

Court No. - 2

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 487 of 2022

Petitioner :- Smt. Ramkali Samajik Utthan Evan Jan Kalyan Samiti Thru. Secy. Adv. Manoj Kumar Yadav

Respondent :- Union Of India Thru. The Ministry Of Social Justice And Empowerment New Delhi And 2 Others

Counsel for Petitioner :- Birendra Kumar Yadav, Amit Kumar, Satendra Jaiswal

Counsel for Respondent :- A.S.G.I., C.S.C.

Hon'ble Devendra Kumar Upadhyaya, J.

Hon'ble Rajnish Kumar, J.

1. Heard Shri Birendra Kumar Yadav, Advocate for the petitioner, Shri S. B. Pandey, learned Assistant Solicitor General of India, who appeared for Union of India and learned State Counsel representing the State-respondents.

2. This petition as a Public Interest Litigation has been filed by the petitioner, which is a society, with the prayer that the respondents may be directed to enhance the age of retirement from 60 to 62 years in respect of the employees of the State Government who are differently-abled. The prayer clause of the writ petition is reproduced hereunder:-

"1. To issue a writ, order or directions in the nature of Mandamus commanding and directing the opposite parties to issue equal policy in terms of section 3, 13, 20 and 21 of the Right of Persons with Disabilities Act, 2016 for extension of benefits of the disabled employees in respect to enhancing the retirement age from 60 to 62 years as the same

benefits were provided to the disable employees of Other State.

2. *To issue any order or direction as the Hon'ble Court deems just and proper in circumstances of the case."*

3. Strenuously arguing on behalf of the petitioner-society, it has been submitted by the learned counsel for the petitioner that in the State of Punjab as also in the State of Haryana the age of retirement of differently abled government employees is 62 years and hence State of Uttar Pradesh may also be directed to enhance the age of retirement of differently-abled government employees working in the State of U.P. from 60 to 62 years. Submission of the learned counsel for the petitioner is that by not extending the age of superannuation from 60 to 62 years the Government of U.P. is subjecting its differently-abled government employees to hostile discrimination and in terms of the provisions contained in Rights of Persons with Disabilities Act, 2016 the differently-abled persons in the State of U.P. are entitled to be given the same treatment as is being given to their counterparts in the State of Haryana and in the State of Punjab by providing their age of superannuation to be 62 years.

4. Learned counsel for the petitioner has relied upon a judgment of the High Court of Punjab and Haryana at Chandigar rendered in the case of **Bhupinder Singh vs. State of Punjab and others, CWP No.7233 of 2010 decided on 25.05.2011**, against which **Civil Appeal No.8855 of 2014 preferred by the State of Punjab before the Hon'ble Supreme Court has also been dismissed by means of the judgment and order dated 16.09.2014**. Another judgment relied upon by the learned counsel for the petitioner is in the case of **Jagjiwan Singh vs. State of**

Punjab and others, CWP No.25972 of 2015, decided on 03.08.2016.

5. On the other hand, learned Assistant Solicitor General of India appearing for the Union of India and learned State Counsel opposing this Public Interest Litigation have unanimously submitted that the prayer made in this Public Interest Litigation essentially pertains to service matter and as such as per the settled position of law, no Public Interest Litigation can be entertained in relation to service related matters and accordingly the writ petition is liable to be dismissed on this score alone.

6. We have considered the submissions made by the learned counsel appearing for the respective parties and have also perused the judgments cited by the learned counsel for the petitioner as also the provisions contained in Rights of Persons with Disabilities Act, 2016.

7. There is no doubt in our mind that the relief claimed by the petitioner in this petition lies in the realm of service matter for the reason that the prayer made is in relation to enhancement of age of superannuation of differently-abled government employees in the State of U.P. Fixation of age of superannuation or retirement is a condition of service which does not, in any manner, concern either the petitioner-society or its members.

8. In the case of *Girjesh Shrivastava and others vs. State of Madhya Pradesh*, reported in (2010) 10 SCC 707, the Hon'ble Supreme Court reiterated the legal principle that in service matters no Public Interest Litigation can be entertained. Reference, at this juncture, may also be had to several other judgments of Hon'ble Supreme Court in this regard, namely, **Dr. Duryodhan Sahoo and others vs. Jitendra Kumar Mishra and others**, (1998) 7 SCC 273, **B. Srinivasa Reddy v. Karnataka**

Urban Water Supply & Drainage Board Employees' Association and another, (2006) 11 SCC 731 and **Dattaraj Nathuji Thaware v. State of Maharashtra and others, (2005) 1 SCC 590**. In these judgments, Hon'ble Supreme Court has categorically held that PIL in service matters should not be entertained. It is equally well settled that except where a writ of *Quo Warranto* is prayed for, Public Interest Litigation in service related matters ought not to be entertained. So far as the present case is concerned, we do not find that it raises any issue of *Quo Warranto* and accordingly in our considered opinion, this Public Interest Litigation is not maintainable. We may, however, also reflect upon the merit of issue raised by the petitioner.

9. The basis of the prayers made in this petition is that since the differently-abled government employees working in the State of Haryana and the State of Punjab have been given the benefit of age of superannuation of 62 years whereas in the State of U.P., the age of superannuation of differently-abled employees is 60 years hence such employees in the State of U.P. have been discriminated against. Learned counsel for the petitioner, apart from pleading discrimination on the basis of the principles enunciated by Articles 14 and 16 of the Constitution of India, has also submitted that the scheme of Rights of Persons with Disabilities Act, 2016 clearly mandates that the differently-abled persons cannot be subjected to any kind of discrimination including in the matter of public employment as such this Court ought to issue a direction to the State of U.P. for enhancing the age of superannuation of its differentaly-abled employees from 60 to 62 years.

10. No doubt that Rights of Persons with Disabilities Act, 2016 has been framed by the Parliament for empowerment of the

persons with disabilities and the said Act clearly mandates that differently-abled persons cannot be discriminated against. However, such non-discrimination which runs across the Act, 2016 has to be read in the context. The Act 2016 was framed to make a law prohibiting all kinds of discrimination of differently-abled persons in the society and also for ensuring their effective participation and inclusion in the society as also for creating an environment where there will be respect for the difference such differently-abled persons bear and also to create equality of opportunity etc. It is not a case where the petitioner is pointing out any discrimination of the differently-abled government servants in the State of U.P. in any respect *vis-a-vis* their counterparts who are not differently-abled. The petitioner has pleaded discrimination of the differently-abled government employees in the matter of their age of retirement in the State of U.P. *vis-a-vis* their counterparts in the State of Haryana and State of Punjab.

11. Apart from the provisions contained in Rights of Persons with Disabilities Act, 2016, at this juncture, we may also refer to the broad principles enunciated under Articles 14 and 16 of the Constitution of India which prohibit discrimination of any kind and provide for equal protection of laws. Article 16 operates in the field of public employment which mandates equality of opportunity for all citizens in the matter relating to employment or appointment to any office under the State. It further prohibits any discrimination of any citizen on grounds only of religion, race, caste, sex, descent, place of birth or residence. However, Article 14 of the Constitution of India cannot be read to mean that all laws have to be uniformly applicable to all people. Differential treatment, in our considered opinion, does not *per se* violate Article 14 of the Constitution of India. Such differential

treatment may amount to denial of equal protection under Article 14 only when there is no reasonable basis for differential treatment. It is equally settled that Article 14 permits classification, however, such classification has to have some reasonable basis. Reasonable classification thus, is not barred. Equal protection is available to all persons belonging to a well defined class. For permissible classification amongst the citizens there has to be a reasonable basis.

12. The age of superannuation as determined by the State of Haryana and State of Punjab for its differently-abled employees cannot be applied so far as the differently-abled employees of the State of U.P. are concerned as a matter of right either flowing from Articles 14 and 16 of the Constitution of India or from the Rights of Persons with Disabilities Act, 2016. Differently-abled employees in the State of U.P. forming well defined class distinct from another well defined class of differently-abled employees serving the State of Punjab and State of Haryana.

13. In the aforesaid view of the mater as well, plea of differential treatment to the differently-abled employees in the State of U.P., in the facts of the present case, so far as their age of superannuation is concerned, in our considered opinion, is not tenable.

14. For all the aforesaid reasons, we are not inclined to interfere in the Public Interest Litigation, which is hereby **dismissed.**

Order Date :-10.8.2022

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(Rajnish Kumar, J.) (D. K. Upadhyaya, J.)