

(2012) 07 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16155 of 2010

Jagdish Chander and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Citation : (2012) 168 PLR 299 : (2013) 1 SCT 136

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Sudhir Aggarwal, for the Appellant; Harish Rathee, D.A.G., Haryana, for the Respondent

Final Decision : Allowed

Judgement

Augustine George Masih, J.—Petitioner has approached this Court praying for a writ of Mandamus directing the respondents to grant the Military service benefit to the petitioner towards increments and other pensionary benefits from the date of his initial appointment i.e. 23.5.1978 instead of 1.1.1987 i.e. the date of regular appointment or any other appropriate writ, order or direction. Counsel for the petitioner, at the very outset, submits that the petitioner is not pressing the claim for increments and seniority, which he had claimed in the writ petition from 23.5.1978 i.e. the initial date of his appointment but contends that for the grant of pensionary benefits, the date of his initial appointment i.e. 23.5.1978 is to be taken into consideration instead of 1.1.1987 which is the date of his regularization. He presses this claim on the basis of the amendment brought about by the respondents in Clause (iii) of Rule 4 of the Punjab Government National Emergency (Concession) Rules, 1965 (hereinafter referred to as the 1965 Rules), vide notification dated 22.1.1976, according to which the nature of appointment was changed from "permanent service or post" to "service or post". With the classification of "permanent" having been removed, the appointment of the petitioner on work-charge basis from 23.5.1978 till the date of his regularization i.e. 1.1.1987 is to be counted towards the grant of pensionary

benefits. It is on this basis that the prayer for grant of this period for pensionary benefits is made.

2. Counsel for the respondents, on the other hand, submits that as per Rule 4(A) of the 1965 Rules as amended by notification dated 22.07.2005, petitioner is entitled to the benefit of military service for the purpose of increments and seniority from the date of his regular appointment. He, on this corollary, states that the petitioner shall not be entitled to the counting of his work charge service which he had rendered prior to the date of his regularization for the grant of pensionary benefits also. The said period is not to be counted for the grant of pensionary benefits and, therefore, he prays for dismissal of the writ petition.

3. I have considered the submissions made by the counsel for the parties and with their assistance have gone through the records of the case. Government of Haryana vide notification dated 22.3.1976 adopted the 1965 Rules which were deemed to have come into force w.e.f. 1.11.1966. Rule 4 of these Rules, then read as follows:-

4. Increments, seniority and pension:-

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

(i) Increments:- The period spent by person on military service, after attaining the minimum age prescribed for appointment to any service or post, to which he is appointed, shall count for increments. Where no such minimum age is prescribed the minimum age shall be as laid down in rules 3.9, 3.10 and 3.11 of Punjab Civil Services Rules, Volume -II. This concession shall however be admissible only on first appointment.

(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.

(iii) Pension:- The period of military service mentioned in clause (i) shall count towards pension only in the case of appointments to permanent services of posts under the Government subject to following conditions:-

(1) The person concerned should not have earned a pension under military rules in respect of the military service in question;

(2) Any bonus or gratuity paid in respect of military service by the defence authorities shall have to be refunded to the State Government.

(3) The period, if any between the date of discharge from military service and the date of appointment to any service or post under the Government shall count for pension, provided such period does not exceed one year. Any period exceeding one year but not exceeding three years may also be allowed to count for pension in exceptional cases under the orders of the Government.

4. Clause (iii) of Rule 4 which deals with pension, would be the one which would have a bearing on the case and a perusal of the same would indicate that the benefit of service was to be granted only in case appointment is made to a permanent service or post under the Government. This Rule was amended by the Government of Haryana vide notification dated 13.8.1979 which reads as follows:-

3. In the Punjab Government National Emergency (Concession) Rules, 1965, (hereinafter referred to as the said rules), in rule 4,

a) in clause (i), the words "This concession shall however, be admissible only on first appointment," shall be omitted;

b) in clause (iii) for the words "only in the case of appointments to permanent services or posts", the words "in case of first or any subsequent appointment to any service or post" shall be substituted.

5. The above para (b) which deals with clause (iii) and relates to Rule 4 when seen and compared with the earlier rule before substitution, the nature of appointment has been changed for counting the same for the benefit of pension. Now the requirement as per Rule 4 clause (iii) is not permanent service or post but to any service or post. With this, the rigors of permanent service and post stand diluted. The effect thereof is that the nature of appointment would not make much of a difference for counting the said period for pensionary benefits. But the sting of this rigor of "permanent service or post" was not taken off while granting the benefit of increments and seniority, as is apparent from the amendment which has been brought about by the Government of Haryana vide notification dated 22.7.2005 (Annexure R-1) wherein 4-A has been added which clarified that clause (i) and clause (iv) of Rule 4 shall be admissible on first regular appointment or on subsequent regular appointment under the Government and this benefit would be admissible only once. This amendment also leaves clause (iii) untouched which brings about the intention of the Government of Haryana that did not want to deprive the benefit of the service if it is not a regular/permanent in nature for counting towards the pensionary benefits of a person who is entitled to the benefit of the 1965 Rules.

6. In the light of the position as has been explained herein-above, the only conclusion which can be drawn now is that the services of the petitioner rendered as a driver on work-charge basis from 23.5.1978 to 1.1.1987 (the date of regularization of his services) will be counted towards the grant of pension. However, he shall not be entitled to the benefit of this period of service for grant of seniority and increments. In view of the above, the stand of the respondents denying him the benefit of the period of work-charge service with them prior to their regularization cannot sustain. The writ petition is allowed; petitioner is held entitled to the grant of benefit of his service which he had rendered with the respondents on work-charge basis from 23.5.1978 to 1.1.1987 for grant of pensionary benefits only and the result thereof would be that the military service

benefit for pension shall be counted from 23.5.1978 i.e. the initial date of his appointment instead of 1.1.1987 i.e. the date of regularization of his services. The consequential benefits be released to the petitioner within a period of three months from the date of receipt of certified copy of this order.