

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(113)

CWP No. 723 of 2024
Date of Decision : 24.01.2024

Anamika Gupta

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rose Gupta, Advocate,
Ms. Yashika Walia, Advocate and
Ms. Hardeep Kaur, Advocate for the petitioner.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the challenge is to the order dated 22.12.2023 (Annexure P-14) whereby, the representation of the petitioner for the grant of extension in service has been declined by the respondents.
2. Certain facts needs to be mentioned herein for correct appreciation of the issue in hand.
3. The petitioner was appointed as whole time member of District Consumer Disputes Redressal Forum in the State of Haryana vide order dated 16.06.2016 (Annexure P-1). The said term was a period of five years from the date of joining or till the petitioner attained the age of 65 years, whichever is earlier. The petitioner assumed the charge and

continued working. On completion of tenure of five years, the petitioner relinquished the post on 26.06.2021.

4. While the petitioner was in service, she had requested the department for the grant of extension in service but, the same was not granted and ultimately, petitioner relinquished the post on completion of a period of five years. Thereafter, the petitioner approached this Court that extension in service has been granted to number of similarly situated personnel, hence, the petitioner should also be given the same. The petitioner filed CWP No. 21278 of 2023 seeking extension in service, which petition was disposed of on 22.09.2023 directing the respondents to decide the representation/claim of the petitioner for extension in service.

5. In pursuance to the direction given, the respondents have passed the order dated 22.12.2023 (Annexure P-14) by which, the prayer of the petitioner for the grant of extension has been declined. The said order has been impugned in the present petition.

6. Learned counsel for the petitioner argues that though, under the rules governing the service, the tenure has been fixed, which is five years or 65 years of age whichever arise earlier and the petitioner has already completed her tenure of five years and there is no extension in service is provided in the rules governing the service but as, the benefit of extension in service has been given to other similarly situated, the non-grant of extension in service to the petitioner is discriminatory in nature.

7. I have heard learned counsel for the petitioner and have gone through the record with his able assistance.

8. The grant of extension is solely within the domain of the employer and no direction can be issued for the grant of extension in service by the courts. The Hon'ble Supreme Court of India in Civil Appeal Nos. 959-960 of 2000 titled as ***D.C. Aggarwal(Dead) by Lrs. Vs. State Bank of India and another***, decided on 27.04.2006 has held that the extension of service cannot be claimed as a matter of right. While passing the order in the said judgment, the Hon'ble Supreme Court of India has held that there cannot be any discrimination qua the grant of extension in service also even if the grant of extension has been extended to other employees.

9. The said judgment has been relied by this Court while passing order in CWP No. 12332 of 2021 titled as ***Sadhna Mittal Vs. Chaudhary Devi Lal University, Sirsa and another***, decided on 12.07.2021. While discussing the law on the subject of the grant of extension, this Court found that the courts cannot issue a direction to the employer to grant extension as the same is within the domain of the employer only. The relevant paragraphs of the said judgment are as under :-

“6. I have heard learned counsel for the petitioner and gone through the record with his able assistance.

7. Nothing has been pointed out as to how, once the University has its own regulations and statutes to govern the service conditions of the employees employed in the University, the same will be superseded by the UGC rules

being cited. Furthermore, a bare perusal of the rule reproduced by the petitioner relates to the Central University only and admittedly the respondent-University is not the Central University and hence, the reliance being placed by the petitioner upon the UGC regulations is totally misplaced.

8. Nothing has been pointed out to show that the employees of the respondent-University are being retired at the age of 65 years and not at the age of 60 years as being claimed by the petitioner.

9. Not only this, learned counsel for the petitioner has conceded that as of now, the age of superannuation in the respondent-University is 60 years and the grant of extension/re-employment is at the discretion of the University in case, the Executive Council recommends the re-employment or extension of any teacher. It is a settled principle of law that where there is a discretion upon the employer to grant the extension or re-employment to the employee, there is no jurisdiction with the Court to interfere with the said jurisdiction of employer and issue a direction to employer so as to direct the continuance of an employee beyond the age of superannuation.

10. Once it is not a right to claim extension in service, no writ can be issued on the asking of the petitioner. It is only a right of enforceable and not the discretion which the employer has.

*11. The Hon'ble Supreme Court of India in **Writ Petition (Civil) No.656 of 2007 titled as P. Venugopal v. Union of India, decided on 08.05.2008** has held that the Courts have no power to direct the grant of extension to an employee and it is within employer's discretion to grant extension. The relevant paragraph of the judgment is as under:-*

"7. xxx xxx xxx xxx xxx xxx

*Similarly under the Service Rules, there may be provision for extension of service after the attainment of the age of superannuation and it is well settled that in the event of refusal by an employer to grant an extension, the employee cannot justifiably claim to be deprived of any right or privilege. The view taken is that the employer has a discretion to grant or not to grant such extension having regard to the interest of the employer or the establishment. This view is expressed by this Court in the Case of **State Bank of Bikaner and Jaipur and Ors. v. Jag Mohan Lal AIR 1989 Supreme Court 75**. In this case, at para 12, this Court observed as follows:*

"The Bank has no obligation to extend the services of all officers even if they are found suitable in every respect. The interest of the Bank is the primary consideration for giving extension of service. With due regard to exigencies of service, the Bank in one year may give extension to all suitable retiring officers. In another year, it may give extension to some and not to all. In a subsequent year, it may not give extension to any one of the officers. The Bank may have a lot of fresh recruits in one year. The Bank may not need the services of all retired persons in another year. The Bank may have lesser workload in a succeeding year. The retiring persons cannot in any year demand that "extension to all or none". If we concede that right to retiring persons, then the very purpose of giving extension in the interest of the Bank would be defeated. We are, therefore, of opinion that there is no

scope for complaining arbitrariness in the matter of giving extension of service to retiring persons."

*12. Hon'ble Supreme Court of India in **SLP No.22475 of 2012 titled as Yogesh Mahajan v. Prof. R.C. Deka, Director, All India Institute of Medical Sciences decided on 31.01.2018** has held that contract employee has no statutory right for renewal of contract from time to time. The relevant paragraph of the said judgment is as under:-*

"It is settled law that no contract employee has a right to have his or her contract renewed from time to time. That being so, we are in agreement with the Central Administrative Tribunal and the High Court that the petitioner was unable to show any statutory or other right to have his contract extended beyond 30th June, 2010. At best, the petitioner could claim that the concerned authorities should consider extending his contract. We find that in fact due consideration was given to this and in spite of a favourable recommendation having been made, the All India Institute of Medical Sciences did not find it appropriate or necessary to continue with his services on a contractual basis. We do not find any arbitrariness in the view taken by the concerned authorities and therefore reject this contention of the petitioner".

*13. The Hon'ble Supreme Court of India in **Civil Appeal Nos. 959-960 of 2000 titled as D.C. Aggarwal (Dead) by LRs v. State Bank of India and another, decided on 27.04.2006** has held that extension in service cannot be claimed as a right and the Court cannot issue any such directions. The relevant paragraph of the said judgment is as under:-*

"25. The argument for the learned counsel for the appellant proceeded on a misapprehension of the manner in which extension of service is to be granted. In **State Bank of Bikaner and Jaipur and others v. Jag Mohan Lal** (hereinafter "Jag Mohan Lal") this Court had occasion to point out that a rule under which extension of service can be granted beyond the normal age of retirement, does not invest a legal right in the employee to be granted such an extension. The very same regulation as in this case was interpreted in *Jag Mohan Lal* (supra) and it was pointed out therein that the sole purpose of giving extension of service is to promote the interest of the bank and not to confer any benefit or favour on retiring officers. It was pointed out that it was not a conferment of a benefit or privilege on officers. Merely because the officer has put in the requisite number of years of service, that does not earn him/her that benefit or privilege. This Court observed:

"The Bank, however, is required to consider the case of individual officers with due regard to (i) continued utility; (ii) good health; and (iii) integrity beyond reproach of the officer. If the officer lacks one or the other, the Bank is not bound to give him extension of service. In this case, the Bank has shown to the High Court that the case of the respondent was considered and he did not fit in the said guidelines. The High Court does not sit in an appeal against that decision. The High Court under Article 226 cannot review that decision."

If the bank considers that the continuance of services of an officer is desirable in the interest of the bank, it

may allow him to continue beyond the age of superannuation. If the bank considers that the service of the officer is not required beyond the age of superannuation, that is the end of the matter. Further, non-extension of service is no reflection on the calibre of the officer and it carries no stigma."

*14. The Hon'ble Supreme Court of India in **Civil Appeal No.3175 of 1986 titled as State Bank of Bikaner and Jaipur and others v. Jag Mohan Lal**, decided on 13.09.1988 has held that the authorities have no obligation to extend the service of all the officers even if they are found suitable in every respect. The relevant paragraph of the said judgment is as under:-*

"12. It was however, argued for the respondent that the Bank falls within the concept of State' for the purpose of enforcement of fundamental rights. The Bank, therefore, cannot extend the service of some and reject the case of others similarly situated. The concept of Article 14 of the Constitution is relied upon. The argument in our opinion, proceeds on a wrong premise. 'The Bank has no obligation to extend the services of all officers even if they are found suitable in every respect. The interest of the Bank is the primary consideration for giving extension of service. With due regard to exigencies of service, the Bank in one year may give extension to all suitable retiring officers. In another year, it may give extension to some and not to all. In a subsequent year, it may not give extension to any One of the officers. The Bank may have a lot of fresh recruits in One year. The Bank may not need the services of all retired persons in another year. The Bank may have lesser PG NO 1033

work load in a succeeding year. The retiring persons cannot in any year demand that "extension to all or none". If we concede that right to retiring persons, then the very purpose of giving extension in the interest of the Bank would be defeated. We are, therefore, of opinion that there is no scope for complaining arbitrariness in the matter of giving extension of service to retiring persons."

15. A Co-ordinate Bench of this Court in **CWP No.25444 of 2014 titled as Roshan Lal v. State of Haryana and others, decided on 18.10.2016** has held that right of extension in service is not a legal right but it is a benefit and Government servant has no right to continue in service beyond the age of superannuation and in case, he or she is retained beyond that age, it is only the discretion of the Government. The relevant paragraph of the said judgment is as under:-

*"8. In judgment of **State Bank of Bikaner and Jaipur and others v. Jag Mohan Lal**, AIR 1989 (SC) 75, it was held by Hon'ble the Apex Court that right of extension in service is not a legal right but it is a benefit, however, this benefit is not a concession but is a privilege, to which, an officer is entitled to after years of hard work in the respondent-Bank. The right to get extension of service beyond the age of superannuation was considered in case **State of Assam v. Basanta Kumar Das**, 1973 (1) SLR 921. In said judgment, decisions rendered in cases **Kailash Chandra v. Union of India**, AIR 1961 Supreme Court 1346, **B.N. Mishra v. State**, (1965) 1 SCR 693 and **State of Assam v. Pramadhar**, (1971) 1 SCR 503, were discussed. It was held that a Government servant*

has no right to continue in service beyond the age of superannuation and in case he or she is retained beyond that age, it is only the discretion of the government. It was further held that in case certain persons were found fit to be continued in service, it does not mean that the others, who were not found fit, had been discriminated. The whole idea is of continuing only the efficient people in service in stead of pleading long length of service. Hon'ble the Apex Court in Basanta Kumar Das's case (supra) has held as under:-

"A Government servant has no right to continue in service beyond the age of superannuation and if he is retained beyond that age it is only in the exercise of the discretion of the Government."

16. Keeping in view the above, the claim of the petitioner i.e. the grant of re-employment or extension beyond the age of superannuation provided under the statutes governing the university employees is the sole discretion of the University and it is the employer only, who has to decide on the said issue keeping in view the various aspects and the Court has no jurisdiction to direct the University to grant extension merely on the asking of an employee and that too without any plausible ground for the same."

10. Learned counsel for the petitioner has not been able to dispute or distinguish the settled principle of law cited here-in-before, according to which, Courts cannot issue a direction to grant extension in service.

11. Keeping in view the above, no ground is made out for any interference by this Court in the present petition.

12. Dismissed.

January 24th, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No