
(1979) 05 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6630 of 1976

Hari Chand Chhikara

APPELLANT

Vs

The State of Haryana and others

RESPONDENT

Date of Decision : 01-05-1979

Acts Referred:

Punjab Government National Emergency (Concession) Rules, 1965 — Rule 3(3)

Citation : (1979) 05 P&H CK 0005

Hon'ble Judges : S.S. Sandhawalia, J;Gokal Chand Mittal, J

Bench : Division Bench

Advocate : Rameshwar Sharma, for the Appellant; S.C. Mohunta, A.G. (Hary.)
with Mr. N.K. Kapur, for the Respondent

Final Decision : Dismissed

Judgement

Gokal Chand Mittal, J.—The point involved in this writ petition is whether an ex serviceman who having once availed of concession under sub-rule (3) of rule 3 of the Punjab Government National Emergency (Concession) Rules 1965, as amended upto date (hereinafter referred to as the Rules), at the time of his initial appointment in a civil post would be entitled to another concession/benefit under rule 4 (ii) of the Rules For the decision of this matter, it would be useful to reproduce rule 3 (3) and rule 4 (ii) of the Rules hereunder:?

3(3). In case a person who has rendered military service does not possess the minimum qualifications prescribed for any service or post, he shall be deemed to possess these qualifications if the appointing authority certifies that such a person has acquired by experience or otherwise qualifications equivalent to those prescribed for that service or post.

4. Increments, seniority and pension:?

Period of military service shall count for increments, seniority and pension as under:

(i) - - - -

(ii) Seniority : - The period of military service mentioned in clause (i) shall be taken into consideration for the purpose of determining the seniority of a person who has rendered military service. Provided that a person who has availed of concession under sub rule () of rule 3 shall not be entitled to the concession under this clause.

2. The petitioner had joined the Indian Army on October 8, 1965, during Emergency and was released from the Army service on October 27, 1967. According to the petitioner, he was appointed as a clerk in the office of the Director, Public Instruction, Haryana, on the basis of an application which he submitted on the advertisement made by the Haryana Subordinate Services Selection Board as he fulfilled the requisite qualifications for the post. He joined the civil post on April 19, 1973. After joining the civil post, the petitioner made a representation for the grant of benefit of military service rendered by him during the period of National Emergency for purposes of fixing seniority, granting him increments and pension in accordance with the Rules, and in particular he sought the fixation of his seniority at the position of March 30, 1971, a copy of which has been annexed as annexure P 2 to the writ petition. That representation of his was rejected by the Director, Public Instruction, Haryana, vide order annexure P-4, in view of the notification of the State Government dated March 22, 1976, by virtue of which proviso was added to clause (ii) of rule 4 of the Rules. A copy of the added proviso is annexed with the petition as Annexure P-3

3. The petitioner has challenged the amended rule P3 and the order P-4 on the grounds, firstly, that he did not avail of any concession at the time of his initial appointment and secondly that the amendment contained in annexure P-3 is unconstitutional, illegal ultra vires and is a breach of faith on the part of the respondents towards the ex servicemen

4. As regards the first ground, the petitioner has alleged in his petition that he fulfilled the requisite qualifications for being appointed as a clerk in the office of the Director, Public Instruction, and, therefore, he had not availed of any concession under rule 3 (3) of the Rules and as such he was entitled to the benefit of the military service for purposes of seniority, increments and pension under rule 4 (ii) of the Rules. The State of Haryana and the Director, Public Instruction, have controverted the allegation of the petitioner that he fulfilled the requisite qualification for the post on which he was initially appointed and have submitted that he did not fulfil the requisite qualification for that post as he was not a first class matriculate The requisite qualification prescribed for the post of a Clerk in that office is as under:?

He has passed the S.L.C Exam, or is a Matriculate or post matriculate of the 1st Division or has other equal or higher qualification.

It is the case of the State Government that it had issued circular letter dated June 19, 1972, taking "policy decision to the effect that where a particular

division is a necessary minimum qualification such division should not be insisted upon while filling up the vacancies reserved for ex-servicemen and the minimum qualification in their cases may be deemed to have been relaxed to that extent. In para 4 of the written statement, the stand of the respondents is that since the petitioner did not fulfil the minimum qualification with regard to the division, the minimum qualification in his case was deemed to have been relaxed in accordance with the aforesaid Government instructions, read with sub-rule (3) of rule 3 of the rules, and that is how he was appointed as a clerk in the civil post on April 19, 1973.

5. Faced with the written statement of the respondents and the policy circular dated June 19, 1971, the learned counsel for the petitioner sought to argue that although the petitioner did not fulfil the requisite qualification of having first division, still he was not granted the benefit of rule 3 (3) of the rules as no certificate granting the concession was issued in his favour by the appointing authority and as much it cannot be said in this case that the petitioner has availed benefit of concession under rule 3 (3) of the Rules. As such, not having availed of the concession under the aforesaid rule, he would be entitled to the concession and the benefit under rule 4 (ii) of the Rules

6. In reply to the above argument of the learned counsel for the petitioner, the learned Advocate General, Haryana, has argued that rule 3(3) is a directory provision and the word used therein is "certifies" and it is not necessary that there should be a separate certificate in each case relaxing the qualification before the issue of the appointment letter. According to him, this would have not only delayed the appointment of ex servicemen but would have created problems for the appointing authorities of taking a separate decision in the case of each ex-servicemen which would have meant increase of unnecessary work for the appointing authorities and to overcome this difficulty, the State Government issued the policy decision to all the Heads of different Departments to make appointments of ex-servicemen by deeming the minimum qualification to have been relaxed with regard to division. On the basis of the aforesaid policy decision of the State Government, it is submitted before us by the learned Advocate-General that the petitioner was appointed to the civil post after relaxing the minimum qualification with regard to division. This was done precisely to give the concession of rule 3(3) of the Rules to the petitioner failing which he would not have been appointed as a clerk. He goes on to argue that if this reasonable interpretation is not placed on rule 3(3), then the appointments of all ex servicemen who have been appointed in the State without a certificate in each case would be bad and void ab initio and it would be open for the State Government to terminate their services on this short ground and whenever those persons will seek fresh appointments in the civil posts, they will be appointed after specifically giving the benefit of rule 3(3) of the Rules by certifying in each case as to relaxation. According to him, this course would harm the petitioner then help him. It is submitted that the Government took the policy decision in order to avoid different interpretations and mis-understanding of rule

3(3) by various Heads of Departments in the State. In support of his argument that rule 3(3) is directory and that liberal interpretation to placed on the same, he has relied on *Guru Nanak University Vs. Dr. (Mrs.) Iqbal Kaur Sandhu and Others*, , a Full Bench Judgment of this Court and has invited our attention particularly to para 29 at page 81 of the report, and the decision of this Court in *C.W. No. 3102 of (1976) (Ram Datt Sharma and others v. State of Haryana C.W. No. 3102 of 1976)* decided by J.M. Tandon, J., on April 12. 1979

2. After hearing the learned counsel for the parties on this point, we are clearly of the view that the submissions made by Shri S.C. Mohanta, the learned Advocate General, Haryana, deserve to prevail. The rule making authority never intended rule 3(3) to be so stringent or mandatory and the underlying idea was to give concession to the ex-servicemen by not insisting on the qualification even if they did not fulfil the same and the decision of the appointing authority under this rule was deemed to be enough Either the appointing authority could certify the holding of requisite qualification in the case of each ex-servicemen to be appointed in civil posts or could do so as a matter of policy. To avoid delay in the appointments of ex-servicemen in the civil posts, the State Government was justified in asking all the Heads of Departments by letter dated June 19, 1972, not to insist upon the division and to deem the minimum qualification as having been relaxed to that extent under rule 3(3) of the Rules. This circular of the State Government, followed by the appointing authorities would be deemed to be a sufficient certification in the case of ex-servicemen who have been appointed in the civil posts and who did not possess the requisite qualifications at the time of initial appointment to the civil posts This would be the most reasonable and harmonious way of reading the rule and this promotes justice and would benefit the ex-servicemen. As such, we hold that rule 3(3) is directory and it is not necessary that the appointing authority should certify in the case of each individual ex-serviceman that the minimum qualification in his case has been relaxed under rule 3(3) of the Rules and the concession under that rule would be deemed to have been given in all cases where it is shown that the ex servicemen did not fulfil the requisite qualification at the time of his initial appointment in the civil post Tandon, J., who rightly taken this view in *Ram Datt Sharma and others* cast (*supra*) If we were to take a different view, then the result would be that the initial appointment of the petitioner would become bad and it will be open for the the State Government to terminate his services on the ground of his not having fulfilled the requisite qualification at the time of initial appointment. As such, we hold that there is no merit in the first point raised by the learned counsel for the petitioner.

8. As regards the second point that the proviso added to rule 4(ii) Is unconstitutional and is in breach of faith on the part of the respondents towards the ex servicemen no reasonable argument has been brought out as to how the amended rule is bad. It is not shown that the authority who amended the rule had no power to make the amendment nor is it shown that it is hit by Article 14 or 16 of the Constitution In fact, this was a half hearted argument which was

raised before us for which neither any basis was laid in the writ petition nor has been brought out during arguments before us. As such, we are unable to hold the amended rule as violative of the Constitution or in violation of the breach of faith by the respondents towards the ex servicemen. The State Government by rules could provide one or more than one benefit to the ex-servicemen but if one benefit is provided, an ex-serviceman cannot say that the Government should have provided him more than one. Finding no merit in the second point of the petitioner, the same is also rejected.

9. Before parting, it may be made clear that by representation annexure P 2, although the petitioner had stated that as an ex-serviceman he was entitled to the benefit for the period from October 8, 1965, to October 25 1967, for purposes of seniority, pension and increments, as per rule 4 of the Rules, but the relief sought by this interpretation was only with regard to the fixation of his seniority at the position of March 30 1971, and only this prayer of his was rejected by the impugned order. This is so in view of the leading judgment written by the Chief Justice while sitting. In D.B. in C.W. No. 3642 of 1978 *Raj Kumar Verma v. State of Haryana*, decided on November 23, 1978. Therein, it has been clearly held that all the three sub-clauses of rule 4 are separate and mutually exclusive of each other. The proviso, which was subject matter of consideration in this case, was added only to clause (ii) of rule 4 with regard to fixation of seniority and that proviso would not be operative with regard to clause (1), regarding increments, and clause (iii) regarding pension of rule 4. If the petitioner entitled to the benefits of rule 4 (i) and (iii) with regard to increments and pension, for that matter, no decision is being rendered in this case and it will be open to the petitioner to make representation to the State Government for those benefits.

10. For the reasons recorded above, we find no merit in this petition and dismiss the same but without any order as to costs.

S.S. Sandhawalia, C.J.

11. I agree.