

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

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**ORIGINAL APPLICATION NO.060/01109/2016**

**Chandigarh, this the 13<sup>th</sup> day of December, 2017**

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**CORAM:HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &  
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Dr. Vinod Kumar Sharma, Aged 59 years, S/o Sh. Narayan Datt Sharma, presently working as Headmaster, Government Model High School, Sector 34-C, Chandigarh. Group - A

**....Applicant**

**(Present:** Mr. R.K. Sharma, Advocate)

**VERSUS**

1. Union Territory, Chandigarh Administration through Advisor to Administrator, U.T. Secretariat, Sector 9, Chandigarh.
2. Education Secretary, Union Territory, Chandigarh Administration, U.T. Secretariat, Sector 9, Chandigarh.
3. Director School Education, Union Territory, Chandigarh Administration, U.T. Secretariat Sector 9, Chandigarh.
4. District Education Officer, Union Territory, Chandigarh Administration, U.T. Secretariat, Sector 9, Chandigarh.

**....Respondents**

**Present:** Mr. Rakesh Verma, Advocate)

**ORDER (Oral)**

**JUSTICE M.S. SULLAR, MEMBER (J)**

1. Claiming himself to be a physically handicapped person with 82% disability, as per certificate dated 15.01.2015 (Annexure A-1), issued by the Medical Board of Govt. Multi Specialty Hospital, Sector 16, Chandigarh, applicant Vinod Kumar Sharma, Headmaster, (since retired w.e.f. 31.12.2016), has instituted the instant Original Application (O.A.), for issuance of a direction to the respondents, to consider his claim for extension in service, after the age of 60 years, being disabled person, for a further period of two years, in terms of Punjab Govt. instructions dated 22.12.2014

(Annexure A-7), and in view of ratio of law laid down in the case of **Dr. Jagjivan Singh Vs. State of Punjab and Others** (CWP NO. 25972 of 2015 decided on 03.08.2016) (Annexure A-9), by the Hon'ble Punjab and Haryana High Court.

2. The epitome of the facts and material, which needs a necessary mention, for the limited purpose of deciding the core controversy, involved in the instant O.A., and emanating from the record, is that having successfully completed the recruitment process, the applicant was initially appointed as Sanskrit teacher on 10.11.1979, by the U.T. Administration. Taking into consideration his subsequently acquired higher educational qualifications, hard work, devotion to duty, he was stated to have given the officiating charge of Head Master on 27.07.2011. Subsequently, he was regularly promoted as such w.e.f. 11.05.2012, and presently working as Headmaster in Government Model High School, Sector 34-C, Chandigarh. The conditions of service of the employees of U.T. Chandigarh are governed by the corresponding provisions of employees of the State of Punjab, vide Gazette notification dated 13.01.1992 (Annexure A-2).

3. The case set up by the applicant, in brief insofar as relevant, is that the State of Punjab formulated a policy dated 19.11.2014, enhancing the age of retirement of physically handicapped persons, in terms of Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter to be referred as 'PWD Act'). These instructions were adopted by the Chandigarh Administration, vide policy decision dated 11.12.2014. In pursuance thereof, the applicant was also granted the benefit of the said policy decision by the UT,

enhancing his age of retirement from 58 years to 60 years, vide order dated 16.02.2015 (Annexure A-3). It was alleged that the State of Punjab also granted the benefit of enhancement in age of retirement for two years, in terms of Govt. of Punjab, Department of Finance policy circulars dated 08.10.2012 and 20.09.2013 (Annexure A-4 and A-5 respectively). Taking note of the enhancement of age of retirement, already granted in favour of Blind and Physically Handicapped, the State of Punjab has issued clarification dated 21.11.2014 (Annexure A-6), declining the benefit of circular dated 08.10.2012 and 20.09.2013. The circular was adopted by the Chandigarh Administration. It was claimed that subsequently, the Punjab Govt. again issued a policy circular dated 22.12.2014 (Annexure A-7), granting the benefit of two years of extension only to blind and physically handicapped of Class-IV category, with reference to circular dated 08.10.2012 and 20.09.2013, on the ground that their age of retirement is 60 years, was later on provided for extension of service by two years on optional basis only subject to the condition that after 60 years no extension shall be given. The circular dated 22.12.2014 (Annexure A-7), was adopted by the UT Administration, vide letter dated 19.08.2015 (Annexure A-8).

4. According to the applicant, that since the aforementioned circular was discriminatory qua physically handicapped Group A, B & C employees, so its vires were challenged in Jagjivan Singh's case, and the Hon'ble High Court extended the benefit of extension of service to all categories of physically handicapped persons, vide judgment dated 03.08.2016 (Annexure A-9). The similarly situated persons are stated to be still working, in view of protection granted

to them, vide interim order dated 23.11.2016(CWP NO. 24273/2016) (Annexure A-16), by the Hon'ble High Court. The applicant, who was going to retire (now retired during the pendency of this case) w.e.f. 31.12.2016, submitted representations dated 27.07.2016, 23.08.2016 & 24.10.2016 (Annexure A-10, A-11 & A-13) for granting the benefit of further extension of two years being physically handicapped person, as per the indicated instructions, but in vain.

5. Aggrieved thereby, the applicant has preferred the instant O.A., claiming the benefit of further extension of two years, on the following grounds.

“(i) That admittedly applicant belongs to physically handicapped category who has been granted benefit of enhancement of age of retirement up to 60 years in terms of State of Punjab policy letter dated 19.11.2014 as adopted by the Chandigarh Administration vide policy decision dated 11.12.2014.

(ii) That in terms of policy of the Punjab Government dated 22.12.2014 which was applied only to Group 'D' employees for consideration of their claim for further extension of two years in addition to the extension granted to normal employees in two spells, one year plus one year in terms of Punjab Government policy letters dated 08.10.2012 and 20.10.2013, benefit has been restricted only to Group 'D' employees, which was discriminatory and violative of provisions of Article 14 and 16 of the Constitution of India, which was challenged by one Dr. Jagjivan Singh, who belongs to Group 'A', filed CWP No. 25972 of 2015 challenging the validity of circular dated 22.12.2014 to the extent it denied the benefit to categories of physically handicapped and our own jurisdictional High Court has been pleased to quash the said circular to the extent it had discriminated with Group A, B and C categories of physically handicapped persons granting benefit to even the employees other than Group 'D' relying upon the judgment of Bhupinder Singh Versus State of Punjab and Others, 2011 (4) SCT 55, as well as the judgment rendered in LPA therein. In addition, the Hon'ble High Court also relied upon judgment of the Hon'ble Supreme Court in Union of India and another Versus National Federation of the Blind and others, 2013 (4) SCT 807.

(iii) That Chandigarh Administration having followed the instructions of the State of Punjab in view of the notification dated 13.01.1992, is also duty bound to follow the directions issued by the jurisdictional High Court relating to the policy of Punjab government which determine condition of service of its employees. Consequently judgment in Dr. Jagjivan singh's case is applicable to the case of the applicant also as in view of the policy decision dated 13.01.1992 notified in the official gazette on 06.02.1992, it is specifically held that the service conditions of the employees of UT Chandigarh will be the same as are the service conditions of the employees of corresponding categories of the State of Punjab and even there is no requirement of formal adoption thereof in terms of para 19 of the judgment passed by the Hon'ble Supreme Court in the case of Rajesh Kumar Basandhi reported as 2004 (1) SCT 680.

(iv) That not only in the main judgment even subsequently the Hon'ble Punjab and Haryana High Court has passed interim orders in

two Writ Petitions i.e. CWP No. 17237 of 2016 titled Balwinder Singh Versus State of Punjab and others and CWP No. 24273 of 2016 in case titled Mukhtiar Singh versus State of Punjab and others has ordered status quo and those Writ Petitions are now fixed for 09.02.2017.

(v) That the respondents are unnecessarily lingering the matter despite the fact that applicant represented in July, 2016 before pronouncement of judgment by the Hon'ble Punjab and Haryana High Court in Dr. Jagjivan Singh's case and even after pronouncement of the judgment, applicant had represented in the month of September, 2016 and a period of more than 2 ½ months has already expired but no action has been taken by the respondents. Thus the whole action on the part of the respondents is bad in law.

(vi) That the action of the respondents is harsh, illegal, arbitrary, against the principles of natural justice, violative of Article 14 and 16 of the Constitution of India as well as against the specific provisions in the Persons with disabilities (Equal opportunities Protection of Rights and Full Participation) Act, 1995. Hence, the whole action is bad in law."

6. Levelling a variety of allegations and narrating the sequence of events, in detail, in all, the applicant claims that he is entitled to further extension of two years, in view of the pointed instructions of Punjab Govt., adopted by the U.T. Chandigarh Administration, and judgment (Annexure A-9) in Dr. Jagjivan Singh's case (supra), in the manner, indicated herein above.

7. On the contrary, the respondents have refuted the claim of the applicant, and filed the reply, wherein it was pleaded that the Govt. instructions dated 22.12.2014 (Annexure A-7) are applicable only in respect of Group D employees and not to the applicant. However, the legal position, laid down by the Hon'ble Apex Court in Dr. Jagjivan Singh's case (Annexure A-9), was acknowledged wherein it was ruled that the benefit cannot be restricted to Group C & D employees only, but it is applicable to the employees of all Groups A, B, C & D. It was pleaded that as per Rule 3.26 of the Punjab Civil Service Rules Volume I para 1 (Annexure R-1), applicable to the employees of U.T. Chandigarh, the superannuation age in respect of Group A, B and C employees is 58 years and in respect of Group D employees is 60 years. It was admitted that the Govt. of Punjab, Department of Personnel, vide

letter dated 19.11.2014 (Annexure R-2 colly), adopted by the Chandigarh Administration, vide letter dated 11.12.2014 (Annexure R-2 colly), has enhanced the retirement age of all the disabled persons. In pursuance of the Govt. of Punjab letter dated 19.11.2014 (Annexure R-2 colly), the retirement age of the applicant stands already enhanced from 58 years to 60 years, vide order dated 16.02.2015 (Annexure A-3). The representations for further extension in service for two years beyond 60 the age of years, moved by the applicant, were accordingly decided.

8. However, it was further pleaded that after the decision dated 03.08.2016 (Annexure A-9) of Hon'ble Punjab and Haryana High Court, no fresh order/policy decision has been issued by the Govt. of Punjab for enhancing the retirement age from 60 years to 62 years in respect of disabled persons. So the applicant is not entitled for enhancement of age beyond 60 years. As and when the decision is taken in the matter, by the Punjab Govt. for enhancement of retirement age up to 62 years for disabled persons, the same will be implemented in respect of the employees of the U.T., including the applicant. Instead of reproducing the entire contents of the reply and in order to avoid the repetition of facts, suffice it to say, that while virtually acknowledging the factual matrix and reiterating the validity of their action, the respondents have stoutly denied all other allegations and grounds, contained in the O.A., and prayed for its dismissal.

9. Controverting the contents of reply, filed by the respondents, and reiterating the grounds contained in the O.A., the applicant filed rejoinder. That is how we are seized of the matter.



10. Having heard learned counsel for the parties, having gone through the record, with their valuable assistance, and after considering the entire matter, we are of the firm view that the instant O.A. deserves to be accepted, in the manner, and for the reasons, mentioned hereinabove.

11. Ex-facie, the arguments of learned counsel for the respondents that since the Punjab Govt. has not framed any policy for granting extension in service to physically handicapped persons, up to the age of 62 years, after the judgment in Dr. Jagjivan Singh's case (supra) of the Hon'ble High Court (Annexure A-9), so the applicant is not entitled to extension in service beyond the age of 60 years, are not only devoid of merits, but misplaced as well.

12. As is evident from the record, that in pursuance of the provisions under Section 33 of the PWD Act and the instructions dated 19.11.2014 (Annexure R-2 colly), issued by Govt. of Punjab, Department of Personnel, adopted by the U.T. Administration, vide letter dated 11.12.2014 (Annexure R-2 colly), the retirement age of the applicant was enhanced from 58 years to 60 years being orthopedically handicapped person, vide order dated 16.02.2015 (Annexure A-3). At the same time, it was decided to grant extension in service, after 60 years to blind and orthopedically Class-IV employees, vide letter dated 22.12.2014 (Annexure A-7), adopted by the UT Administration. Since the instructions (Annexure A-7) had illegally created a class within the class of physically handicapped persons, so one Dr. Jagjivan Singh had filed CWP bearing No. 25972 of 2015, for issuance of a writ in the nature of mandamus, directing the respondents to extend the date

of his retirement, up to 62 years, in pursuance of the same very circular, issued by the respondents, as the same benefit has already been extended to other similarly situated physically handicapped employees. A further prayer was also made to the effect that letter dated 22.12.2014 (Annexure P-7) (therein) be declared as discriminatory, and violative of provisions of PWD Act, restricting the benefit of extension of age only with respect to blind and orthopedically Class-IV employees. The Writ petition came to be decided and after relying upon the ratio of law laid down by the Hon'ble Punjab and Haryana High Court in the case of **Bhupinder Singh Vs. State of Punjab and Others** 2011 (4) SCT 55 and the Hon'ble Supreme Court in the case of **Union of India and another Vs. National Federation of the Blind and others**, 2013 (4) SCT 807, while interpreting the relevant statutory provisions 38, 39, 47 etc. of the PWD Act, it was ruled that the benefit of reservation under Disability Act cannot be confined to Class-C and D posts, and it is also applicable to all Group A, B, C and D posts and as such the classification made by the respondent-State is contrary to the provisions of the Disability Act, 1995, vide judgment dated 03.08.2016 (Annexure A-9). The operative part of the judgment reads as under:-

“In view of the ratio of judgment in Bhupinder Singh's case (supra), the circulars issued by the State Government confining the benefit of enhancement of retirement age only to blind persons creates discrimination between different categories of the persons suffering with disabilities. It was held that the benefit of circular is required to be expanded and extended to all physically disabled persons as well. These circulars are administrative in nature and the Government cannot discriminate by its executive or administrative action. The State Government was directed to modify the circulars and extend the benefit of enhancement of age to all categories of disabled Government employees as specified under Section 2(i) of the Disability Act, 1995 in tune and spirit of the Act.

In the present case, the petitioner retired at the age of 60 years whereas he was entitled for extension of his age upto the age of 62 years like one Bhajan Chand, who was blind. Moreover, the



controversy in hand is squarely covered by National Federation of Blind's case (supra) wherein it was held that the benefit of reservation under the Disability Act, 1995 cannot be confined to Class C and D posts. It is applicable to all Group A, B, C and D posts and as such, the classification made by the respondent-State is contrary to provisions of the Disability Act, 1995.

Accordingly, in view of the facts and law position as discussed above, the present writ petition is allowed and the respondents are directed to consider the case of the petitioner in view of National Federation of Blind's case (supra) by granting the extension by one year as mentioned in circulars issued by the State Government by granting benefit to Class III and IV employees as it was held in said judgment that the benefit cannot be restricted to Class C and D posts only but it is applicable to all the Groups. The necessary exercise be done within a period of two months from the date of receipt of certified copy of this order. In case, the petitioner is found to be entitled, the necessary benefits be granted within one month thereafter. In case, any adverse order is passed, the petitioner is at liberty to challenge the same."

13. Meaning thereby, the applicant, in view of this legal position, is also entitled to the benefit of further extension of period of service beyond 60 years, as contemplated under the PWD Act and circular (Annexure A-7). Therefore, the contrary arguments of the learned counsel for the respondents, *stricto sensu*, deserve to be and are hereby repelled, under the present set of circumstances. On the other end, the ratio of law laid down in the indicated judgments, *mutatis mutandis*, is applicable to the present controversy and is a complete answer to the problem in hand.

14. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

15. In the light of the aforesaid prismatic reasons, the instant O.A. is accepted. The applicant, who is physically handicapped person, is held entitled to the benefit of extension in service, beyond 60 years, in the obtaining circumstances of the case. At the same time, since the applicant had already retired, during the pendency of this case, w.e.f. 31.12.2016, so the Competent Authority amongst the respondents is directed to issue order of re-appointment, by extending the benefit of extension in

service, forthwith, failing which the applicant would be entitled to the pay and all other consequential benefits of service w.e.f. 01.01.2018. However, the parties are left to bear their own costs.

**(P. GOPINATH)**  
**MEMBER (A)**

**(JUSTICE M.S. SULLAR)**  
**MEMBER (J)**

**Dated: 13.12.2017**

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