

(2012) 11 P&H CK 0131

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 23165 of 2010

Ram Niwas Soni

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 09-11-2012

Acts Referred:

Citation : (2013) 169 PLR 293

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Harish Rathee, D.A.G., Haryana, for the Respondent

Final Decision : Allowed

Judgement

Augustine George Masih, J.—Petitioner has approached this Court assailing the order dated 17.7.2010 (Annexure P-6) issued by the Commissioner & Director General, Secondary Education, Haryana-respondent No. 2 vide which the representation of the petitioner for granting him extension beyond the age of his superannuation by two years on the ground that he is physically handicapped, stands rejected. Petitioner, who appears in person states that he was working as an Assistant in the Office of the District Education Officer, Bhiwani, when he vide his application dated 25.6.2009 prayed for granting him extension by two years in the light of the Haryana Government instructions dated 28.3.2006 (Annexure P-1). His application was accompanied with a certificate of disability issued by the Chief Medical Officer, Bhiwani. The case of the petitioner was forwarded by the District Education Officer, Bhiwani on 27.7.2009, which was returned by the Director, Secondary Education with the objection that the petitioner's medical certificate should have been issued by the Medical Board PGIMS, Rohtak. Petitioner appeared before the Medical Board in PGIMS, Rohtak, and was examined on 9.10.2009, wherein his physical disability was assessed at 70%. A fax was sent by the PGIMS, Rohtak to the office of the Director, Secondary Education, Haryana on 23.10.2009. The original documents of the petitioner were forwarded by the District Education Officer, Bhiwani along with the

certificate of the Medical Board of PGIMS, Rohtak, which was received in the office of the Director Secondary Education on 9.11.2009.

2. The claim of the petitioner has been rejected on the ground that complete case of the petitioner has not been received by the office of the Directorate prior to the date of retirement of the petitioner and the petitioner stood retired on 31.10.2009 on attaining the age of 58 years. It has further been asserted by the respondents that the petitioner was required to submit his complete case along with the documents one year prior to the date of his retirement, which the petitioner has failed and, therefore, is not entitled to the extension. This ground, the petitioner states, for rejecting the claim of the petitioner is not justified and accordingly prayer has been made for setting aside the impugned order dated 17.7.2010 (Annexure P-6).

3. On the other hand, counsel for the respondents has placed reliance upon the instructions dated 21.4.2008 (Annexure R-1) to contend that the petitioner was required to attach disability certificate along with the application for extension in his age beyond 58 years from the Medical Board of PGIMS, Rohtak, which certificate was not attached along with the application, which was required to be submitted at least one year prior to the date of retirement. This requirement stands incorporated with an intention to get the contents of the application and the certificate verified. Since the case of the petitioner was received in the office of the Directorate only on 27.7.2009, which was also not fulfilling the mandate of the instructions dated 21.4.2008, the claim of the petitioner has rightly been rejected by the respondents. He accordingly prays that the writ petition is without any merit and, therefore, deserves to be dismissed.

4. I have considered the submissions made by the petitioner and the counsel for the respondents, and with their assistance have gone through the records of the case.

5. The fact that the petitioner is 70% disabled because of past polio in his right leg and has been assessed as 70% permanently disabled is not in dispute. Petitioner was appointed on the post of a Clerk under the handicap category and, therefore, the disability of the petitioner was never in dispute. The objection of the respondents that the case of the petitioner for extension was required to be submitted at least one year prior to date of his retirement cannot, in these circumstances, be pressed into service, especially when the permanent disability of the petitioner is not in dispute. However, the petitioner had along with his application attached the disability certificate issued by the Chief Medical Officer, Bhiwani, which certificate is also not disputed. The application for extension was submitted on 25.6.2009, which was forwarded by the District Education Officer, Bhiwani on 27.7.2009. There was ample time for the respondents to verify the correctness of the certificate issued by the District Medical Officer, Bhiwani. The objection raised by the respondents that the certificate was not issued by the Medical Board of PGIMS, Rohtak, was also taken care of when the petitioner was examined by the Medical Board of PGIMS, Rohtak on 23.10.2009 and a fax

showing his disability was sent to the Office of the Director, Secondary Education on 23.10.2009 itself. The case of the petitioner with regard to the requirement of the instructions stood fulfilled prior to the date of his retirement i.e. 31.10.2009. Respondents have taken the shelter of the fact that the original documents, which were forwarded by the District Education Officer have been received in the office of the Directorate only on 9.11.2009, by that date petitioner had retired on 31.10.2009, which cannot be taken as a ground for rejecting the claim of the petitioner, who had taken due precaution and complied with the mandate of the instructions prior to his retirement. Technicalities should not be pressed into service when beneficial instructions are to be given effect to. Instructions dated 28.3.2006 provide for extension in service to an employee, who is physically handicap from 58 years to 60 years i.e. two years but this is also limited to those physically handicapped government employee whose minimum disability is assessed as 70%. The intention of the instructions is to help such employees who are unable to fend for themselves and this beneficial provision is to be construed further liberally in those cases where an employee is initially appointed under the handicapped category itself. It is also not in dispute that along with his application, certificate of disability issued by the District Medical Officer, Bhiwani was also attached, which showed him to be 70% disabled man. The Medical Board of the PGIMS, Rohtak has also found him to be 70% disabled. There was no misrepresentation on the part of the petitioner and, therefore, the genuineness of the claim of the petitioner stands established. Earlier too, this Court in *Shri Bhagwan v. State of Haryana and others*, 2011(1) S.L.R. 634, wherein similar facts were involved, held that such instructions which are beneficial in nature cannot be defeated by putting any restrictive or constrictive interpretation so as to defeat the right of a person claiming benefit of the provisions.

6. The beneficial instructions, thus, should not be kept in water tight compartments but should be construed, exercised and applied liberally to grant benefit to the deserving candidates. The decision of the State white enforcing such instructions in case of the physically handicapped person should not be laid a hostage to the technicalities and decision needs to be taken by the authorities with an open mind without being overwhelmed by the restrictive constrains of the instructions. In view of the above, present writ petition is allowed, the impugned order dated 17.7.2009 (Annexure P-6) is hereby quashed. Petitioner is held entitled to all consequential benefits, which be released to the petitioner within a period of three months from the date of receipt of certified copy of the order.