2024:PHHC:030526

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

113

CWP-3049-2024
Date of decision: 04.03.2024

Balbir Singh ....Petitioner

Versus

State of Punjab and another ....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Gaurav Mohunta, Advocate for the petitioner.

Mr. Rajesh Sehgal, Addl. A.G., Punjab.

Ms. Afreen Chaudhary, Advocate for respondent No.2.

NAMIT KUMAR J. (Oral)

1. The petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ of mandamus directing the respondents to notify the amendment in the Punjab Ex-Servicemen Corporation (Service) Regulations, 1993 which was approved by the Board of Directors in 143rd meeting held on 30.12.2020 (Annexure P-4) vide which retirement age of Group-D employees has been increased from 58 years to 60 years in consonance with the Punjab Civil Service Rules and to reinstate the petitioner back into service on the post of Peon and allow him to continue till the age of 60 years.

2. The petitioner had earlier filed CWP No.18710 of 2023 with a prayer that he may be allowed to continue in service till the age of 60 years. The said writ petition was dismissed as premature vide

order dated 31.08.2023 and the relevant portion from the said judgment reads thus :-

> *"xx xx xx xx xx*
>
> *Learned counsel for the petitioner contends that the petitioner has completed 58 years of age as on 15.8.2023 and has an apprehension that the respondents may retire him forcefully today itself, i.e. 31.8.2023. He further contends that he has sent representations dated 9.8.2023 (Annexure P-4) and 14.8.2023 (Annexure P-5) in this regard to the respondents.*
>
> *On 29.8.2023, learned State counsel sought time to take instructions. Learned State counsel submits that the contesting respondent is respondent No.2.*
>
> *Today, Ms.Afreen Chaudhary, Advocate has put in appearance on behalf of the Corporation-respondent No.2 and on instructions, while referring to the proceedings of 143rd Meeting of the Board of Directors held on 30.12.2020 submits that the Board of Directors unanimously agreed to adopt the retirement age of PESCO regular Group-D employees from 58 years to 60 years in consonance with Punjab Civil Services Rules, as amended and to forward the case to the Government for amendment in the Punjab Ex-Servicemen Corporation (Service) Regulations, 1993, but the same is under consideration with the Government and has not been accepted as yet. She further submits while referring to the correspondence made vide letters dated 17.5.2023, 06.06.2023 and 17.07.2023, photocopies of which have been provided during the Court proceedings, wherein a reference for service revision from 58 to 60 years of Group-D employees had been made, but till today the required amendment in the regulations of the Corporation has not been made and unless and until the regulations are amended and said amendment is incorporated in the Punjab Ex-Servicemen Corporation (Service) Regulations, 1993, the prayer of the petitioner cannot be accepted at this stage. Learned counsel appearing on behalf of respondent No.2 also refers to the Section 31 of the Punjab Ex-Servicemen Corporation Act, 1978, which has been reproduced hereinbelow for ready reference-*

> *"31. (1) The Corporation may, with the previous approval of the Government, make regulations not inconsistent with this Act and the rules framed thereunder to provide for all matters for which provision is necessary or expedient for the purposes of giving effect to the provisions of this Act.*
>
> *(2) In particular and without prejudice to the generality of the foregoing power such regulations may provide for-*
>
> > *(a) The duties which [the Chairman, the Vice Chairman] and the Managing Director shall perform.*
> >
> > *(b) The time and places of meetings of the Board and the Committees appointed by it and the procedure to be followed in relation to such meetings.*
> >
> > *(c) The conditions which may be imposed and the procedure which may be followed in granting loans or entering into other arrangement by the Corporation.*
> >
> > *(d) The duties and conduct of the officers and other employees of the Corporation.*
> >
> > *(e) The establishment and maintenance of provident fund and other benefits funds for the officers and other employees of the Corporation; and*
> >
> > *(f) Generally, the efficient conduct of the affairs of the Corporation.*
>
> *(3) No regulations made under this Act shall have effect until they are published in the Official Gazette."*

In view of the submissions made by the learned counsel for respondent No.2 and from the perusal of correspondence, it shows that as per the aforementioned Act, amendment in the PESCO Regulations 1993,Para 11, Chapter 6, which lays down the age limit to 58 years and revision from 58 years to 60 years of GROUP-D employees cannot be made unless said amendment is made and incorporated in the Punjab Ex-Servicemen Corporation (Service) Regulations, 1993. Furthermore, the submissions *made by the learned counsel for respondent No.2 have not been disputed by the learned counsel for the petitioner regarding 143rd Meeting conducted by the Board of Directors vide which the proposal regarding retirement age at 60 years was made and even the said aspect has been admitted in the pleadings. Accordingly, the prayer for continuation in the service in light of Rule 3.26(a)(ii) of Punjab Civil Services Rules is not tenable, unless and until the proposal approved by Board of Directors of respondent No.2 is incorporated by way of an amendment expressly or by necessary implication. Therefore, the prayer of the petitioner at this stage cannot be entertained being premature.*

Consequently, the present petition is dismissed."

3. On receipt of advance copy of writ petition, Ms. Afreen Chaudhary, Advocate has put in appearance on behalf of respondent No.2 and submits that in 151th meeting of the Board of Directors of Punjab Ex-Serviceman Corporation held on 20.09.2023, it has been approved by the Board of Directors that the age of retirement of Group-D employees shall be kept at 58 years. She has produced a copy of said Resolution dated 22.09.2023 which is taken on record. She also submits that the present petition has become infructuous.

4. In view of the above, the claim raised by the petitioner cannot be accepted in view of the decision of the Board of Directors dated 20.09.2023.

5. Disposed of accordingly.

(NAMIT KUMAR)
JUDGE

04.03.2024
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No