
(2006) 08 P&H CK 0390

In the Punjab And Haryana At Chandigarh

Case No : C.M. No. 13040 of 2006 and C.W.P. No. 15417 of 1992

Gurcharan Singh

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 10-08-2006

Acts Referred:

Punjab Government National Emergency (Concession) Rules, 1965 — Rule 1, 4

Citation : (2006) 08 P&H CK 0390

Hon'ble Judges : P.S. Patwalia, J

Bench : Single Bench

Advocate : H.S. Gill and R.K. Dhiman, for the Appellant; R.S. Kundu, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

P.S. Patwalia, J.—By way of this application the petitioner prays that he may be permitted to place on record orders Annexures A-1 and A-2 and that this writ petition may be decided in terms of the said orders. The application is allowed. Orders Annexures A-1 and A-2 are permitted to be placed on record. Counsel for the parties are agreed that this writ petition be taken up for hearing today.

2. The petitioner joined civil service in the State of Haryana after having rendered service in the Army from April, 1956 to November, 1973. He had claimed the benefit of the Army service rendered by him during the proclamation of National Emergency towards his civil employment. When the same was not granted, he filed Civil Writ Petition No. 2688 of 1985. The said writ petition was decided on February 21, 1989 along with a Bunch of other writ petitions and the main judgment was rendered in Civil Writ Petition No. 2625 of 1985. The directions given in that case are as hereunder:

Since the Government itself have decided to give benefit of military service to all those persons who had served the Army during emergency with regard to grant of increments, seniority, pension and gratuity etc. I see no reason as to why the

benefit of the decision could not be given to the petitioners as well. The respondents are, therefore, directed to give benefit of military service to the petitioners for the period from 26.10.1962 to 10.1.1968 within three months from today. In the circumstances of the case, the respondents are further directed to prepare afresh the seniority list after giving benefit of military service to the petitioners and the seniority list already prepared without giving such benefits to the petitioners is quashed.

With these observations, this writ petition is allowed. Costs.

Sd/-xx Amarjeet Chaudhary

February 21, 1989. Judge.

3. Against the decision in these cases, the State Government filed Letters Patent Appeals. Letters Patent Appeals filed in the year 1989 came up for hearing on 4.4.2006 on which date they were decided with the following order:

HARJIT SINGH BEDI, J. (ORAL)

This order will dispose of Letters Patent Appeal Nos. 1429 of 1989 (State of Haryana v. Sushil Kumar etc.), 1430 of 1989 (State of Haryana v. Ishwar Singh Kadian etc.), 1431 of 1989 (State of Haryana v. Dalel Singh), 1432 of 1989 (State of Haryana v. Ravi Parkash), 1433 of 1989 (State of Haryana v. Tej Ram Sharma and Ors.), 2202 of 1989 (The Financial Commissioner and Anr. v. Risal Singh), 2275 of 1989 (State of Haryana and Ors. v. Sube Singh and Ors.), 2087 of 1989 (State of Haryana v. Ram Kishan (Dahiya) and 2079 of 1989 (State of Haryana v. Manohar Singh Malia and Ors.).

Mr. Anmol Rattan Sidhu, on instructions from Mr. Vijender Singh, A.D.A. very fairly states that during the pendency of these appeals, which had been filed way back in 1989, the effected respondents have either retired or have died in the meanwhile. He has informs us that as no stay had been granted in these appeals filed by the State of Haryana, all benefits consequent to the judgment of the learned Single Judge had been released to all the private respondents except in L.P.A. No. 1431 of 1989 and L.P.A. No. 2087 of 1989.

We, therefore, without going into the merits of the controversy, dismiss the present set of appeals on account of their peculiar facts.

Sd/- H.S. Bedi, Judge Sd/- R.S. Madan, Judge.

April 04, 2006.

4. Since there was no interim order made in the Letters Patent Appeals in terms of the directions given by this Court in C.W.P. No. 2688 of 1985 the petitioner was granted the benefit of military service rendered by him during the of proclamation of Emergency towards his civil employment by an order dated 2nd August, 1990. The said benefit was, however, granted subject to the decision of the Letters Patent Appeals. The order passed by the State Government reads as

hereunder:

In terms of Rule 1 of the Punjab Government National Emergency (Concession) Rules, 1965 and Instructions contained in the Chief Secretary to Govt., Haryana Letter No. 12/24/84-245-11 dated 4.8.1986 Military services rendered by Shri Gurcharan Singh, Clerk, Haryana Treasury Chandigarh from 26.10.1962 to 10.1.1968 (5 years 2 months 16 days) is hereby allowed to be counted in Civil Service with effect from 18.2.1977 viz the date from which he joined as clerk in the Treasury Organisation on regular basis for the purpose of fixation of pay and seniority.

2. This is subject to the decision of the Hon"ble High Court of Punjab and Haryana in the LPA's No. 1429 to 1433 of 1989 filed by the State of Haryana which is still pending in the Hon"ble High Court.

5. Thereafter by another order dated 29.10.1992 the benefit of military service granted to the petitioner was withdrawn. It is the order dated 29.10.1992 which was challenged by the petitioner in this writ petition. On 3.12.1992 operation of the order withdrawing the benefit of military service was stayed in this writ petition.

6. The petitioner now submits that there was a clear direction in Civil Writ Petition No. 2688 of 1985 that he had to be granted the benefit of Army service during the proclamation of Emergency towards his civil employment. The Letters Patent Appeal against the said judgment has since been decided.

7. Therefore, the State is bound to give him the said benefit. It is further stated on behalf of the petitioner that he had joined civil employment as a Clerk on 26.4.1974. This was before an amendment was made to Rule 4 of the Punjab National Emergency (Concession) Rules, 1965 limiting the grant of benefit of military service only to those employees who joined duty the proclamation of Emergency. Even though the said amendment was made with retrospective effect but the retrospective effect of the amendment was quashed by the Hon"ble Supreme Court in Ex. Capt. K.C. Arora and Anr. v. State of Haryana and Ors. 1984 (2) S.L.R. 97.

8. Thus, it is contended that even on first principle the petitioner is entitled to the benefit of military service rendered by him during the period of Emergency towards his civil employment. Having examined the controversy, I am of the opinion that the claim of the petitioner deserves to be allowed. There is a positive direction in the writ petition filed by him that the benefit of aforesaid military service is to be given to the petitioner. Letters Patent Appeal filed by the State against the said judgment has also been disposed of. Thus, in this view of the matter, the respondent-State is bound to comply with the directions given by this Court in Civil Writ Petition No. 2688 of 1985.

9. For the reasons mentioned above, the writ petition is allowed and the order Annexure P-3 is set aside. Since the operation of the order had been stayed

during the pendency of the writ petition the petitioner would have got all benefits of the service rendered by him in the Army during the period of Emergency towards his civil employment. However, if any benefit is still due and payable to the petitioner, the same be released to him by the respondents within a period of four months from the date of receipt of a certified copy of this judgment.