
(2012) 08 P&H CK 0111
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 2033 of 2001

Harbans Lal Sharma

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 16-08-2012

Acts Referred:

Citation : (2012) 168 PLR 380

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : O.P. Gabba, for the Appellant; Vivek Chauhan, Assistant Advocate General, Punjab, for the Respondent

Final Decision : Dismissed

Judgement

Tejinder Singh Dhindsa, J.—Challenge in the present petition is to the order dated 7.7.1999, Annexure P12, issued by the Director, Education Department (S) Punjab whereby the claim of the petitioner for grant of benefit of military service from 11.11.1944 to 21.3.1948 towards qualifying service for pension has not been accepted. The petitioner retired from the post of Punjabi Teacher from the Education Department, State of Punjab on 31.12.1984 on completion of almost 30 years of service. Accordingly, the petitioner has been released the benefit towards pension/retrial benefits in lieu of service rendered with the Education Department, State of Punjab. It has been asserted that the petitioner served in the Military Accounts Department from 11.11.1944 to 21.3.1948 as Upper Division Clerk and his services had been dispensed with on account of closure of concerned establishment. Since such service was less than four years, the petitioner did not get any pension or gratuity in relation to such military service. It so transpires that the petitioner submitted a representation for claiming the benefit of military service towards qualifying service for pensionary benefits, in the year 1993. Thereafter, repeated representations were submitted by the petitioner towards claiming such benefit. The petitioner preferred Civil Writ Petition No. 10215 of 1998 before this Court and the same was disposed of on

7.7.1998 in terms of directions having been issued to the respondent-authorities to consider and decide the petitioner's claim in terms of passing a speaking order. It is in deference to the directions passed by this Court that the impugned order dated 7.7.1999 has been passed wherein the claim for counting of military service for purposes of pensionary benefits has been rejected.

2. I have heard learned counsel for the parties at length.

3. The issue regarding counting of military service towards civil pension is governed by the provisions contained in the Punjab Civil Service Rules Volume-II. Section III in Chapter IV, Rule 4.3(a) and Note 8 of the Punjab Civil Service Rules, Volume-II would be relevant for purposes of adjudication of the claim raised by the petitioner and the same read in the following terms:

4.3(a) - Service rendered by an employee belonging to one of the classes mentioned in the schedule below after attaining the age of 18 years, which is pensionable under military rules, but which terminated before a pension has been earned in respect of it, may, at the discretion of Government, be allowed to count. When followed by service qualifying for pension under civil rules, as part of such service :

Provided that any bonus or gratuity received in lieu of pensions, on or since, discharge from military service, shall be refunded in such number of monthly instalments, not normally exceeding 36 and beginning from such date, as in such case, the Government may decide, service so allowed to count shall, however, be restricted to service, within or outside the employees unit or department, in India or elsewhere, which has been paid for from Indian revenues or for which a pensionary contribution has been received by Indian revenues. In the case of Defence Security Corps personnel reemployed in any civil posts, however, only half of the service rendered by them in the Defence Security Corps shall count for the purpose of pensionary benefits.

Note 8. - The sanction regarding the counting of military service should be accorded by the competent authority at the time of appointment of the person concerned and not at the time of his retirement from civil service. Sanctions accorded in such cases are required specially to mention the amount of gratuity or bonus recoverable, the number of monthly instalments in which the bonus or gratuity is to be recovered and the date from which the recovery is to commence. If, in any case, the gratuity is not to be recovered, the fact will be specially stated in the sanction. The gratuity once refunded in order to secure the benefit of counting former military service for civil pension cannot be paid back in any circumstances.

4. A perusal of the relevant statutory provision would make it clear that the service rendered by an employee is pensionable under the Military Rules, but if the same is terminated before his pension has been earned in respect of such service, then it is at the discretion of the Government to allow such service which is followed by service qualifying for pension under civil rules to count for

purposes of grant of pensionary benefits. However, such discretion vested at the hands of the Government is subject to a rider contained in Note 8 wherein it is clearly stipulated that the sanction regarding counting of military service has to be accorded by the competent authority at the time of appointment of the employee in civil service and not at the time of his retirement.

5. It is the petitioner's own pleaded case that even though he joined service as a Teacher with the Education Department, State of Punjab on 19.6.1954, but the first representation as regards his claim for counting of military service towards pensionary benefits was submitted to the authorities concerned in the year 1983. The language of the statutory provision contained in the Punjab Civil Service Rules as reproduced hereinabove is clear and unambiguous. Once the statutory provision mandates any administrative decision to be taken in a particular time-frame, there would be no scope for any deviation from the same. The claim of the petitioner for counting of military service from the year 1944 to 1948 in terms of such having been raised, first in point of time in the year 1983 would be clearly barred in terms of Rule 4.3(a), Note 8.

6. Learned counsel appearing for the petitioner would place reliance upon a Division Bench judgment dated 22.4.2008 passed by this Court in S.S. Puri, IAS (Retired) v. State of Punjab, 2009(1) RSJ 56. The facts of such judicial precedent cited by the learned counsel are clearly distinguishable. In the case of S.S. Puri (supra), the petitioner therein was praying for directions to re-fix his pension and to grant him retiral benefits in terms of counting the period of military service for the purpose of pension as the same had already been counted towards pay fixation and seniority. Such judgment would have no relevance in the light of the facts of the present case.

7. For the reasons recorded above, I find no infirmity in the order dated 7.7.1999, Annexure P12, whereby the claim of the petitioner for counting of his military service from 1944 to 1948 towards qualifying service for pensionary benefits has been rejected. The writ petition is, accordingly, dismissed. Petition dismissed.