

(2020) 08 SHI CK 0138

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1494, 1659, 1660 Of 2020

Ex. Hav. Balwan Singh And Others

APPELLANT

Vs

State Of H.P. & Others

RESPONDENT

Date of Decision : 17-08-2020

Acts Referred:

Central Civil Service (Pension) Rules, 1972 — Rule 5(2)
Fundamental Rules, Vol I — Rule 48, 48A, 56(j), 56(k), 56(l), 56(m)

Citation : (2020) 08 SHI CK 0138

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Imran Khan, Ravinder Singh Jaswal, Ashok Sharma, Ranjan Sharma, Svaneel Jaswal

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

1. Since a common question of law and facts arise for consideration in all these petitions, therefore they were taken up together for

hearing and are being disposed of by a common judgment.

2. The petitioners are Ex-Servicemen and superannuated from the Indian Army on 31.12.2016 and thereafter, they got their names registered for

re-employment in the respective Employment Exchanges.

3. The Superintendent of Police, Kangra at Dharamshala (respondent No.3), vide recruitment notice dated 23.06.2015, requested the Director, Sainik

Welfare Board (respondent No.2) to sponsor the names of Ex-servicemen as per terms and conditions for 24 posts reserved for Ex-servicemen vide

Annexure R-1.

4. The Director General of Police fixed 45 years as the age for Ex-servicemen for enrollment in Police and the break in service between the date of discharge from Army and enrollment in Police was kept as two years keeping in view the job requirement of the Police.

5. The Commandant 2nd IRBn, Sakoh, District Kangra (respondent No.5) vide letter dated 13.3.2020 informed respondent No.2 that on scrutiny of recruitment record it was found that the petitioners had been discharged from Army on 31.12.2016, whereas the cut off date of eligibility was 01.01.2019. The duration gap from their date of discharge to cut off date admissible for the post exceeds two years time limit by one day, which is contrary to the instructions of the Government.

6. Respondent No.2 vide letter dated 18.3.2020 clarified the position by stating that the petitioners, who were in active service on 31.12.2016 and were serving Soldiers, they became Ex-servicemen only on 1. 01.2017. Despite this clarification, the candidatures of the petitioners have been rejected vide letter dated 14. 04.2020 on the aforesaid account, constraining them to file the instant petitions.

7. We have heard learned counsel for the parties and have gone through the material placed on record.

8. It would be noticed that the petitioners had been in active service upto 31.12.2016. Once that be so, then obviously it is only on 01.01.2017 that they ceased to be in service and acquired the status of Ex-servicemen.

9. A similar question came up before the Hon'ble Supreme Court in S. Banerjee vs. Union of India and others 1989 Supp (2) SCC 48 6 wherein the petitioner therein sought voluntary retirement and was so retired on 31.12.1985, he acquired the benefit of the recommendation of the Pay Commission, which came into force w.e.f. 01.01.1986. The question was whether the petitioner therein could be said to have been in service on 01.01.1986 or ceased to be in service for practical purpose on 31.12.1985 itself. Referring to the contentions, the Hon'ble Supreme Court observed as under:

3. After the retirement of the petitioner, the Fourth Central Pay Commission (for short 'Pay Commission') gave its report recommending the revision of salaries and pension of the Government employees. It is not disputed that the above recommendations of the Pay Commission have been

accepted by the Government and that the benefit thereof is also available to the employees of this Court. Paragraph 17.3 of Chapter 17 of Part II at page 93 of the Report of the Pay Commission provides as follows:

17.3 In the case of employees retiring during the period January 1, 1986 to September 30, 1986, Government may consider treating the entire dearness allowance drawn by them up to December 31, 1985 as pay for pensionary benefits.

4. The petitioner claimed the benefit of the recommendation of the Pay Commission as contained in the said paragraph 17.3, but it was not allowed on the ground that he did not, as he was not entitled to, draw salary for January 1, 1986 in view of the proviso to rule 5(2) of the Central Civil Service (Pension) Rules, 1972, hereinafter referred to as 'the Rules'. Rule 5(2) reads as follows:

5(2). The day on which a Government servant retires or is retired or is discharged or is allowed to resign from service, as the case may be, shall be treated as his last working day. The date of death shall also be treated as a working day.

Provided that in the case of a Government servant who is retired prematurely or who retires voluntarily under clause (j) to (m) of Rule 56 of the Fundamental Rules or Rule 48 (or Rule 48A) as the case may be, the date of retirement shall be treated as a non-working day.

5. At the hearing of the writ petition, it has also been vehemently urged on behalf of the respondents that as in view of the proviso to rule 5(2) of the Rules, the date of retirement of the petitioner should be treated as a non-working day or, in other words, as the petitioner was not entitled to the salary for the day of his retirement, he was not entitled to the benefit of the recommendation of the Pay Commission as contained in paragraph 17.3 of the report extracted above.

6. Under paragraph 17.3, the benefits recommended will be available to employees retiring during the period, January 1, 1986 to September 30, 1986.

So the employees retiring on January 1, 1986 will be entitled to the benefit under paragraph 17.3. The question that arises for our consideration is

whether the petitioner has retired on January 1, 1986. We have already extracted the order of this Court dated December 6, 1985 whereby the

petitioner was permitted to retire voluntarily from the service of the Registry of

the Supreme Court with effect from the forenoon of January 1, 1986.

It is true that in view of the proviso to rule 5(2) of the Rules, the petitioner will not be entitled to any salary for the day on which he actually retired.

But, in our opinion, that has no bearing on the question as to the date of retirement. Can it be said that the petitioner retired on December 31, 1985?

The answer must be in the negative. Indeed, Mr. Anti Dev Singh, learned counsel appearing on behalf of the respondents, frankly conceded that the

petitioner could not be said to have retired on December 31, 1985. It is also not the case of the respondents that the petitioner had retired from the

service of this Court on December 31, 1985. Then it must be held that the petitioner had retired with effect from January 1, 1986 and that is also the

order of this Court dated December 6, 1985. It may be that the petitioner had retired with effect from the forenoon of January 1, 1986 as per the said

order of this Court, that is to say, as soon as January 1, 1986 had commenced the petitioner retired. But, nevertheless, it has to be said that the

petitioner had retired on January 1, 1986 and not on December 31, 1985. In the circumstances, the petitioner comes within the purview of paragraph

17.3 of the recommendations of the Pay Commission.â??

10. After placing reliance on the judgment in S. Banerjee case (supra), the Full Bench of Andhra Pradesh High Court in P. Principal Accountant

General, A.P. and another vs. C. Subba Rao, 2005 Lab I.C. 1224, held that when the employee has retired on the last date of the month, his date of

retirement has to be treated as first date of the succeeding month.

11. In view of the aforesaid discussion, we find merit in these petitions and the same are accordingly allowed. The impugned order dated 14.4.2020

whereby the candidatures of the petitioners have been found ineligible for the post of Constable reserved for Ex-â?servicemen, is quashed and set-â?

aside and consequently, the respondents are directed to give appointment to the petitioners for the post of Constable in the Department.

12. All these writ petitions are disposed of in the aforesaid terms, so also the pending application(s), if any.

13. For compliance, list on 17.09.2020.