

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

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LPA No. 1247 of 2017 (O & M)

Date of Decision: 28.11.2018

State of Haryana and others

.....Appellants

v.

Umesh Kumar

.....Respondent

**CORAM HON'BLE MR. JUSTICE MAHESH GROVER
 HON'BLE MR. JUSTICE LALIT BATRA**

Present:- Mr. Ankur Mittal, Addl. AG, Haryana
 for the appellants

Mr. Jatinder Nagpal, Advocate, for the respondent

MAHESH GROVER, J. (Oral) :

CM No. 2635 of 2017 :

For the reasons mentioned in the application, the same is allowed. Delay of 68 days in filing the appeal stands condoned.

Main Case :

The appellants are in appeal against the judgment of learned Single Judge.

Briefly stated, the controversy revolves around the grant of extension to the present respondent beyond the date of superannuation on the ground that he is physically challenged person.

There is indeed a policy of the State on record as Annexure P-1C, which enables them to grant extension to an employee beyond the date of superannuation provided his physical disability is determined by a Medical Board and certified so.

The case of the respondent was rejected by a cryptic order and the learned Single Judge observed so with which we cannot disagree. However, he went on to accept the petition and grant not only extension but all the service benefits for the period the respondent did not work, which is the cause of grievance to the appellants, who contend that firstly, right to be retained in service beyond the age of superannuation, was not an absolute right. Besides, although the Act does not state that physical disability has to be permanent in character but Form 4 provided for the purpose, certainly say so.

After hearing learned counsel for the parties, we are of the opinion that the Act does not provide that an employee with permanent physical disability alone has to be granted this benefit. Learned Single Judge was, therefore, right in observing that language of the Statute would prevail and not that of the appendix to the Statute to infer the intent of the legislature.

Be that as it may, our question still remains as the grant of extension beyond the age of superannuation was not an absolute right in terms of the policy, the relevant of which is extracted here below :

“However, on receipt of the medical report from the Board, the Competent Authority shall take a decision to grant or not to grant the extension in service to such physically disabled employees.”

Consequently, the learned Single Judge fell in error in assuming that once the physical disability determined, the grant of extension would be an automatic course.

The respondent or any other employee for that purpose would have no occasion to insist upon an extension as a matter of right and if that

be so, then it cannot be presumed that the respondent would have been

retained in service to grant him all the service consequences, particularly, when he did not even work during the said period. This part of the impugned order is, thus, set aside.

Disposed of.

(MAHESH GROVER)
JUDGE

(LALIT BATRA)
JUDGE

28.11.2018
Ashwani

Speaking/Reasoned	Yes/No
Reportable	Yes/No