.3 took note of the fact that the appellant was a handicapped person and that State Government had issued instructions on

¹ In CWP-7233-2010 dt.25.05.2011

² In CWP-3974-2012 dt.18.09.2015

19.11.2014 fixing retirement age of handicapped persons other than falling in Group D services at 60 years, and the fact that the appellant had already retired from service on 31.05.2013 on attaining the age of 58 years.

So he directed that the appellant would be deemed to have been retired on attaining the age of 60 years for the purpose of grant of increment, pay fixation and retiral benefits, but he would not be entitled to arrears of pay. He however directed that the retiral benefits of the appellant should also be revised by the competent authority.

CWP-25280-2016

8. The appellant then filed CWP-25280-2016 before this Court for quashing of the said order in so far as respondent No.3 had denied payment of arrears of pay on enhancement of retirement age from 58 to 60 years and sought a direction to the respondents to grant and release arrears of pay with interest @ 18% per annum contending that the appellant was available and willing to perform duties, but was not allowed to do so, by granting extension before his retirement.

9. Vide order dt.07.12.2016, the learned Single Judge dismissed the Writ Petition on the ground that the appellant had retired from service on 31.05.2013, but he had got issued legal notice in 2015 and waited till 2015 to file the Writ Petition by which time he had already crossed the age of 60 years.

The learned Judge distinguished the judgments in *Bhupinder Singh* (1 Supra) and *Harbhajan Singh* (2 Supra) on the ground that the petitioners therein, when they were denied extension, had filed the Writ Petition *before* their retirement in the same year in which they had retired, and so arrears were rightly granted to them; but the appellant is not similarly situated and he had not worked

for the extended two years and he filed the Writ Petition only after he completed the age of 60 years.

The LPA

10. Assailing the same, this Appeal is filed.

11. Counsel for the appellant contended that the learned Single Judge erred in dismissing the Writ Petition on the ground of delay in filing the Writ Petition in the High Court and he ought to have taken note of the fact that the appellant volunteered to work and had given representations (P6 to P8) before his retirement on 31.05.2013, but the respondents took no decision thereon and the respondents cannot be allowed to take advantage of their own wrong and deny relief of arrears of pay for the period of two years to the appellant.

12. Counsel for the State refuted the said contentions and supported the order passed by the respondents.

Consideration by the Court

13. We have noted the contentions of both sides.

14. There is no dispute that the appellant was physically handicapped and he had retired on 31.05.2013 as Senior Assistant from the office of respondent No.3.

15. Initially the benefit of extension of service beyond 58 years was confined only to blind persons through a circular dt.16.02.1996, but other categories of handicapped persons were left open.

16. They and other similarly situated employees filed *CWP-7233-2010* being ***Bhupinder Singh Vs. State of Punjab and others*** before this Court on the basis of parity and also claiming the enhancement of retirement age upto 60 years. The said Writ Petition came to be allowed on 25.05.2011.

This Court directed the respondents to suitably modify the circulars and extend the benefit of enhancement of age to *all categories* of disabled government employees as specified under Section 2(i) of the 1955 Act in tune with the spirit of the Act, and directed the respondents to re-induct the appellant into service for the rest of period of retirement upto the age of 60 years and declare that the petitioner therein to entitle the emoluments for extended period of retirement. It also directed that he would be deemed to retire at the age of 60 years and would be entitled to all consequential benefits.

17. This order was confirmed by the Division Bench of this Court in LPA-1719-2011.

18. The State carried the matter to the Supreme Court in Civil Appeal No.8855-2014 titled *State of Punjab and others Vs. Bhupinder Singh*.

19. The Supreme Court on 16.09.2014 agreed substantially with the view taken by the High Court.

It held that the issue of discrimination adjudicated upon by the High Court related to employees who were already engaged in Government service, that there was no dispute about their ability to discharge their duties against the posts on which they were employed, and the benefit if extended to the categories of disabilities for which reservation and employment has been contemplated under the Act 1955, would not cause any administrative inconvenience to the appellants. It however held that under the Act 1995 equality is established only in respect of three categories specified in Section 33 of the Act 1995 i.e. persons suffering from blindness or low vision, persons suffering from hearing impairment and *persons suffering from locomotor disability* (to which category the petitioner belongs) or cerebral palsy.

20. We may point out that at the time when the appellant retired from service on 31.05.2013, the decision of this Court in CWP-7233-2010 as confirmed in LPA-1719-2011 dt.25.05.2011 was in force. The judgment of the Supreme Court in Civil Appeal No.8855 of 2014 arising from SLP-10610-2013 came on 16.09.2014, but the appellant had been retired between the dates of the decision in the LPA and in Civil Appeal/SLP.

21. It is not the case of the respondents that the judgment of the learned Single Judge in CWP-7233-2010 or decision in LPA-1719-2011 had been suspended by the Supreme Court in Civil Appeal No.8855 of 2014 (arising from SLP-10610-2013) and were not in force on the date of the retirement of the appellant or prior thereto.

22. When the said judgments were binding on the respondents, in spite of the appellant making representation dt.03.12.2012 (P6), dt.01.01.2013 (P7) and dt.04.03.2013 (P8), the respondents deliberately did not dispose of the said representations and did not grant relief to the appellant and did not allow him to continue upto the age of 60 years.

23. No doubt the appellant after retirement gave a legal notice on 30.11.2015 and then filed the CWP-24930-2015 out of which this Appeal arises.

24. In our considered opinion the appellant was willing to work if the extension had been granted and had made it clear in his representations submitted on 03.12.2012 (P6), 01.01.2013 (P7) and 04.03.2013 (P8), but it was the respondents who prevented him from working inspite of the decision in CWP-7233-2010 dt.25.05.2011 and the judgment in LPA-1719-2011 dt.25.09.2012 which were both binding on it.

25. The respondents cannot be permitted to take advantage of their own wrong in preventing the appellant from working beyond the age of 58 years upto the age of 60 years, and then on the said pretext they cannot deny wages to the appellant for the period of two years as has been done by the learned Single Judge.

26. This amounts to allowing the respondents taking advantage of their own wrong in not giving effect to the judgments in CWP-7233-2010 and LPA-1719-2011 and not giving extension to the appellant though he is entitled to the same by virtue of the said decisions.

27. It is a settled law that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. A wrong doer ought not to be permitted to make a profit out of his own wrong.

21. In ***Kusheshwar Prasad Singh vs. State of Bihar and Ors***³ the Supreme Court held:

*“11. In this connection, our attention has been invited by the learned Counsel for the appellant to a decision of this Court in **Mrutunjay Pani and Anr. v. Narmada Bala Sasmal and Anr.**⁴, wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim '**Commodum ex injuria sua nemo habere debet**' (No party can take undue advantage of his own wrong).*

*12. In **Union of India and Ors. v. Major General Madan Lal Yadav (Retd.)**⁵, the accused-army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings*

³ 2007(11) SCC 447

⁴ MANU/SC/0357/1961 : [1962]1SCR290

⁵ (1996) 1 SCC 127

ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time-barred. This Court referred to Broom's Legal Maxims (10th Edn.) p. 191 wherein it was stated;

...it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in Courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure.

13. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrong doer ought not to be permitted to make a profit out of his own wrong".

22. Learned Single Judge appears to have overlooked the conduct of the respondents in trying to take advantage of their own wrong by disabling the appellant from working inspite of his willingness to do so, and inspite of the decisions in CWP-7233-2010 and LPA 1719-2011 being binding on them, and denied relief to the appellant.

23. Accordingly the judgment of the learned Single Judge dt.07.12.2016 in CWP-25280-2016 is set aside and the said Writ Petition is allowed. The respondents are directed to grant to the appellant wages for 2 years within

8 weeks from the date of receipt of copy of this order along with interest of 6% per annum upto the date of actual payment. LPA is allowed accordingly.No costs.

24. Pending application(s), if any, shall stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

03.05.2023

Vivek

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes
Yes