

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(223)

CWP No. 37712 of 2018
Date of Decision : 10.01.2024

Jai Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jasmer Singh Rozera, Advocate for the petitioner.

Mr. Harish Rathee, Sr. Deputy Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the grievance of the petitioner is that he is entitled to continue in service upto the age of 60 years keeping in view the Haryana Civil Services (General) Rules 2016 (hereinafter referred to as '2016 Rules'), according to which, the retirement age of a disabled employee is 60 years whereas, the respondents retired the petitioner on attaining the age of 58 years.
2. Certain facts needs to be mentioned herein for correct appreciation of the issue in hand.
3. The petitioner was appointed as a Driver with the respondent-department. While working on the said post, the petitioner met with an accident injuring his lower limb and suffered disability and his disability was assessed at 70%. The said disability has already been

certified by the disability certificate issued by the competent authority i.e. Civil Surgeon, Palwal.

4. Upon acquiring the disability, the respondents compulsorily retired the petitioner vide order dated 31.12.2012, which order was challenged by the petitioner by filing CWP No. 14331 of 2015. The said writ petition was allowed by this Court vide order dated 16.12.2016 and the order of compulsory retirement of the petitioner was set-aside with a direction to the respondents to reinstate the petitioner and to allow him to continue till he attains the age of superannuation. Thereafter, the respondents passed an order retiring the petitioner from service on attaining the age of 58 years on 25.07.2017.

5. Feeling aggrieved against the said action, the petitioner approached the respondents that he is a disabled employee, hence, he is entitled to continue in service till he attained the age of 60 years, which request was also rejected on 28.11.2018, copy of which has been appended as Annexure P-3. The reason given by the respondents while rejecting the claim of the petitioner is that till the petitioner submits a disability certificate from PGIMS, Rohtak, the petitioner cannot be treated as a disabled employee. The said order dated 28.11.2018 (Annexure P-3) is under challenge in the present petition.

6. Learned counsel for the petitioner argues that the disability of the petitioner should not be in dispute for the reason that initially the respondents themselves had compulsorily retired the petitioner on the ground that the petitioner is 70% disabled vide order dated 31.12.2012,

which order was set-aside by this Court while passing order in CWP No. 14331 of 2015, decided on 16.12.2016, hence, once the disability of the petitioner was not in dispute that the same was 70%, which was also recorded in the judgment itself, the respondents were under obligation to allow the petitioner to continue as per the 2016 Rules upto the age of 60 years.

7. Learned counsel for the petitioner further submits that the reason given in Annexure P-3 is that the petitioner has not submitted a disability certificate from PGIMS, Rohtak, which itself amounts to contempt of Court for the reason that the said reason was also given so as to support the order of compulsory retirement, which reason was rejected by the Court while directing the reinstatement of the petitioner and setting-aside the order of compulsory retirement, hence, in fact the reason given by the respondents to reject the claim of the petitioner is contemptuous in nature.

8. Learned State counsel, on the other hand, submits that as per the rules and regulations governing the service, the petitioner has to prove his disability before he is allowed to continue upto the age of 60 years, whereas the petitioner has failed to produce the disability certificate issued by PGIMS, Rohtak, hence, petitioner has rightly been retired at the age of 58 years.

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

10. It is a matter of fact that while in service, petitioner met with an accident acquiring 70% disability, which was duly certified by the Civil Surgeon, Palwal vide medical certificate dated 18.01.2012, wherein, the disability has been assessed at 70%. Again in the year 2014, the Civil Surgeon, Palwal issued another disability certificate on 19.03.2014 assessing the disability of 70%, which certificate was valid for a period of 05 years from the date of issue of the said certificate. That being the factual aspect, it is clear that the petitioner is a disabled employee and was entitled to continue as per the age of retirement fixed by the Government of Haryana qua the disabled employees under the 2016 Rules.

11. From the pleadings, it is clear that as per Rule 143 of 2016 Rules, the age of retirement on superannuation is 58 years for all the Group of employees except the differently abled employees having minimum degree of disability 70% and above for whom the same is 60 years. The said Rule has been reproduced by the respondents themselves in paragraph 2 of the reply.

12. Keeping in view the said Rule 143 of 2016 Rules, once it is a conceded fact that petitioner is a disabled employee and as per the certificate given by the Civil Surgeon, Palwal, the disability of the petitioner has been assessed at 70%, which certificate was valid for a period of 05 years from the date of issue and the date of issuance of the said certificate is 19.03.2014, hence the petitioner was entitled to

continue in service upto the age of 60 years as per Rule 143 of 2016 Rules.

13. Learned counsel for the respondents has not been able to rebut as to on what ground, the petitioner has been retired on attaining the age of 58 years.

14. The decision to retire the petitioner at the age of 58 years is totally arbitrary and illegal and contrary to the rules governing the service and the same has been passed without due application of mind. Further the argument which has been raised by the learned counsel for the respondents is that the disability of the petitioner can only be proved through a certificate issued by the PGIMS, Rohtak cannot be accepted.

15. The said contention is contemptuous in view of the order passed by this Court in the case of the petitioner himself in CWP No. 14331 of 2015, decided on 16.12.2016. The relevant paragraph of the said judgment is as under -

“In Rule 3 (2) (ii), it is stipulated that the application shall be submitted to a medical authority competent to issue such a certificate in the district of the applicant's residence. Rule 4 provides that the medical authority shall consider the application and upon his satisfaction shall issue the disability certificate. The petitioner had applied to the Civil Surgeon, Palwal for issuance of the medical certificate. The Civil Surgeon, Palwal, had issued medical certificate on 18.01.2012, whereby physical disability of the petitioner in the lower limbs has been assessed at 70% and this certificate was valid for a period of two years. The petitioner again got

himself examined before the Civil Surgeon, Palwal, who had issued another disability certificate on 19.03.2014 again assessing the disability at 70%, which was valid for a period of five years from the date of its issuance. In such circumstances, the contention of the respondents that the petitioner should have got himself examined at PGIMSMS, Rohtak, is devoid of merit. The petitioner had suffered serious injuries in the course of his employment. The petitioner had been residing at Palwal and, hence, the medical certificate issued by the Civil Surgeon, Palwal, had to be accepted by the respondents in the light of Rules of 1996.”

16. A bare perusal of the above reproduction would show that the same contention raised before the Court in earlier round of litigation that disability can only be proved through a certificate issued by the PGIMS, Rohtak, has been found to be invalid one and the judgment dated 16.12.2016 passed in CWP No. 14331 of 2015 has already been upheld by the Division Bench as LPA No. 346 of 2018 was dismissed on 07.03.2018. That being so, the ground taken by the respondents in the impugned order dated 28.11.2018 (Annexure P-3) that till the petitioner submits a disability certificate from PGIMS, Rohtak, is contrary to the judgment between the parties concerned, which has already attained finality.

17. Keeping in view the above, the present petition is allowed. The petitioner is held entitled to continue in service till he attained the age of 60 years. As of now, the petitioner has already crossed the age of 60 years. That being the factual position, the respondents are directed to

treat the petitioner in service upto the age of 60 years and grant him all the benefits including arrears of salary and other allowances admissible to a serving employee and thereafter, re-fix his pensionary benefits and grant him the difference between the pensionary benefits already granted and the pensionary benefits as calculated on account of having retired at the age of 60 years.

18. Not only this, as the petitioner has been arbitrarily restrained from discharging the duties upto the age of 60 years, the petitioner will also be held entitled for interest @ 6% per annum on the same.

19. Further, the order dated 28.11.2018 (Annexure P-3) has been passed contrary to the decision of this Court dated 16.12.2016 and even the appeal filed by the State was dismissed with Rs. 50,000/- cost to be recovered from the Officer concerned, a cost of Rs. 25,000/- is imposed upon the Officer, who has passed the impugned order dated 28.11.2018 (Annexure P-3) to be paid from his own pocket to the petitioner for passing illegal and arbitrary order.

20. In case, the said Officer is in service, let the said recovery be done from his pay and be given to the petitioner and in case, the said Officer has already retired, the said recovery should be done from his pensionary benefits to be paid to the petitioner.

21. Petition is allowed in above terms.

January 10th, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No