

2025.PHHC.000987



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

210

CWP-4729-2019

Date of Decision: 07.01.2025

GURNAM SINGH

... Petitioner

VERSUS

BHAKHRA BIAS MANAGEMENT BOARD AND ORS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Pawan Kumar, Sr. Advocate with
Ms. Vidhushi Kumar, Advocate for the petitioner.

Mr. Sudhanshu Makkar, Advocate for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

Seeking issuance of directions to the respondents to grant all financial benefits of two years' service in lieu of extension granted to the petitioner from the age of 58 years to 60 years under the Physically Handicapped Employee Category, the petitioner has approached this court.

Learned counsel for the petitioner contends that the petitioner was appointed with the Bhakhra Bias Management Board, Patiala on 12.05.1982 to the post of Lower Division Clerk (LDC). While the petitioner was in service, he met with an accident and suffered permanent physical disability to the extent of 40% as per the certificate dated 19.03.2002 issued in his favour in this regard. Thereafter, the petitioner was promoted to the post Upper Division Clerk (UDC) in the year 2012 and he attained the age of 58 years on 31.03.2014. The petitioner was given extension in service from the age of 58 years to 60 years,

on a year to year basis. The petitioner was given his first extension in service vide office letter No.19 dated 08.01.2014 for a period of one year from 31.03.2014 to 31.03.2015 and was given second extension for another one year vide office letter No.126 dated 10.02.2015 from 01.04.2015 to 31.03.2016 (upto the age of 60 years). During the period of extension, the Government issued a circular dated 19.11.2014, in compliance of the Judgment dated 25.05.2011 passed by this Court in the matter of “Bhupinder Singh Versus State of Punjab and others” bearing No.CWP-7233 of 2010 that had attained finality upto the Hon’ble Supreme Court. Vide the said circular, the retirement age of all the physically handicapped employees in general was increased to 60 years and an amendment was also later carried out in Rule 3.27 of the Punjab Civil Services Rule Vol. 1(1). He contends that pursuant to the amendment/circular, all the employees who were/are physically handicapped, irrespective of whether they could do physical work or not, have been given extension in service up to the age of 60 years alongwith all financial benefits including the arrears, annual grade increments, regular pay scales/salaries and all pensionary benefits. Even though the petition was given extension in service from the age of 58 years to 60 years but for the period of said extended service, he was not granted annual grade increment and was being paid only the regular pay. The petitioner finally retired on 01.04.2016, without getting any benefit for the extended service period for two years above. The pensionary benefits of the petitioner were calculated on the basis of salary that was admissible to the petitioner at the time of attaining an age of 58 years. The petitioner claims that benefits of two annual grade increments alongwith revision of retiral benefits and all other benefits, however, the claim of the petitioner was not responded to. The petitioner hence

submitted a representation dated 19.03.2018 to the respondents in light of the aforesaid judgment passed by this Court, however, no decision was taken thereupon, thus compelling him to approach this Court for seeking the said relief.

It is further argued that originally the benefit of the increased age of superannuation was granted only to the State Government employees suffering from blindness and not to the other handicapped employees. The writ petition bearing No.CWP-7233 of 2010 titled as 'Bhupinder Singh Versus State of Punjab' was hence filed before this Court, wherein the above action of the respondents was set aside being arbitrary and it was held that a parity treatment needs to be extended to all disabled persons under the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and they have to be treated as a similar category for being given the benefit. The operative part of the abovesaid judgment is reproduced hereinafter below:

“(7) From various provisions of the Act noticed herein above, it is abundantly clear that all categories of disabled persons have been treated alike 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 seem 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.

(8) A Division Bench of this Court while considering the question of allotment of houses to one category of disabled persons under Section 43 of the Act issued directions for expanding the scheme to all categories of disabled persons as defined under Section 2 (i) of the Disability Act. The relevant observations are as under: -

“If the expression “disability” under the Act covers seven categories of persons including persons suffering from mental retardation and mental illness, we do not see how a scheme or a policy framed pursuant to Section 43 of the Act can have a restricted meaning to the said definition. Section 33 of the Act which deals with reservation of posts for only three categories of persons suffering with disabilities is a specific provision dealing with public employment of disabled persons. The provisions contained in the aforesaid Section 33 of the 1995 Act, therefore, have no application to other fields covered by the Act including the field covered by Section 43 of the 1995 Act. We, therefore, direct that the policy in force for providing housing/accommodation/land to disabled persons be suitably expanded to all categories of persons with disabilities as defined by Section 2 (i) of the 1995 Act. However, it is left to the discretion of the State to specify the percentage of reservation for each of the said categories. With the aforesaid observations and directions, these Public Interest Litigations are disposed of.”

XXX XXX XXX

(10) In view of the above, this petition is allowed. Respondent-State is directed to suitably modify the Circulars (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.”

The above said judgment attained finality upon dismissal of SLP by the Hon’ble Supreme Court. He further submits that thereafter, numerous employees of the State of Punjab and Haryana have approached this Court for grant of similar benefits regarding revision of pay and other retiral benefits, they were granted all the financial benefits calculated up to the age of 60 years in light of the circular dated 19.11.2014 and the amended Rule 3.27 of Civil Services Rules. One Harbhajan Singh had filed CWP-3974 of 2012 claiming similar benefits. Another similar petition bearing No.CWP-23145 of 2015 was also filed by one Paramjit Singh before this Court. Both the petitions were allowed by this Court and all admissible benefits were ordered to be released in favour of the said petitioners.

Responding to the above, learned counsel for the respondents submits that even though the Government of Punjab had taken a decision for grant of benefit of increased age of superannuation with respect to the disabled employees from the age of 58 years to 60 years, as reflected in the circular dated 19.11.2014, however, the said decision is *per se* not applicable to the Bhakhra Bias Management Board. He further submits that as on the date when the petitioner was granted extension on yearly basis for two years, the

instructions of the year 2012-13 were applicable where there was no such provision. It is further submitted that the petitioner has claimed relief under the instructions/circular dated 19.11.2014, however, the same was adopted by the respondents subsequent to the extension granted to the petitioner vide office orders dated 08.01.2014 and 10.02.2015. Thus, the instructions dated 19.11.2014, as adopted by BBMB on 07.04.2015 are not applicable to the case of the petitioner, since such adoption was later in point of time and cannot be applied retrospectively.

I have heard the learned counsel for the respective parties and have gone through the documents and other material available on record with their able assistance.

After hearing both sides, the undisputed facts that emerge from the perusal of the above is that the petitioner herein suffered physical disability to the extent of 40% and a valid certificate had also been issued in his favour. It also remains undisputed that notwithstanding the enhancement in the age of superannuation for the persons suffering disability above 40% as per the “Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995”, benefit was being extended only to the handicap employees suffering from low vision/blindness. It is upon the arbitrariness in action having been held bad as per the judgment in the matter of ***Bhupender Singh (Supra)*** that the State decided to extend the benefit to other similarly placed persons who are entitled to the same benefits. Suitable instructions and amendments in the statutory rules were, however, carried out later in point of time.

It is also not in dispute that the precedent judgments in the matters of Harbhajan Singh in CWP-3974 of 2012 decided on 18.09.2015 and Paramjit Singh in CWP-23145 of 2015 decided on 31.10.2015 were allowed under similar circumstances and the directions qua revision of pay scales, disbursement of arrears on revision of the pay as well as pensionary benefits have already been passed. The vehement objection by the respondents is only to the subsequent adoption of the direction of the State of Punjab by the BBMB. The reason for declining the claim thus emanates from an argument that it would have a retrospective effect of extending the adoption of the circular and the increase in age of superannuation.

What is, however, seemingly lost in the argument is that the Act of 1995 was already in force and being a special as well as parliamentary legislation on the subject, it had an over-riding effect on any other repugnant or contradictory provision as per the State rules and circular. Besides, it is not that the benefit of increase in age of superannuation was not being given but that such benefit was being arbitrarily restricted to only the visually impaired employees, which such act was held to be arbitrary and discriminatory.

It would be unjust and improper to deny the benefit accrued in favour of the disabled employee on the ground that erstwhile instructions/circulars did not provide for increase in age of retirement for the employees other than visually challenged even when such classification has already been held as illegal. Hence, a wrongful and illegal deprivation and denial of a rightful entitlement cannot be upheld. Hence, the benefits are required to be extended to all categories of disabled persons. The amendment to be carried out the respondents in its Rules was only a formal exercise to be undertaken to bring

the Rules in conformity with the Central Act and would not confer any right on the respondent-Department to contend that the benefit can be extended only after adoption of circular and specific amendment in its Rules. The said stand of the respondents, if accepted, would give an overriding power to the State Government to deny and deprive the petitioner of the benefits, which are otherwise intended to be extended to the petitioner.

Moreover, once the respondent-Bhakhra Bias Management Board has adopted the policy as issued by the Government of Punjab on 19.11.2014, all the employees who were/are physically handicapped persons irrespective of the fact whether they have physical worked or not, have to be given extension in service up to the age of 60 years along with all financial benefits including the arrears, annual grade increments, regular pay scales/salaries and all pensionary benefits. The petitioner, who has undisputedly worked for the extended period, i.e. from the age of 58 years to 60 years for 1 + 1 year, is certainly entitled for the benefits as mentioned above. Even otherwise, the respondent has failed to dispute that other employees were given similar benefits. No arguments have been advanced by the respondents as to how the case of the petitioner is distinguishable from the other employees to whom such benefit has already been extended.

The present petition is accordingly allowed.

The respondents are directed to grant all consequential financial benefits qua two years' service rendered by the petitioner from 2014 to 2016 by treating that the petitioner has superannuated from the post of UDC on 31.03.2016.

Let the calculation of arrears qua revised pay, gratuity, pension and refixation of pension etc. be undertaken within a period of two months of the receipt of certified copy of this order and the entire admissible dues be released thereafter in favour of the petitioner within a further period of two months, failing which the respondents shall be liable to pay the entire dues alongwith interest @ 6% per annum from the date of filing of the present petition till actual disbursement. The defaulting employe causing delay shall also be liable to pay a cost of Rs. 50,000/- to be deposited with Poor Patients Welfare Fund, PGIMER, Chandigarh.

JANUARY 07, 2025.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No