

COURT CASE
DATE BOUND

No.11/84/2024-1FR/25215
HARYANA GOVERNMENT
Finance Department
(Finance Regulation Branch)

Dated : 13.11.2024

To

1. The Chief Secretary to Government Haryana (HRD, HR-I and Estb.-I/II/III).
2. All the Administrative Secretaries to Government Haryana.
3. The Registrar General, Punjab and Haryana High Court Chandigarh.
4. All Head of Departments in Haryana.
5. All the Commissioners of Divisions, Ambala, Karnal, Faridabad, Gurugram, Hisar and Rohtak.
6. All Deputy Commissioner and Sub Divisional Officers (Civil) in Haryana.

Subject : To reconsider the Rule 143(1)(i) of HCS (General) Rules, 2016 for superannuation age of differently-abled employees.

Sir/Madam,

I am directed to invite your kind attention towards FD's earlier instructions No. No.11/84/2024-1FR/17540 dated 28.08.2024 (copy attached) on the subject noted above.

2. In addition to the facts and advice earlier issued by the Finance Department vide instructions dated 28.08.2024, referred to above, it is further advised that:-

- i) judgement dated 24.01.2018 (copy attached) passed by the Hon'ble High Court in CWP No.6414 of 2016 – Gopi Ram Vs. State of Haryana and others may also be kept in view wherein the condition of 70% or more disability for the purpose of extension was upheld;
- ii) to go through both the judgements, referred in FD's earlier instructions dated 28.08.2024 as well as judgement dated 24.01.2018 passed by the Hon'ble High Court in CWP No.6414 of 2016;
- iii) interim orders (to continue/re-join service beyond the age of superannuation) passed in various CWPs may be got reviewed by apprising the Hon'ble Punjab and Haryana High Court by filing CM Application through O/o Advocate General, Haryana without any delay;
- iv) all pending CWPs may be got dismissed by apprising the Hon'ble Punjab and Haryana High Court about legal position and facts of the relevant case(s).

3. Copy of this order is available on the official website of the Finance Department i.e. finhry.gov.in.

Desh Raj
Superintendent

for Additional Chief Secretary to Govt. Haryana,
Finance Department *13/11/24*

Endst. No.11/84/2024-1FR/25215

Dated: 13.11.2024

A copy is forwarded to the following for information and necessary action in continuation to FD's earlier instructions No. No.11/84/2024-1FR/17540 dated 28.08.2024:-

1. The Advocate General, Haryana, Chandigarh with the request to assign all such pending cases to one dedicated Law Officer (DAG/AAG) for defending the matter on behalf of State Government.
2. The Incharge, Computer Cell (Finance Department) for uploading these instructions on the website of the Finance Department.

Desh Raj
Superintendent

for Additional Chief Secretary to Govt. Haryana,
Finance Department *13/11/24*

COURT CASE/
MOST IMPORTANT/
DATE BOUND

No.11/84/2024-1FR/17540
HARYANA GOVERNMENT
 Finance Department
 (Finance Regulation Branch)

Dated : 28.08.2024

To

1. The Chief Secretary to Government Haryana (HRD, HR-I and Estb.-I/II/III).
2. All the Administrative Secretaries to Government Haryana.
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6. All Deputy Commissioner and Sub Divisional Officers (Civil) in Haryana.

Subject : To reconsider the Rule 143(1)(i) of HCS (General) Rules, 2016 for superannuation age of differently-abled employees.

Sir/Madam,

I am directed to invite your kind attention towards Rule 143(1)(i) of HCS (General) Rules, 2016, which has the following provisions:-

the age of retirement on superannuation is fifty eight years for all groups of employees except the following for whom the same is sixty years:-

- (i) *Differently-abled employees having minimum degree of disability of 70% and above.*

2. As per following details, Civil Writ Petitions have been filed by many differently-abled employees having less than 70% disability to extend their service beyond the age of superannuation for further 2 years because as per Section 2(r) of the RPwD Act, 2016 "person with benchmark disability" means a person with not less than 40% of a specified disability" :-

Sr.No.	CWP No. & Year	Name of petitioner	Name of concerned Deptt.
1.	6460 of 2023	Dilbag Singh	Power (HVPNL)
2.	17510 of 2023	Rajiv Kumar	Secondary Education
3.	26961 of 2023	Rekha Rani	School Education
4.	29482 of 2023	Hari Parkash	Agriculture
5.	1373 of 2024	Lalit Roopesh	Secondary Education
6.	2340 of 2024	Jora Singh	Revenue
7.	2824 of 2024	Satpal Singh	Secondary Education
8.	3145 of 2024	Sher Singh	Elementary Education
9.	3148 of 2024	Naresh Kumar	HVPN
10.	3307 of 2024	Satish Kumar	School Education
11.	3927 of 2024	Surjeet Singh	Dakshin Haryana Bijli Nigam
12.	4250 of 2024	Gajraj Singh	School Education
13.	4458 of 2024	Tarsem Singh	School Education
14.	4481 of 2024	Ved Parkash	Transport
15.	5411 of 2024	Pardeep Chand	Secondary Education
16.	5470 of 2024	Pradeep Kumar	School Education
17.	5476 of 2024	Parkash Singh	School Education
18.	5485 of 2024	Joginder Singh	Sports & Youth Affairs.
19.	5970 of 2024	Nirmala Devi	Food & Supply
20.	6476 of 2024	Pushpa Devi	Transport
21.	6490 of 2024	Gulzar Singh	Excise & Taxation

22.	6555 of 2024	Balwant Singh	School Education
23.	6569 of 2024	Sajjan Singh	School Education
24.	6662 of 2024	Raj Singh	School Education
25.	6678 of 2024	Braham Dutt	Revenue & Disaster
26.	6720 of 2024	Gulab Singh	School Education
27.	7297 of 2024	Surinder Singh	School Education
28.	7473 of 2024	Bir Singh	School Education
29.	7720 of 2024	Sumer Singh Bhuwal	Higher Education
30.	9857 of 2024	Karan Singh	Transport
31.	11326 of 2024	Shiri Bhagwan	Women & Child Development
32.	12637 of 2024	Kai ash Chander	School Education
33.	13159 of 2024	Ramesh Kumar	Transport
34.	13392 of 2024	Kamlesh Kumari	Treasuries & Accounts
35.	14179 of 2024	Murti Devi	Women & Child Development
36.	14352 of 2024	Ram Phal	Labour Department
37.	14876 of 2024	Om Parkash	School Education
38.	14921 of 2024	Vijay Saini	Women & Child Development
39.	16070 of 2024	Sushila Devi	School Education
40.	Many more.....		

3. In the main case (CWP No.2340 of 2024) of Jora Singh Vs. State of Haryana & Others, the Hon'ble Punjab and Haryana High Court had passed following interim orders on 27.02.2023:-

"Notice of motion for 18.05.2023.

Mr. Hitesh Pandit, Addl. A.G., Haryana and Mr. D.S. Nalwa, Additional A.G., Haryana accept notice on behalf of respondent-State and seek time to file reply. May do so on or before the next date of hearing with a copy in advance to the counsel opposite. An important issue as to interpretation of Amended Rule 143 of the Haryana Civil Services General Rules, 2016 is raised in the matter.

Under the said Rule certain benefits are conferred on disabled persons/differently abled persons, blind employees, Group-D employees and Judicial Officers can be given an extension for 02 years beyond the age of superannuation.

*Petitioner contends that fixing of a minimum degree of disability of 70% in amended Rule 143 to differently abled persons is arbitrary because the Provisions of the Rights of persons with Disability Act, 2016 fix only a 40% disability as a bench-mark disability; that similar provision contained in the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation Act, 1995) was considered by learned Single Judge of this Court in **Hardev Kaur Vs. State of Haryana and Others 2015 (3) S.C.T. 825** and in that case it was held that the similar policy of the State Government prescribing minimum degree of disability of 70%, was held to be illegal and was set aside. It is also brought to our notice that LPA No.732 of 2017 filed against the said order was disposed of on 30.10.2019 on the ground that in that case the respondent/writ petitioner was given the extension and the appeal was dismissed as infructuous leaving the legal question raised open.*

*Counsel for the State however, refuted the said contentions and relied on the decision of the **Himachal Pradesh High Court in 2021 Volume-3 SCT 216** and also the decision in **V. Surendra Mohan Vs. State of Tamil Nadu and others 2019 4 SCC 237** cited therein. Both these decisions relate to grant of reservation in direct recruitment and do not stand attracted to the instant case. We are of the considered view, prima facie that if the policy similar to that contained in the amended Rule 143 had been previously set aside by this Court in **Hardev Kaur's case (supra)**, and the State had acquiesced in it and granted extension to Hardev Kaur in that case, it would amount to discrimination if the petitioner in the instant case is denied the said benefit.*

Therefore, pending further order the respondents are directed to permit the petitioner to continue to perform his duties until further orders.

A copy of this order be supplied to the learned counsel for the petitioner under the signatures of the Bench Secretary."

4. In another CWP No.13392 of 2024 – Kamlesh Kumari Vs. State of Haryana & Others, the Hon'ble Punjab and Haryana High Court had also passed following interim orders on 30.05.2024:-

"Notice of motion.

Ms. Tanisha Peshawaria, DAG, Haryana accepts notice on behalf of State and seeks time to file reply. May do so, on or before the next date of hearing with a copy in advance to the counsel opposite.

Learned counsel submits that the Rule amended by the respondents denying extension to disabled persons having disability more than 40% but less than 70% is per se discriminatory and goes contrary to the view expressed by the Supreme Court in the case of Deaf Employees Welfare Association vs. Union of India, 2014 (1) RCR (Civil) 377 as well as by this Court in Hardev Kaur vs. State of Haryana and others 2015 (3) S.C.T. 825. It is also stated that in the case of Hardev Kaur (supra), extension was granted. Learned counsel has also relied on the interim order passed on 27.02.2023 by the Coordinate Bench in CWP-2340-2023 wherein the concerned petitioner was allowed to continue to perform his duties. Learned counsel for the State submits that the petitioner has already been relieved from his duties treating him as superannuated at the age of 58 years on 30.04.2023.

However, we find that the extension of age of superannuation is of two years i.e. up to 60 years. Since interim orders have been passed in similar cases, we direct the respondents to allow the petitioner to rejoin on her duties, and she would be allowed to work up to the age of 60 years. Salary shall be paid to her for the period during which she works. The question relating to the intervening period and salary thereto shall be examined finally."

5. The case of Deaf Employees Welfare Association vs. Union of India, referred to above, pertains to grant of transport allowance. Similarly, LPA in the case of State of Haryana Vs. Hardev Kaur was not decided on merits rather it had kept the legal question (fixation of 70% or more disability) open.

6. In view of above, it is advised:-

- i) to go through both the judgements, referred above in para-5;
- ii) interim orders (to continue/re-join service beyond the age of superannuation upto 60 years) passed in various CWPs may be got reviewed by apprising the Hon'ble Punjab and Haryana High Court about legal position;
- iii) all the CWPs may be got dismissed by apprising the Hon'ble Punjab and Haryana High Court accordingly.

7. Copy of this order is available on the official website of the Finance Department i.e. finhry.gov.in.


Superintendent (FR)

for Additional Chief Secretary to Govt. Haryana,
Finance Department

28/08/24

Endst. No.11/84/2024-1FR/17540

Dated: 28.08.2024

A copy is forwarded to the following for information and necessary action:-

1. The Advocate General, Haryana, Chandigarh with the request to assign all such pending cases to one dedicated Law Officer (DAG/AAG) for defending the matter on behalf of State Government. Interim orders passed in various CWPs may be got reviewed by apprising the Hon'ble High Court about legal position, referred to above and all the CWPs may be got dismissed.
2. The Incharge, Computer Cell (Finance Department) for uploading these instructions on the website of the Finance Department.


Superintendent (FR)

for Additional Chief Secretary to Govt. Haryana,
Finance Department

28/08/24



CWP No.6414 of 2016

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6414 of 2016

Date of Decision: 24.01.2018

Gopi Ram

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ram Niwas Sharma, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.

1. In the matter of Haryana Government raising the age of retirement of physically handicapped Government employees from 58 to 60 years the right is controlled by policy instructions dated January 31, 2006, March 28, 2006 and April 21, 2008, the copies of which policies are placed at Annex P-4, P-5 and P-7 with the writ petition. The instructions dated March 28, 2006 designate the Director, PGIMS Rohtak to be the authority to constitute a Medical Board to determine the extent of disability of an employee for purposes of extension in service until age 60. The Chief Medical Officer on reference and after physical examination certified the percentage of the handicap of the petitioner at 60% signed in the Medical Certificate dated February 07, 1983 while the instructions require 70% disability to be eligible for considered for extension in service for two years beyond the age of superannuation, specified in rules at age 58.

2. The petitioner contends that the condition of the minimum



CWP No.6414 of 2016

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degree of disability of 70% stipulated in the policy notifications is not in consonance with the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("1995 Act") and toward this end the petitioner relies on a judgment of the learned Single Judge in CWP No.3919 of 2015, *Hardev Kaur v. State of Haryana and others* decided on March 04, 2015.

3. The learned Single Judge in the order and judgment delivered in *Hardev Kaur* case ruled that the condition of minimum degree of disability of 70% imposed in the notifications is not in consonance with the provisions of the 1995 Act and decided that and not is the policy illegal it deserves to be quashed.

4. Thereafter, the respondent - Director of School Education has been directed to consider the representation of Hardev Kaur uninfluenced by the condition imposed in the notification and in compliance of the observations made in the judgment regarding Sections 2 (i) and 2 (t) of the 1995 Act.

5. Relying on the decision of the Supreme Court delivered case, Deaf Employees Welfare Association and another v. Union of India and others, reported in book 2014 (1) RCR (Civil) 377 taken in the first motion hearing without receiving the reply of the State and issuing notice to the Law Officer on the asking of the Court, makes the order not a contested one or one passed after receiving the views of the Government in a written statement in a matter involving extension of service beyond retirement to a special classified group of citizens. It has been mentioned that against the order, the department has filed LPA No.732 of 2017 but the same has not



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been listed so far. The present position obtaining is that the appeal is posted awaiting service of respondents by last order dated January 08, 2018.

6. It was on the directions of this Court in CWP No.366 of 2016 filed earlier by the petitioner that he was medically examined on directions by the Medical Board of PGIMS Rohtak and disability then was assessed at 50% of the patient-candidate suffering from Post Polio Residual Paralysis (R) Lower Limb per certificate dated March 03, 2016. Since the petitioner does not fall within the purview of the executive instructions he was retired from service on December 31, 2015 at the age of 58 years.

7. The question agitated in this petition is as to whether the provisions of the 1995 Act will prevail over the policy instructions as far as percentage of disability concerned. The 1995 Act prescribes minimum 40% disability as condition precedent to reap the benefits of the 1995 Act.

8. Section 2 (i) of the Central Act defines disability with seven different debilitating conditions including blindness, low vision, locomotor disability etc. Section 2 (t) defines what a person with disability means and prescribes the same to be a person suffering from not less than forty per cent of any disability as certified by a Medical authority.

9. Chapter V of the 1995 Act provides for appropriate Governments and local authorities to provide opportunities to disabled children and persons of disability to free education, non-formal education etc., while Chapter VI of the 1995 Act deals with reservation of posts for persons with disabilities. Identification of posts manageable by disabled persons is done by the mandate of Section 32 of the Act is dispersed on posts, in the establishments, which can be reserved for persons with



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disabilities.

10. Section 33 of the Act deals with reservation of posts. Section 38 of the 1995 Act provides that the appropriate Governments and local authorities shall, by notification, formulate schemes for ensuring employment of persons with disabilities. Section 39 provides for reservation of seats for persons with disabilities in educational institutions. There are schemes for preferential allotment of land for certain purposes, such as, non-discrimination in transport on the road, inbuilt environment including ramps in public buildings etc. and non-discrimination in Government employment. Section 68 deals with unemployment allowance. The Act provides for a wide range of activities which are made open to persons with disabilities and to provide them equal treatment.

11. The Supreme Court in *Deaf Employees Welfare Association* did not deal with age of retirement nor is such a concession provided under the 1995 Act and, therefore, the same has to be regulated by virtue of rules and notifications. The Haryana Government has guaranteed extension in service to persons with disability with minimum 70% disability of the afflicted employees to be applied uniformly in all departments.

12. If the prescription is by operation of policy instructions, I find no reason to hold that the ceiling of 70% disability is illegal or arbitrary or that it should be brought down to 40% disability in the vision of the 1995 Act. There was no guarantee to the petitioner when he was employed, may be against quota for physically handicapped, that the guarantee would run beyond age 58 years, which is the age prescribed in the rules as to age of superannuation. The fact remains staring in the face that the petitioner



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attained the age of 60 years on March 31, 2017 and therefore, reinstatement is out of the question. Still further, this Court heard Mr. Sharma on July 27, 2016 and passed the following order:-

“Notice of the application to the non-applicant/respondents.

Ms. Shruti Jain Goyal, AAG, Haryana, accepts notice on behalf of the non-applicant/respondents.

Heard learned counsel on the application.

Willy nilly, the petitioner worked for 9 months beyond the period of superannuation while his case was under consideration for extension. Having worked and discharged duties salary becomes non-recoverable. Therefore, recovery shall not be made from the petitioner on the principle of quantum meruit. However, the petitioner's case for pension be accelerated and pension be given to him without prejudice to his prayers in the petition and subject to its outcome. The petitioner will cooperate with the paper-work and complete the necessary formalities.

C.M. stands disposed of accordingly.”

13. The interim order dated July 27, 2016 is adverse and prejudicial to the interest of the petitioner but the same has not been challenged in appeal.

14. In view of the above, the petition has no merit at all and is accordingly dismissed. However, recovery orders are quashed.

(RAJIV NARAIN RAINA)
JUDGE

24.01.2018
manju

Whether speaking/reasoned Yes

Whether reportable No