

Before Ajai Lamba, J.

AMARJIT SINGH,—Petitioner

versus

STATE OF PUNJAB & OTHERS,—Respondents

CWP No. 19231 of 2008

29th October, 2010

Constitution of India, 1950—Art. 226—Instructions dated 16th March, 1995 issued by State Government—A Constable Driver suffering with 100% visual disability seeking extension in age of retirement—Instructions dated 16th March, 1995 provide that retirement age of blind employees would be 60 years—No prudence in action of respondents in disallowing benefit of instructions—Action of respondents in not giving benefit of instructions dated 16th March, 1995 to petitioner is arbitrary—Petition allowed.

Held, that the purpose of instructions dated 16th March, 1995 is to provide succour to a person with visual disability, Whether it has been acquired later or was in existence when the person joined service is dehors the purpose. In such circumstances, there is no prudence in the action of the respondents in disallowing the benefit of the instructions to the petitioner. While serving the respondents, the petitioner suffered a disability and there being nothing in instructions dated 16th March, 1995 to debar the petitioner of the benefit. The stand of the respondents is not reasonable and acceptable. Action of the respondents in not giving the benefit of instructions dated 16th March, 1995 to the petitioner is clearly arbitrary. This is a fit case for invoking extraordinary writ jurisdiction to do substantial justice.

(Paras 9 and 11)

D.K. Bhatti, Advocate, *for the petitioner.*

B.S. Chahal, Deputy Advocate General, Punjab, *for the respondents.*

AJAI LAMBA, J (ORAL)

(1) This writ petition has been filed under Article 226/227 of the Constitution of India praying for issuance of a writ in the nature of mandamus, directing the respondents to raise the age of retirement of the petitioner from 58 years to 60 years in view of Instructions dated 16th March, 1995 (Annexure P-1).

(2) It has been pleaded that the petitioner joined Indian Army on 9th May, 1969. In the year 1986, the petitioner came to know that Punjab Police Department required special drivers due to terrorist activities. On considering the call of native State for services of persons with special competence/experience, the petitioner applied and was selected as Constable Driver with Punjab Police Department on 2nd December, 1986.

(3) It has been pleaded that the petitioner served the State of Punjab during the peak terrorism days with various senior officers. Unfortunately, during the service period, eye-sight of the petitioner started deteriorating and the petitioner has been rendered 100 % blind as would be evident from certificate dated 1st February, 2006 issued by the Civil Surgeon, Jalandhar. The petitioner, however, has been shown as otherwise medically fit except visual handicap.

(4) In view of handicap of the petitioner, he was given light duty in Police Lines, Jalandhar.

(5) The petitioner made representation to the respondents to consider the case of the petitioner for extension in age of retirement from 58 years to 60 years, at the first instance on 7th November, 2007 and thereafter, by way of reminder on 28th March, 2008. Copies of the letters have been placed on record as Annexures P-4 and P-5, respectively. On 1st September, 2008, the petitioner again approached the respondents by way of a mercy petition. Till date, neither decision on the representation has been taken nor has age of superannuation been increased from 58 years to 60 years. Be that as it may, the petitioner attained the age of superannuation on 31st January, 2009. The instruction, on which the petitioner relies, is Annexure P-1.

(6) Learned counsel for the respondent-State contends that in Punjab Police, a person who is visually handicap is not even eligible to join and therefore, Instructions dated 16th March, 1995 (Annexure P-1) would have no application in the case of the petitioner.

(7) I have heard the learned counsel for the parties and gone through documents to which my attention has been drawn.

(8) Instructions dated 16th March, 1995 (Annexure P-1) (relevant portion reads as under :—

“I am directed invite to reference to Punjab Government circular letter No 7572-3GS-77, dated the 1st August, 1977, on the subject noted above,—*vide* which a provision has been made that the blind State Government employees may be granted re-employment liberally after the normal age of retirement up to the age 60 years on year to year basis, where efficiency continues to be unimpaired and subject to their being declared physically and mentally fit.

2. Keeping in view the demand of the blind employees it has been under the consideration of the State Government that instead of granting of re-employment liberally after the normal age of retirement up to the age of 60 years on year to year basis it would be appropriate if the retirement age is raised from 58 years 60 years from the date of the issue of these instructions subject to their being declared physically and mentally fit by the Civil Surgeon of the District concerned for further service.”

(9) It is not in dispute that the petitioner has been given light duty after the petitioner was rendered visually blind. The instructions as extracted above do not provide that the same would not apply to the Punjab Police Department.

(10) The respondents have tried to carve out a distinction by way of saying that the instructions (Annexure P-1) would not apply to a service which does not allow a person with visual handicap to join that service. Instructions however do not make any such stipulation and therefore, no such distinction can be read in the instructions.

(11) The purpose of instructions, Annexure P-1, is to provide succour to a person with visual disability. Whether it has been acquired later or was in existence when the person joined service is dehors the purpose.

In such circumstances, there is no prudence in the action of the respondents in disallowing the benefit of the instructions to the petitioner.

(12) In any case, instructions, Annexure P-1, have been made for a benign purpose. To deprive the petitioner of the advantage of the same would be against equity, considering the fact that the petitioner served the respondents while he was able. On acquiring a disability, the petitioner cannot be deprived of the benefits of the instructions issued and adopted by the respondents.

(13) Considering the case of the petitioner that while serving the respondents, he suffered a disability as noticed above, and there being nothing in Instructions Annexure P-1 to debar the petitioner of the benefit, I am of the considered view that the stand of the respondents is not reasonable and acceptable. Action of the respondents in not giving the benefit of Instructions, Annexure P-1, to the petitioner is clearly arbitrary. This is a fit case for invoking extraordinary writ jurisdiction to do substantial justice.

(14) Learned counsel for the petitioner has taken a very fair stand in saying that the petitioner would not claim any salary for the period he has not served. Learned counsel however contends that the petitioner be allowed to re-join and serve the respondents till the age of 60 years by way of extension in age of superannuation.

(15) In view of the above, the petition is allowed with directions to the respondents to take a decision within two weeks of receipt of a certified copy of the order and allow the petitioner to retire at the age of 60 years.

(16) Copy of the order be given under signatures of the Reader of the Bench.