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Court : Punjab and Haryana

Decided On : May-10-2013

Appellant : “15. as Rightly Pointed out by the Learned Counsel Appearing for the

Respondent : State of Punjab and Others

Judgement :

CWP No.9062 o

1. IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH CWP No.9062 of 1994 Date of decision:10.05.2013 Balwant SinghPetitioner Versus State of Punjab & othersRespondents CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA Present: Mr.Suvir Sehgal, Advocate, for the petitioner. Mr.Aman Bahri, Addl.A.G., Punjab. **** G.S.Sandhawalialia J.

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of writ in the nature of mandamus for the respondents to count military service of the petitioner towards his service benefits for all intent and purposes and grant all consequential benefits and to count the military service of the petitioner to the civil services during the period of First Emergency from 19.01.1963 to 10.01.1968 and for the Second Emergency from 03.12.1971 to 27.03.1977. The orders dated 24.04.1990 (Annexure P-5) which rejected the claim of the petitioner for grant of benefit of said military service on the

ground that his services were regularized w.e.f. 01.04.1985, after the promulgation of Punjab Recruitment of Ex-Servicemen Rules, 1982 (for brevity, the '1982 Rules') was also sought to be quashed along with subsequent letter dated 04.11.1992 (Annexure P-12), declining the said relief.

2. The pleaded case of the petitioner is that he had served the Military as petty officer, namely, Radar Controller, First Class on 19.01.1963 during the period of proclamation of Emergency and retired on 19.05.1981. Thereafter, he joined the service of the respondent-State on 05.10.1981 as Clerk in the office of the Deputy Inspector General of Police, Punjab, Chandigarh. The respondent- CWP No.9062
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2. State had issued notification dated 20.07.1965, notifying the Punjab National Emergency (Concession) Rules, 1965 (hereinafter referred to as '1965 Rules') which granted benefit of Emergency for purpose of increment, seniority and pension to the personals who had served in the Military during the period of Emergency. Accordingly, the petitioner represented for granting the Military service benefit towards his civil service but his request was declined vide orders dated 24.04.1990 on the ground that his services were regularized on 01.04.1985, after the promulgation of the 1982 Rules. It was pleaded that benefit of Military service had been granted to the co-employees of the petitioner whose services were regularized w.e.f. 01.04.1985. The petitioner again represented on the ground of discrimination and gave the examples of Babu Singh, Clerk and Tara Singh, Assistant since his case had been declined by the Director General of Police with the observation that he could approach the Government through proper channel. But respondent No.1 refused to grant the benefit vide order dated 04.11.1992 by referring to earlier refusal dated 24.04.1990. Accordingly, the present writ petition was filed and thereafter, amended petition was filed taking the plea that during the pendency of the writ petition, instructions dated 23.06.1998 had been issued whereby the Ex-Servicemen who had rendered service during the period of Second Emergency from 03.12.1971 to 27.03.1977 were also entitled for the benefits of Military service and accordingly, he was also entitled for the benefits of the Second Emergency.

3. In the written statement filed by the respondents, the plea taken was that the petitioner had been appointed as a Clerk purely on temporary basis through the Employment Exchange for a period of 6 months or till the availability of eligible candidates from Subordinate Services Selection Board. His services were regularized w.e.f. 01.04.1985 in terms of Punjab Government letter dated 29.03.1985. The case of the petitioner was considered and examined and vide CWP No.9062 o

3. letter dated 24.04.1990, the petitioner was held not entitled for the benefit on the ground that Babu Singh was given benefit of Military service on the advice of the Controller/Finance & Accounts (Audit) and that Tara Singh was also given such benefit and the case of the petitioner was rejected. The State Government instructions dated 23.06.1998 declaring the period of Second Emergency as Military service was put on hold vide letter dated 09.10.1998 till the final decision to be taken in CWP No.14829 of 1998 titled Jacob & others Vs. Punjab State & others.

4. Counsel for the petitioner has, accordingly, contended that the petitioner had been discriminated against as it is a matter of record that similarly situated persons have been granted benefit whereas the petitioner's case was rejected. It was further contended that during the pendency of the writ petition, the petitioner had retired and therefore, at this stage, he was entitled to count his military service rendered during the period of Emergency for the purposes of pension under the 1982 Rules which had been amended. Rule 8A had been incorporated wherein the benefit of the period of Military service from 26.10.1962 to 09.01.1968 was to be counted for the purpose of increments and pension. It was further submitted that under Rule 8B, period of Military service rendered from 03.12.1971 to 27.03.1977 was also to be counted towards the increment and pension. It was submitted that even otherwise, the benefits of 1965 Rules had to be granted to the petitioner since at that relevant point of time, in 1981, the petitioner had joined service when the 1965 Rules were still in force. Counsel for the petitioner has relied upon the judgment rendered by this Court in CWP No.17515 of 1997 titled Jattan Singh Vs. State of Punjab & others decided on 01.03.2012 and CWP No.5811 of 1994 titled Jagir Singh Vs. The State of Punjab & others decided on

11.07.2011. Reliance has also been placed upon Sumer Singh Vs. State of Haryana & others 2009 (1) RSJ 86.CWP No.9062 o

4. 5. State, on the other hand, submitted that 1965 Rules were giving a concession which were repealed by the promulgation of the 1982 Rules and the petitioner had no enforceable right as such. It was further submitted that even undue benefit given to others would not amount to violation of Article 14 of the Constitution of India and the equality clause was not a negative clause. The 1982 Rules talked of permanent service to the posts and the petitioner had been made regular only on 01.04.1985, i.e., after the 1965 Rules had been repealed and in the un-amended Rules, there was no such benefit of Military service which could be given and there was only reservation of posts for the Ex-Servicemen and the orders dated 24.04.1990 and 04.11.1992 were defended. Under 1965 Rules, it was further provided that where there was a period exceeding 3 years from the date of joining and the date of discharge, then the benefit was not to be granted. The amended Rule 8-A talked about services of posts and there could not be gap of more than 3 years for the purpose of counting of pension and the petitioner joined on 05.10.1981 and was regularized on 01.04.1985.

6. Admittedly, in view of 1965 Rules, the petitioner was entitled for the benefit of counting of Military service for increments, seniority and pension. The said benefit was denied to him solely on the ground that before his services could be regularized w.e.f. 01.04.1985, the 1965 Rules were repealed and the 1982 Rules had come into force w.e.f. 12.02.1982. The petitioner had, thereafter, approached this Court and during the pendency of the present petition, the amendment in the 1982 Rules w.e.f. 11.02.1982 had been made. Under the said Rules, there were only benefit of reservation of seats to the tune of 15% initially. However, vide amendment dated 08.06.2004, the period of Military service from 26.10.1962 to 09.01.1968 was to be counted for the purposes of increments and pension. The relevant Rule 8-A reads as under: 8-A, Increments and pension Period of military service rendered during the First National Emergency from 26th October, 1962 to 9th CWP No.9062 o

5. January, 1968 shall count for increments and pension as under :- (i) Increments - The period spent by a person on military service (restricted to emergency period from 26th October, 1962 to 9th January, 1968) after attaining the minimum age prescribed for appointment to any service or post, to which he is appointed, shall count for increments. Where no such minimum age is prescribed the minimum age shall be as laid down in Rules 3.9, 3.10 and 3.11 of the Punjab Civil Services Rules Volume II. This concession shall however, be admissible only on first appointment. (ii) Pension - The period of military service mentioned in clause shall count toward pension only in the case of appointments to permanent services of posts, subject to the following conditions:- (1) The person concerned should not have earned a pension under military rules in respect of the military service in question. (2) Any bonus or gratuity paid in respect of military service by the defence authorities shall have to be refunded to the State Government. (3) The period, if any, between the date of discharge from military service and the date of appointment to any service or post under the Government shall count for pension, provided such period does not exceed one year. Any period exceeding one year but not exceeding three years may also be allowed to count for pension in exceptional cases under the orders of the Government. This benefit shall be applicable to all those who were appointed in Government services before or after 11th February, 1982.

7. Thereafter, Rule 8-B was added w.e.f. 10.04.2012 wherein the benefit of Military service was restricted to the appointments against the reserved vacancies. Rule 8-B reads as under: 8-B. Increments and pension Period of military service rendered during the Second National Emergency from 3rd December, 1971 to 25th March, 1977, shall count for increments and pension as under :- (a) Increments - The increments for the aforesaid service shall be paid to those persons only, who joined and rendered service during the aforementioned period. This benefit will, however, be given only at the time of making first appointment on regular basis on a civil post or service under the Government. However, these increments will be taken into account when the pay of a person is subsequently CWP No.9062 o

6. fixed on account of his promotion, selection, new recruitment or revision of pay scale or otherwise; (b) Pension - The period of military service, referred to above,

shall count towards pension only in case of an appointment to a permanent post under the Government, subject to the following conditions namely:- (i) The person concerned should not have earned a pension under military rules in respect of the military service in question; (ii) Any bonus or gratuity paid in respect of military service by the defence authorities shall have to be refunded to the State Government, and; (iii) The period, if any, between the date of discharge from military service and the date of appointment to any service or post under the Government shall count for pension, provided such period does not exceed one year. Any period exceeding one year but not exceeding three years may also be allowed to count for pension in exceptional cases under the orders of the Government. These benefits shall be available to all the persons who were appointed in Government Service against reserved vacancies and were in Service as on 1st December, 2011 or are appointed thereafter: Provided that these benefits shall be admissible for pay fixation on notional basis with effect from 1st January, 2012 and arrears on account of pay shall not be paid.

8. A perusal of Rule 8-A would, thus, go on to show that the benefit of Military service, which had been initially granted under the 1965 Rules and withdrawn in view of the un-amended 1982 Rules, was restored for the purpose of increments and pension in the case of appointment to the permanent posts. The Rule further provided that all these benefits were admissible to all those employees who were appointed before or after 11.02.1982. Vide the impugned order dated 24.04.1990 which was subsequently up held on 04.10.1992, the case of the petitioner was rejected on the ground of repeal of Rules and in view of the fact that the 1982 Rules did not provide any such benefit of Military service. However, once the Rules have been amended and benefits have been restored, the CWP No.9062 o

7. petitioner would necessarily be deemed to be entitled for the said benefit, as per the Rules, for the purposes of counting his Military service from 19.01.1963 to 09.01.1968. The submission of the State that the petitioner was not appointed against a permanent post and therefore, was not entitled to the benefits under the Rules is of no avail as admittedly, the appointment letter dated 29.09.1981 resulted into regularization of service of the petitioner w.e.f. 01.04.1985, as per the case of the respondents themselves. Once the petitioner was regularized, having

been appointed through the employment exchange, it would not be open for the State to contend that the appointment was not against a permanent post and the petitioner was not entitled for the benefits. The said Rules are for the benefit of the Ex-Servicemen who had, at that point of time, joined Military services, keeping in view the threat to the Nation and in the wake of the Chinese aggression.

9. A Division Bench judgment of this Court in Sumer Singh's case (supra) held that the ad hoc period of service rendered by the petitioner which was followed by regular service was liable to be considered for the purpose of fixing the pension after taking into account the Military service rendered during the period of emergency, keeping in view the observations of the Full Bench judgment rendered in Kesar Chand, resident of village Naroli Vs. State of Punjab & others AIR 198.(P&H) 265. Similarly, in Tej Ram Vs. State of Haryana 2011(2) RSJ 565.this Court, while granting the benefit to the petitioner, held that persons who had been appointed on ad hoc basis and subsequently regularized were also entitled to reap the military benefits. Relevant observations reads as under:

15. As rightly pointed out by the learned Counsel appearing for the petitioner, neither Rule 4(i) of the Punjab Government National Emergency (Concessions) Rules, 1965 nor the clarification issued by the Chief Secretary to the Government of Haryana vide proceedings No.12/14/84-2GS-II speaks of employment in regular CWP No.9062 o

8. service. so as to get the benefits under Rule 4 of the Punjab Government National Emergency (Concessions) Rules, 1965. A person who had put in military service as per the definition under Rule 2 and the clarification given by the Chief Secretary employment in service or post. of the Government is required to reap the military benefits. A person who has been appointed on Adhoc basis is also under the service of the Government. Even otherwise there is no dispute to the fact that the service of the petitioner has been regularised. For the reasons best known neither the petitioner nor the respondents would come out with the actual date on which the service of the petitioner was regularized. When Rule 4(i) of the Punjab Government National Emergency (Concessions) Rules 1965, does not contemplate either regularised service or permanent service, the petitioner, who

has been in the government service long prior to the amendment introduced to the definition military service cannot be deprived of the benefits accrued to him.

16. In view of the above, the impugned order passed by the respondents dis-entitling the petitioner from the military service benefits on the sole ground that he entered into government service only on Adhoc basis, does not stand legal scrutiny. Therefore, the impugned order is liable to be quashed. Accordingly, the impugned order passed by the respondents stands quashed and a direction is issued to the respondents to grant the military benefits alongwith consequential benefits to the petitioner, as per Rule 4(i) (ii) and (iii) of the Punjab Government National Emergency (Concessions) Rules, 1965.

10. Resultantly, keeping in view the said observation in mind, it is held that the petitioner is entitled to count the Military service rendered from 19.01.1963 to 09.01.1968, for the purpose of pension. Accordingly, orders dated 24.04.1990 and 04.11.1992 are quashed and a direction is issued to the respondent-State to grant the benefit of the said period to the petitioner for the purpose of calculating his pension. Necessary consequential benefits be paid to the petitioner within 2 months from the date of receipt of a certified copy of this order on his complying with the conditions laid down in Clauses 1 & 2 of Rule 8-A(ii) of the 1982 Rules, as amended. CWP No.9062 o

9. 11. Writ petition is, accordingly, allowed in the above-said terms. 10.05.2013
(G.S.SANDHAWALIA) sailesh JUDGE

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