

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-26797-2023(O&M)
Decided On: 21.05.2024

Jagtar Singh Sidhu

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Rajeshwar Singh, Advocate
for the petitioner.

Mr. Arun Gupta, DAG, Punjab
Assisted by Mr. Satnam Singh,
Senior Assistant, DC Office, Moga.

AMAN CHAUDHARY, J.(ORAL)

1. The prayer made in the present petition is for directing the respondents to enhance the age of retirement of the petitioner from 58 to 60 years, on account of him having more than 40% disability.
2. Learned counsel submits that the petitioner, who is suffering from Post Polio Residual Paralysis Right Lower Limb and has a disability of 50%, as assessed by the Civil Surgeon, Faridkot vide certificate dated 25.11.1986 Annexure P-1, was appointed to the post of Clerk in the office of District & Sessions Judge, Ferozepur and joined on 21.12.1987, wherein he worked for two years and thereafter transferred through proper channel on 02.09.1998 in the office of Deputy Commissioner, Moga on the same post. He was consequently promoted as Senior Assistant and was set to retire on 30.11.2023. He was, in view of the Instructions dated 02.12.2022, released handicap allowance on 02.06.2023. As per Rule 3.27 of Punjab Civil Services Rules Volume I Part I and Instructions dated 19.02.2021, appended as Annexure P-6 issued in terms of Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act, 1995, (hereinafter referred to as “the Act of 1995”) he was entitled for extension in service upto the age of 60 years. The office in order to consider his claim, even got his handicapped certificate verified as per procedure from the Civil Surgeon, Moga vide letter dated 09.03.2023 Annexure P-3. He also submitted a representation on 24.05.2023 for with the aforesaid request. The Deputy Commissioner had, vide letter dated 15.11.2023 Annexure P-5 also sought necessary approval with regard for grant of extension to him. However, no response was received, he thus, filed the present writ petition on 28.11.2023, prior to his retirement, wherein this Court vide order dated 30.11.2023 made it clear that if the petitioner succeeds, he will be treated to continue in service and would also be entitled to salary for the said period as well. In case of grant of extension, the petitioner will continue in service till 30.11.2025. The case of the petitioner is squarely covered by the judgment in **Bhupinder Singh vs. State of Punjab and others**¹, the relevant portion whereof reads thus:

“The entire scheme underlining the Disability Act is to provide equal opportunities to persons suffering from various kinds of disabilities with those who do not suffer with any such disabilities. The Act also protects the rights of disabled persons and provides opportunities for full participation in all matters to enable the disabled persons to come to the level of normal human beings and not to suffer on account of any physical deformity or disability. Section 2 (i) has defined 7 kinds of disabilities. Chapter VI for employment and also reservation in services. Section 33 provides reservation in services not less than 3% for three categories of disabled persons i.e. (i) blindness or low vision ii) hearing impairment (iii) locomotor disability or cerebral palsy. Persons suffering from all kinds of disabilities have been treated at par.

From various provisions of the Act noticed herein above, it is abundantly clear that all categories of disabled persons have been treated alive and have been subjected to similar treatment in all spheres of their life. From the scheme of the Act it also appears that every kind of disability places a person in one or other kind of disadvantage depriving him not only the enjoyment of normal life but also deprives such a person of equal opportunities with those who do not suffer from any deformity. It is with this objective that the Parliament of this

country enacted this legislation. There is no distinction between a person suffering from one kind of disability or the other. All seems to be in similar disadvantageous position. Thus, the contention of the State that the enhancement of age meant only for blind persons cannot be extended to persons suffering from other kinds of physical disabilities does not seem to be rational, logical nor does it achieve any special purpose. It is, thus, necessary rather expedient that all categories of the disabled persons be treated alike without any discrimination to achieve the objective of the Act.

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In view of the above, this petition is allowed. Respondent State is directed to suitably modify the Circular (Annexures P-2 & P-3) and extend the benefit of enhancement of age to all categories of disabled Govt. employees as specified under Section 2 (i) of the Disability Act in tune and spirit of the Act. The petitioner has been retired at the age of 58 years. It is more than one year that the petitioner has retired. I leave it to the wisdom of the State to re-induct the petitioner into service for the rest of period of retirement up to age of 60 years, however, petitioner shall be entitled to emoluments for extended period of retirement. He shall be deemed to have retired at the age of 60 years and will be entitled to all consequential benefits.”

3. The Division Bench of this Court while dismissing the appeal filed by the State i.e. **LPA-1719-2011**², which was affirmed by Hon’ble the Supreme Court vide judgment dated 16.09.2014³, observed thus:

“...A doubt had arisen as to whether this benefit is available only in the case of blind employees who were blind at the time of recruitment or who became/become blind during the service later. Vide Circular dated 16.2.1996 it was clarified that such a benefit of retirement age of 60 years would be available in all cases irrespective of the fact that employee was blind at the time of recruitment or became blind during service, later. This circular emphasized that making distinction between two sets of employees, namely, those who were blind at the time of recruitment and those who become blind during service, was not legally tenable. Therefore, it was clarified that those employees who became/become blind during the service later should not be discharged from the service but they may be adjusted against the suitable posts by taking action under rule 5.12 of the Punjab C.S.R. Vol.II. Plea of the respondent herein was that this benefit of enhancing the age of retirement from 58 years to 60 years subject to their being declared physically and mentally fit should not be confined only to visually handicapped category of disabled persons, but it should be extended to other disabled employees also who were suffering

from any disability covered by the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [hereinafter referred to as 'the Disability Act']. Section 2 (I) of the said Act defines the disability as under:-

“(I) “disability” means- - - -

- (i) blindness;
- (ii) low vision;
- (iii) leprosy-cured;
- (iv) hearing impairment;
- (v) locomotor disability;
- (vi) mental retardation;
- (vii) mental illness;

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(t) “person with disability” means a person suffering from not less than forty per cent of any disability as certified by a medical authority;”

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In our considered view, the aforesaid argument of the learned Additional Advocate General is a myopic view of the entire matter. Even if a scheme was formulated at a time when the Disability Act had not been enacted, it is a matter of common knowledge that even prior to 1996, Central Government as well as State Governments were coming out with various schemes for the benefit of differently-able persons, may be such benefits were confined to one or the other category of disabled persons. However, the enactment of the Disability Act guaranteed and assured certain rights to disabled persons and all those fit into the definition of 'disability' defined in Section 2(1) of the Disability Act are brought at par. The purpose is to ensure that all these categories are able to get the fruits of such reservations/schemes in reality as well and that these provisions do not remain only on papers. It is now well recognized that persons with disabilities are invisible minority and under-privileged class. They suffer from many disadvantages. In order to ensure that rights guaranteed under this Act are extended to them, the Ministry of Social Justice and Empowerment, Government of India came out with "National Policy for Persons with Disabilities", issued on 10.2.2006.

"11. "Introduction" to the said Policy starts with constitutional spirit recording as under: "The Constitution of India ensures equality, freedom, justice and dignity of all individuals and implicitly mandates an inclusive society for all including persons with disabilities. In the recent years, there have been vast and positive changes in the perception of the society towards persons with disabilities can lead a better quality of life if they have equal opportunities and effective access to rehabilitation measures." [emphasis supplied)

12. This very National Policy recognizes the fact that education is the most effective tool for social and economic empowerment and therefore, if any prime

importance is to be given to educate the PWDs. That is the scheme of Disabilities Act itself. 13. Statistics of Socio-Economic studies reveal that there is abysmally low literacy and employment rates among the PWDs. Further, they face widespread social stigma and it is making disabled people among the most excluded in Indian Society."

Thus, with the enactment of the Disability Act, all such disabled persons, irrespective of the nature of their disabilities, are to be treated equally and at par. The Disability Act places responsibility on the society to make adjustments for disabled people so that they overcome various practical, psychological and social hurdles created by their disability. The Act places disabled people at par with other citizens of India in respect of education, vocational training and employment. The Act seeks to establish a coherent and comprehensive framework for the promotion of just and fair policies and their effective implementation. It creates formal procedures, which hasten the process of full and total integration of the disabled in the society. It also aims at facilitating efficient enforcement of policies and permits strong measures against the law-breakers. The main aim of PWD Act is also to define the responsibilities of the Central and State Governments with regard to the services for disabled persons. The Act aims to ensure full life to a disabled individual so as to enable him to make full contribution in accordance with his disability condition.

The aforesaid discussion would amply demonstrate that it is not only the statutory but constitutional right of persons suffering from disabilities to get special treatment recognized by law. In this process, persons suffering from one disability cannot be treated differently from other kind of disability. All disabled persons falling within the definition of Section 2(I) of the Disability Act form one class. There cannot be sub-classification within this same class."

4. The Government of Punjab, after a consideration of the matter in light of the judgment rendered in **Bhupinder Singh** (supra), issued Instructions dated 19.11.2014, whereby the benefit of extension in service was made available to all disabled employees covered under Section 33 of the Act of 1995, which were further clarified by Instructions dated 19.02.2021 along the same lines.

5. Hon'ble the Supreme Court in **Kunal Singh vs. Union India**⁴, a case of a disabled employee who, while in service was declared permanently incapacitated for further service observed that, "...In construing a provision of

social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act.”

6. The Division Bench in **Kamal Dev Kalia vs. State of Punjab**⁵, following the judgment in Bhupinder Singh (supra), allowed the appeal and since the petitioner had retired on attaining the age of 60 years by then, granted him wages alongwith interest.

7. Learned State counsel despite his best efforts, has not been able to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.

8. In wake of the above, the present petition is disposed of in terms of **Bhupinder Singh** (supra), directing that the petitioner be granted extension in service with all consequential benefits. Needful be done within a period of two weeks.

21.05.2024
Aman Dua

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No