

(2015) 04 P&H CK 0346
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 318 of 2014

Chander Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 352

Citation : (2015) 3 SCT 210

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Advocate : Jagbir Malik, for the Appellant; Sourabh Mohunta, DAG, Advocates for the Respondent

Judgement

Jitendra Chauhan, J.—This is a Civil Writ Petition under Article 226 of the Constitution of India for issuing a writ in the nature of certiorari for quashing of order dated 03.01.2013 (Annexure P-7) and issuing a writ of mandamus directing the respondents to count the Army service from 24.01.1963 to 30.03.1973 and Adhoc service from 26.05.1975 to 28.02.1977 of the petitioner for the purpose of grant of retiral benefits of the petitioner and to release the arrears of retiral benefits with interest @ 12% per annum. It is asserted that petitioner joined the Army during emergency on 24.01.1963 and retired on 30.03.1973 on compassionatry grounds. On 26.05.1975 the petitioner was reemployed as a Clerk on Adhoc basis in the office of respondent department as his name was sponsored by the Employment Exchange and his services were regularised on 01.03.1977. On 31.03.2003 he retied from service after attaining the age of superannuation. On 20.07.1965, the Punjab Government National Emergency (Concession) Rules, 1965 was enacted for providing the benefit of Army service to the Civil Servants and as per these rules the petitioner was granted the benefit of Army service and his pay was accordingly fixed. Thereafter, respondent sent a letter dated 29.09.1986 to the petitioner for the withdrawal of Army Service benefits. Aggrieved against the same, the petitioner filed a Civil suit which was decreed in his favour on 20.04.1993. Then the

respondents filed a Civil Appeal against the judgment and decree dated 20.04.1993 which was dismissed on 02.11.1996.

2. On 31.01.1984, the Government of Haryana took a decision that the adhoc service is countable as qualifying service for the purpose of retiral benefits. Respondents refixed the pay of the petitioner without counting the period of Army service from 24.01.1963 to 30.03.1973 and Adhoc service from 26.05.1975 to 28.02.1977 for purpose of release of retiral benefits which were released to the petitioner without considering the above said period. The petitioner had been receiving Rs. 1293/- as gratuity on account of Army service and vide affidavit dated 11.05.2011 he had undertaken to refund the same after the receipt of pensionary benefit. The petitioner had served detailed representation dated 01.06.2011 (Annexure P-6) and requested for release of the arrears of retiral benefits after counting the above Army service and adhoc period. The respondent No. 2 sent the case of the petitioner to the respondent No. 1 and vide order dated 03.01.2013, respondent No. 1 rejected the claim of the petitioner.

Hence, this writ petition.

3. The respondent contested this writ petition on the ground that the petitioner has not completed the essential qualifying period for counting adhoc period as per Govt. instructions (Annexure R-1) and states that petitioner applied to the Government for counting his military service towards qualifying service for pensionary benefit, but the Government rejected and advised to the department that in this case, no relaxation can be granted under rules (Annexure R-2).

4. I have heard the rival contentions raised by learned counsel for the parties.

5. Rule 2 of the Punjab Government National Emergency (Concessions) Rules, 1965 defines the Military Services as under:

"2. Definition:- For the purposes of these rules, the expression "military service" means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including service as a warrant officer) rendered by a person during the period of Operation of the Proclamation of Emergency made by the President under Article 352 of the Constitution on the 26th October, 1962 or such other service as may hereafter be declared as military service for the purposes of these rules. Any period of military training followed by military service shall also be reckoned as military service."

This Rule has been amended by the State of Haryana vide notification dated 04.08.1976 and the amended Rule 2 is reproduced as under:--

"2. Definition:- For the purpose of these rules, the expression "military service" means the service rendered by a person who had been enrolled or commissioned during the period of operation of the proclamation of emergency made by the President under Article 352 of the Constitution of India on the 26th October, 1962 in any of the three Wings of the Indian Armed Forces (including the service

as a Warrant Officer) during the period of the said emergency or such other service as may, hereafter be declared as Military service for the purpose of these Rules. Any period of military training followed by military service shall also be reckoned as military service."

6. In *Raj Pal Sharma and Others Vs. State of Haryana and Others*, AIR 1985 SC 1263 : (1985) LabIC 1500 : (1985) 1 SCALE 1088 : (1985) SCC 72 Supp : (1985) 17 UJ 615 , it has been held that for availing the benefits of Rule 4 of the Rules the petitioner should be ex-military serviceman.

In *Tej Rant v. State of Haryana* 2011(2) S.C.T. 543 : 2011(5) SLR 269 (Pb and Hry.), this Court has observed 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 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."

7. In this case, petitioner joined the Military Service on 24.01.1963 prior to the proclamation of the emergency and discharged from the Military Service on 30.03.1973. The first national emergency was declared from 20.10.1962 to 10.01.1968 during the Indo-China war and the second emergency was declared on 03.12.1971 which remained in force till 03.07.1977. Even otherwise the denial of military service and adhoc service is illegal and unjust as the right of the petitioner for counting of Army service has been upheld by the Civil Court. The judgment of the Civil Court became final and is binding on the parties. The action of the respondents ignoring the Civil Court judgment is illegal and liable to be struck down in view of *Ram Singh v. State of Haryana and others* reported as 1993(4) S.C.T. 740 : 1994(1) Recent Service Judgments 238 wherein this Court has held that the adhoc services is to be counted for the purpose of retiral benefits. In the impugned communication dated 03.01.2013 (Annexure P-7) the Additional Chief Secretary, Government of Haryana, Irrigation Department advised the department that in this case no relaxation can be granted as per

rules to the petitioner. Before issuing this communication no opportunity of hearing was given to the petitioner. Moreover the impugned communication is non-speaking and cryptic, no satisfactory reason has been assigned in the communication to decline the request of the petitioner. Therefore, the impugned order dated 03.01.2013 is set aside and it is held that the military service from 24.01.1963 to 30.03.1973 and adhoc service from 26.05.1975 to 28.02.1977 be counted towards the service of the petitioner including retiral benefits for all intents and purposes. It is further directed that the respondent shall release the arrears of consequential monetary benefits within the period of four months from the date of receipt of certified copy of this order. Failing which the petitioner shall pay interest @12% per annum from the date of appointment comes out till its payment.