

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

254 (05 cases)

(1)CWP-2331-2023 (O&M)
Date of Decision :24.01.2024

Rumali Devi and another

...Petitioners

Versus

State of Haryana and others

...Respondents

(2) CWP-22975-2021 (O&M)

Satyawan

...Petitioner

Versus

State of Haryana and others

....Respondents

(3) CWP-26203-2022 (O&M)

Hawa Singh

...Petitioner

Versus

State of Haryana and another

....Respondents

(4) CWP-9981-2022 (O&M)

Dalbir Singh

...Petitioner

Versus

State of Haryana and another

....Respondents

(5) CWP-5156-2023 (O&M)

Chandi Ram

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sachin Gupta (Ladwa), Advocate and
Mr. Himanshu Bansal, Advocate for petitioner in
CWP-2331-2023.

Mr. A.P. Bhandari, Advocate for the petitioners
in CWP-26203 & 9981 of 2022.

Mr. Vikas Sonak, Advocate for petitioner in CWP-5156-2023.

Mr. Tapan Yadav, DAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

1. By this common order, above mentioned five writ petitions are being decided as all the writ petitions involve the same question of law on similar facts.

2. In the present petitions, the petitioners have challenged the orders by which they are being sought to retire from their service by the respondent-State on the ground that they have attained the age of 58 years. The grievance of the petitioners is that the regular employees, who are working on Group-D post are allowed to continue in service up to the age of 60 years before they superannuate as envisaged under Haryana Civil Service

(General) Rules, 2016 (hereinafter referred as '2016 Rules') but the said

benefit has not been extended in favour of the petitioners, who are working on temporary basis on the same Group-D post. Prayer of the petitioners is that the temporary employees working on Group-D post should also be allowed to continue in service up to the age of 60 years as provided under 2016 Rules.

3. It is a conceded position that the petitioners are working on group-D post though, not as regular employees and that as per 2016 rules maximum age to work for Group-D employees is upto 60 years, whereas, the petitioners are being sought to retire by the respondent-State from their service at the age of 58 years on the ground that they are not the regular employees.

4. Learned counsel for the petitioners contends that there cannot be made any discrimination between the petitioners and the regular Group-D employees with regard to continuing in service till a particular age hence, even temporary Group-D employees should be allowed to continue till the maximum age of 60 years as provided under the 2016 Rules.

5. Learned counsel for the respondents on the other hand submits that the petitioners are not regular employees so as to cover under the 2016 Rules hence, they cannot claim that they should be allowed to continue up to the maximum age of 60 years. Learned counsel for the respondents further submits that the petitioners will be governed by Industrial Employment (Standing Orders) Punjab Rules, 1949 as amended from time to time, as applicable to the State of Haryana (hereinafter referred to as 'Standing Orders') as per which Rules a workman shall be retired at the age of 58 years.

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. The question which has been raised in the present bunch of petitions is as to whether two different age of superannuation can be prescribed for temporary employees and regular employees working on the same post performing same duties in the facts and circumstances of the present case and applicable law.

8. In the present case, the respondent-State has already notified 2016 Rules, according to which, it is a conceded fact that Group-D Government employees will retire on attaining the age of superannuation at the age of 60 years.

9. The argument which has been raised by the learned counsel for the respondents is that the temporary employees will be governed by Industrial Employment (Standing Orders) Punjab Rules 1949 Rule 17-A (Ins. by the Haryana Government Labour Department Notification No. 11/04/2012/04 Lab) dated 06.08.2013 (hereinafter referred to as '2012 Rules') according to which, a workman working on group-D post is to retire on attaining the age of 58 years. Hence, a workman will retire on attaining the age of 58 years and petitioners being workmen have rightly been retired at the age of 58 years.

10. In order to appreciate the arguments of respondent-State the definition of 'workman' as given in the industrial dispute Act, 1947 defined in Section 2 (s) of the said Act needs to be seen. A bare reading of the definition of workman makes it clear that an employee performing certain duties in the course of employment is to be treated as workman and whether

the said employee is working on regular basis or temporary is not relevant factor to determine the status of an employee as workman. Hence, even the regular employees working with respondent-State, who are governed under 2016 Rules performing the nature of duties as per the definition of workman will also be covered by the definition of workman and thereby under 2012 Rules, however they are allowed to continue till the age of 60 years under 2016 Rules.

11. Learned counsel for the respondent-State has not been able to rebut the fact that employees who are working on regular basis on a Group-D post and are covered under the definition of workman to whom 2012 Rules applies irrespective of their status of being regular or temporary employee, are retired at the age of 60 years under 2016 Rules. Therefore, once the respondent-State has prescribed a higher age of retirement for a workman working on regular basis under 2016 Rules, there is no valid reason/rationale why the temporary employees who were also workman and are working on the same post be also not given the same higher age of retirement and the action of respondent-State in not allowing temporary workman to continue in service till 60 years of age and in retiring them at the age of 58 years by contending application of the said 2012 Rules is totally arbitrary and illegal and will be discriminatory and cannot be accepted.

13. Further, Rule-17-A of the 2012 Rules as being relied by the respondents is as under:-

“Age of superannuation:- The age for retirement or superannuation of a workman shall be as may be agreed between the employer and the workman under an agreement or

as specified in a settlement or award which is binding on both the workman and the employer. Where there is no such agreed age, retirement or superannuation shall be on completion of fifty eight years of age by the workman”

14. A bare perusal of the said rule would show that the age of superannuation of workman can be as agreed between the employer and workman under the agreement or settlement or award, which is binding upon both workman and employer and where there is no agreed age, retirement and superannuation shall be on completion on 58 years of age by the workman.

15. In the present case, respondents have framed the 2016 Rules prescribing age of superannuation as 60 years qua regular Group-D employee who are covered by the definition of workman as envisaged under the Industrial Dispute Act, 1947. Once 2016 Rules have been framed subsequent to 2012 Rules for employees covered under the definition of workman, who are working on regular Group-D post as per which they are allowed to work till 60 years of age, there is no rationale to suggest why the same should not be made applicable to temporary employees/workmen, who are working on the same group-D post. Further, after prescription of a particular age under 2016 Rules, same will be applicable even under Section 17-A of the 2012 Rules. As per Rule 17-A of the 2012 Rules, which has been reproduced hereinbefore, age of retirement can be prescribed by consent or agreement. The said will also include where Government prescribes the age of retirement of workman which is being applied to the workmen, who are working with the Government of Haryana though on regular basis. Rule 17-A does not differentiate between a regular workman

and temporary workman and once an age of 60 years has been prescribed for regular workman in the 2016 rules, the same will ipso facto covers the rule 17-A of the 2012 Rules to govern the workman working with the State of Haryana. Therefore, keeping in view the promulgation of 2016 Rules, even under Rule 17-A of the 2012 Rules, the employee will retire at the age of 60 years as the same has already been prescribed by formulating the statutory rules qua workman.

16. At this stage, learned counsel for the respondent-State contends that the 2016 Rules are only applicable to regular employees and any benefit of the same cannot be given to the petitioners.

17. It may be noticed that despite there being no provision under the 2016 Rules governing the service to appoint temporary persons, still the appointments are being made by the Government on temporary basis and the work is being taken from temporary employees for years altogether at lower salary before regularization of their services under any regularization policy issued by the State. Once, the State has taken the liberty of appointing employees on temporary basis on a Group-D post which exist under the rules governing the service, for doing the same nature of work as is being taken from those regularly appointed, the respondent-State cannot be allowed to say that 2016 Rules will not be applicable qua the temporary group-D employees for the grant of continuity in service till the age of 60 years as allowed to the regular group-D employees working on the same post. Prescribing different standards of retirement age only on the basis of status of workman will be too harsh for a temporary employee/workman without there being any logical differentiation.

18. Further, being a welfare State, once a particular age of retirement has been prescribed under 2016 Rules for Group-D employees and when it is a conceded position that the duties being discharged by the petitioners is within the parameters of those discharged by Group-D employees, there is no justification that the temporary Group-D employees be made to retire at the age of 58 years whereas, the employees discharging the same duties but working on regular basis be allowed to work till the age of 60 years. This differentiation/discrimination has not been justified on basis of any object, which may be sought to be achieved by doing so.

19. It may also be pointed out that the purpose which the said discrimination would serve has also not been pointed out by the respondent-State. The onus of proving that a discrimination has been made on basis of an intelligent rationale for achieving a particular purpose/object remains on the respondent-State, which the respondent-State has failed to discharge.

20. No other argument has been raised.

21. Therefore, in light of the above discussed position of law the impugned orders discharging the petitioners from their services at the age of 58 years are set aside and respondents are directed to allow the petitioners i.e. temporary Group-D employees to continue in service till the age of 60 years. It may be noticed that under the interim order of this Court, the petitioners are already discharging duties as temporary group-D employees beyond the age of 58 years and it is directed that the respondents shall not disturb their services so as to retire them before the age of 60 years.

22. Present petitions are allowed in above terms.

23. Civil Miscellaneous application pending, if any, is also disposed of.

24. Photocopy of this order be placed on the file of connected cases.

January 24, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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