2025 INSC 472

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. OF 2025

(arising out of SLP (C) Nos.1091 - 1092 of 2023)

KASHMIRI LAL SHARMA **APPELLANT(S)**

VERSUS

HIMACHAL PRADESH STATE ELECTRICITY BOARD LTD. & ANR. **RESPONDENT(S)**

O R D E R

1. Leave granted.

2. These two appeals arise from a writ petition (i.e., CWP No.146 of 2020) filed by the appellant for declaring the retirement order dated 30.09.2018, seeking to retire the appellant at the age of 58, as null and void in view of the Office Memorandum (for short OM) dated 29.03.2013 and also for declaring the OM dated 04.11.2019, withdrawing the OM dated 29.03.2013, as null and void, or, in the alternative, to declare the same as not applicable to the appellant. By the impugned order dated 28.07.2021 the aforesaid writ petition was dismissed and, later, by the second impugned order dated 22.06.2022 the review was dismissed.

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Reason:

Facts

3. Briefly stated the facts giving rise to these appeals are as under:

a) The appellant being a person with permanent locomotor disability to the extent of 60 per cent was appointed as an Electrician with the 1st respondent on 13.03.1985. On the date of his appointment, he would have attained the age of superannuation on completing 58 years which, as per his date of birth (i.e., 19.09.1960), would have been 18.09.2018. However, by virtue of the extant service conditions, he would have continued in service till the last date of the month in which he attained the age of superannuation i.e., till 30.09.2018.

b) On 29.03.2013, an OM was issued by the State of Himachal Pradesh extending the age of superannuation of physically handicapped (visually impaired) category of employees from 58 years to 60 years.

c) Claiming that the benefit of the said OM should also be extended to persons suffering from other specified physical disabilities, the appellant before his retirement represented to the authorities to grant him the benefit of age extension.

d) The 1st respondent, however, did not accept the request for age extension and instead served a notice of retirement on 22.09.2018, informing the appellant that he would retire on 30.09.2018.

e) In the meantime, prior to the date of attaining the age of superannuation, the appellant had filed an Original Application No. (M) 508/2018 before the Himachal Pradesh Administrative Tribunal for enhancement of his retirement age from 58 years to 60 years in view of the OM dated 29.03.2013.

f) While the aforesaid Original Application was pending, by OM dated 04.11.2019, the State withdrew the OM dated 29.03.2013 with immediate effect. Faced with that situation, the Original Application, which was transferred to the High Court upon abolition of the Tribunal, was dismissed as withdrawn with liberty to the appellant to file a fresh petition challenging, *inter alia*, the OM dated 04.11.2019.

g) Pursuant to the liberty so provided to the appellant, a fresh petition (i.e., CWP 146 of 2020) was filed before the High Court, which has been dismissed by the impugned order.

4. We have heard learned counsel for the parties and have perused the record.

Submissions on behalf of appellant

5. The submission of Shri Subhro Sanyal, the learned counsel for the appellant, is that denial of benefit of the OM dated 29.03.2013 to persons suffering from other specified disabilities, by confining it to only the visually impaired category, is violative of Article 14 of the Constitution of India as benefit of The Persons with Disabilities (Equal Opportunities, Protection of

Rights and Full Participation) Act, 1995 (for short 1995 Act) and the subsequent enactment i.e., The Rights of Persons with Disabilities Act, 2016 (for short 2016 Act) extend to all specified disabilities which include locomotor disability, therefore persons suffering from those specified disabilities constitute a homogeneous class, albeit posts may be reserved for a specified category of disability.

6. It has been contended that a similar issue had arisen before the High Court of Punjab & Haryana at Chandigarh in CWP No.7233 of 2010 [***Bhupinder Singh vs. State of Punjab and Others***]. The High Court took the view that confining the benefit of enhancement of retirement age only to visually impaired category of employees would tend to discriminate between persons who otherwise constitute one homogenous class under the 1995 Act for the purposes of conferment of benefits under that Act. It was argued that the decision of the Punjab High Court was challenged before this Court in Civil Appeal No.8855 of 2014 [***State of Punjab and Others vs. Bhupinder Singh***], wherein this Court passed the following order:

> "Leave granted.
>
> The issue which arises for consideration in this batch of cases, pertains to the question, whether the benefit of extension in service from 58 years to 60 years granted to blind or visually impaired employees of the State Government should be extended to persons suffering from other disabilities mentioned under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 hereinafter referred to as the Disabilities Act.
>
> The aforesaid issue has been answered by a Division Bench of the Punjab and Haryana High Court in the affirmative. We fully endorse the aforesaid determination rendered by the High Court, and also affirm the reasons recorded in

arriving at the aforesaid determination. All the same, we would record our restriction/ limitation to the determination rendered by the High Court. On the issue of employment, the Disabilities Act contemplates reservation through section 33 for three types of disabilities. Firstly, persons suffering from blindness or low vision. Secondly, persons suffering from hearing impairment. And thirdly, person suffering from locomotor disability or cerebral palsy. For equal opportunity and protection of rights in employment, only the above 3 categories of disabilities have been recognized by the Disabilities Act. On a reference to the provisions of the Disabilities Act, therefore, equality is sustainable only in respect of the three categories specified in section 33 of the Disabilities Act. In fact, learned counsel for the respondents also endorsed the above position.

In order to dissuade this Court from accepting the reasoning expressed in the impugned orders, learned counsel for the appellants invited our attention to a decision rendered by this court in Union of India versus Devendra Kumar Pant and others, (2009) 14 SCC 546. The question that arose for consideration in the aforesaid judgment pertains to promotion. That is not the case here. The benefit granted by the High Court pertains to the respective employment in which a disabled employee has been engaged. In that view of the matter, the judgment relied by the learned counsel for the appellants is not applicable to the facts and circumstances of this case. Our above view is based on the fact, that the issue of discrimination adjudicated upon by the High Court, relates to employees who are already engaged in government service. There is no dispute about their ability to discharge their duties, against the posts on which they were employed. The benefit if extended to the categories of disabilities for which reservation in employment has been contemplated under the Disabilities Act would not cause any administrative inconvenience to the appellants.

For the reasons recorded hereinabove, the instant appeals are disposed of in the above terms with no order as to costs.

Dt/- September 16, 2014”

(Emphasis supplied)

7. It is further contended that the 2016 Act does not take away

any of the rights conferred by the 1995 Act rather amplifies the same, and the disabilities specified thereunder includes locomotor disability with which the appellant suffered from, therefore, relying upon the aforesaid order of this Court, the appellant had been pressing his claim for extension of service since much before attaining the age of superannuation. Hence, the benefit of the OM dated 29.03.2013 should have been made available to the appellant; and once the benefit of that OM is accorded, its withdrawal would not curtail the extension, which would be deemed to have been granted in the light of the law laid down by this Court. He, therefore, prays that the impugned order of the High Court be set aside and that the appellant be granted the benefit of extension of retirement age from 58 to 60 years, with all consequential benefits including continuity of service.

Submissions on behalf of Respondent(s)

8. Per contra, Ms. Archita Nigam, learned counsel representing the 1st respondent, submitted that, admittedly, on the date the appellant attained the age of superannuation, OM dated 29.03.2013, as it stood, was not declared discriminatory by any Court of law. The said OM conferred benefits only on employees belonging to visually impaired category, to which the appellant does not belong, therefore, there could be no vested right for seeking extension of the age of retirement, and once the OM stood withdrawn, the appellant could not have been granted any benefit of extension of service. Accordingly, the decision of the High Court calls for no interference.

9. In the alternative, it has been submitted that, assuming the

benefit of the OM dated 29.03.2013 would be available to the appellant as well, such benefit cannot continue beyond the date of its withdrawal i.e., 04.11.2019.

Discussion/ Analysis

10. Upon consideration of the rival submissions, the following issues fall for our consideration:

I) Whether the benefit of extension of retirement age for the physically disabled category could be confined to persons with visual impairment as provided in the OM dated 29.03.2013 or it should be available to persons suffering from all such disabilities as are specified in the 1995 Act and the 2016 Act?

II) Whether such extension could be withdrawn as was done by the OM dated 04.11.2019? If yes, then what would be its effect on the claim of the appellant?

Issue I

11. As regards the first issue, the same stand settled by the decision of this Court in Bhupinder Singh (supra), wherein this Court specifically framed the issue, *"Whether the benefit of extension in service from 58 years to 60 years granted to blind or visually impaired employees of the State Government should be extended to persons suffering from other disabilities mentioned under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995"* and answered the same in the following terms: *"aforesaid issue has been answered by a Division Bench of the Punjab and Haryana High Court*

in the affirmative. We fully endorse the aforesaid determination rendered by the High Court, and also affirm the reasons recorded in arriving at the aforesaid determination."

12. It may be noted that in Bhupinder Singh (supra), an argument was raised on behalf of the State, based on a decision of this Court in ***Union of India v. Devendra Kumar Pant (2009) 14 SCC 546***, that all persons with disability are not treated equally or similarly under the Act as different principles relating to non-discrimination apply depending upon the context in which the benefit is extended. This argument was repelled by this Court stating that Devendra Kumar Pant's (supra) decision was in the context of promotion whereas the High Court order under challenge was in respect of discrimination between persons who are already engaged in government service and there is no challenge to their ability to discharge their duties in which they are engaged.

13. Besides that, in Devendra Kumar Pant (supra), the issue which arose for consideration was whether refusal to give effect to the promotion unless the incumbent obtains fitness certificate in a particular medical category would violate Section 47 (2)[1] of the 1995 Act. Interpreting the said provision, this Court held that the aforesaid provision would mean that a person who is otherwise eligible for promotion shall not be denied promotion merely or only on the ground that he suffers from a disability. But if the disability would affect the discharge of functions or performance in a higher post or if the disability would pose a threat to the safety of the co-employees, members of the public or employee

[1] **Section of 47 (2) of 1995 Act:** "No promotion shall be denied to a person merely on the ground of his disability."

himself, or to the assets and equipment of the employer, position would be different. It was thus observed that if the promotion is denied on the ground that it will affect the safety, security and performance, then it is not denial of promotion merely on the ground of his disability, but is denial of promotion by reason of the disability plus something more, that is, adverse effect of the disability upon the employee's performance of the higher duties or functions attached to the promotional post.

14. In our considered view, the decision in Devendra Kumar Pant (supra) was rightly distinguished in Bhupinder Singh (supra) as there appeared no intelligible basis to confer benefit of age extension to one disabled category and deny it to the other when both are specified in the 1995 Act as well as the 2016 Act. In this view of the matter, if benefit of extension of retirement age is available to visually impaired category, the same ought to be available to other categories of disabilities specified in the 1995 Act as reiterated in the 2016 Act.

15. Besides above, the decision in Bhupinder Singh (supra) has been followed by the High Court of Himachal Pradesh in several of its decisions (i.e., CWP No.7860 of 2021: ***The Principal Secretary Health and Family Welfare & Anr. V. Surender Kumar Vashisth***, decided on 20.12.2022; and CWP No. 1577/ 2018 -H: ***State of H.P. & others v. Krishan Chand***, decided on November 05, 2018, against which SLP © D. No. 18076 of 2019 was dismissed by this Court on 13.09.2019).

16. For the reasons recorded above, it is held that the benefit of extension of retirement age as provided under the OM dated

29.03.2013 could not have been confined to visually impaired category. Rather, it should be available to persons suffering from all such benchmark disabilities as are specified in the 1995 Act and the 2016 Act.

Issue II

17. The next issue is whether the benefit of the OM dated 29.03.2013 could be withdrawn as was done by the Office Memorandum dated 04.11.2019.

18. In this regard, we observe that the parties have not brought on record any document to canvass that the retirement age of persons suffering from specified physical disabilities was enhanced by amending the service rules or regulations or statutory provision and therefore, change in service conditions could not have been made by way of office memorandums or executive instructions. In these circumstances, applying the general principles, as enshrined in Section 21[2] of The General Clauses Act, the power to issue would include the power to rescind, we are of the view that the OM dated 04.11.2019 was well within the competence of the authority which issued the OM dated 29.03.2013. Consequently, the OM dated 04.11.2019 cannot be faulted for lack of competence. Otherwise also, an employee has no fundamental right as regards the age at which he would retire. Moreover, termination of service of an employee on account of reaching the age of superannuation in accordance with law or rules regulating the conditions of service does not amount to his removal from service within the meaning of

[2] **Section 21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws. –** Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to like sanction and conditions if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

Article 311(2) of the Constitution of India.[3] In ***K. Nagaraj and Others v. State of Andhra Pradesh and another***, (1985) 1 SCC 523, a three-Judge Bench of this Court upheld reduction of the age of retirement from 58 years to 55 years. While doing so, this Court observed that *"it is not possible to lay down an inflexible rule that 58 years is a reasonable age for retirement and 55 is not. If the policy adopted for the time being by the Government or the Legislature is shown to violate recognized norms of employment planning, it would be possible to say that the policy is irrational since, in that event, it would not bear reasonable nexus with the object which it seeks to achieve. But such is not the case here."*

19. Now, the question that arises for our consideration is whether the benefit of the OM dated 29.03.2013 would be available to the appellant till he attained the age of 60 years as propounded by it, or till 04.11.2019 only i.e., the date when it stood withdrawn by the OM dated 04.11.2019.

20. In this regard, the record reveals that the OM dated 29.03.2013 by itself did not confer any extension benefit to the appellant as its benefit was confined to visually impaired category. No doubt, denial of its benefit was claimed to be discriminatory and, earlier, a similarly situated employee like the appellant laid a claim before the Himachal Pradesh Administrative Tribunal and the Tribunal, vide order dated 10.01.2018, extended its benefit to the employee who suffered from other specified disability. But this order of the Tribunal was challenged by the State of H.P. before a Division Bench of the High Court through CWP

[3] Bishnu Narain Misra v. State of Uttar Pradesh and others, AIR 1965 SC 1567 : 1964 SCC OnLine SC 72

No.1577 of 2018-H, which was dismissed on 05.11.2018 by relying upon earlier decision of this Court in Bhupinder Singh (supra). Thereafter, against the order of the Division Bench (passed in CWP No.1577 of 2018-H), the State of H.P. filed an SLP before this Court which came to be dismissed on 13.09.2019. As a result, the State Government withdrew the OM dated 29.03.2013 vide OM dated 04.11.2019. By that time, there was no judicial order conferring benefit of OM dated 29.03.2013 on the appellant. Hence, in our view, on the date when the OM dated 04.11.2019 was issued, no right vested in the appellant to continue in service up to the age of 60 years. We are therefore of the considered view that the appellant is not entitled to continue in service beyond 04.11.2019 i.e., the date on which the OM dated 29.03.2013 was withdrawn.

21. However, as we have held, while deciding issue I, that persons suffering from other specified disabilities could not have been denied the benefit of the OM dated 29.03.2013, we are of the view that till the date the said OM was operative, the appellant was entitled to its benefit as, admittedly, he fell in the category of employee suffering from such disabilities as are specified in the 1995 Act and the 2016 Act.

22. Accordingly, these appeals are partly allowed. The impugned judgment and order dated 28.07.2021 of the High Court dismissing the Writ Petition of the appellant is set aside. The appellant shall be entitled to the benefit of continuance in service until 04.11.2019. In consequence, he shall be entitled to full wages from 01.10.2018 to 04.11.2019, with all consequential benefits that may impact his pension.

23. Pending applications, if any, stand disposed of.

.....J.
(MANOJ MISRA)

.....J.
(K.V. VISWANATHAN)

NEW DELHI;
3rd April, 2025.

ITEM NO.10 COURT NO.17 SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).1091-1092/2023

KASHMIRI LAL SHARMA PETITIONER(S)

VERSUS

HIMACHAL PRADESH
STATE ELECTRICITY BOARD LTD. & ANR. RESPONDENT(S)

Date : 03-04-2025 These petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE MANOJ MISRA
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Petitioner(s) :Mr. Subhro Sanyal, AOR

For Respondent(s) :
Mr. Abhinav Mukerji, Sr. Adv.
Ms. Khushboo Hora, Adv.
Ms. Archita Nigam, Adv.
Ms. Purnima Krishna, AOR

Upon hearing the counsel the Court made the following
O R D E R

1. Leave granted.

2. These appeals are allowed in terms of the signed reportable order, which is placed on the file.

3. Pending application(s), if any, shall stand disposed of.

(D. NAVEEN) **(ANU BHALLA)**
COURT MASTER (SH) **COURT MASTER (NSH)**