

(2020) 09 SHI CK 0328
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 5874 Of 2020

Om Prakash

APPELLANT

Vs

State Of H.P.& Another

RESPONDENT

Date of Decision : 15-09-2020

Acts Referred:

Demobilised Armed Forces Personnel (Reservation Of Vacancies In Himachal Pradesh State Non- Technical Services) Rules, 1972 — Rule 5, 5(1)

Citation : (2020) 09 SHI CK 0328

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : P.P.Chauhan, Sudhir Bhatnagar, Kunal Thakur

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. Precisely, the question which falls for adjudication in the case at hand is "whether decision of the respondent-State to not to give the benefit of approved military service towards fixation of pay to the petitioner is arbitrary and not sustainable in law."

2. In the case at hand, it is not in dispute that the petitioner after having rendered military services of 19 years, 10 months and 15 days came to be reappointed as Physical Education Teacher on 15.2.2014 on the recommendation made by Ex-serviceman Employment Cell, Hamirpur, Himachal Pradesh.

3. The claim of the petitioner is that he is entitled for benefit of counting his past approved military services of 19 years, 10 months and 15 days for the purpose of pay fixation in terms of Rule 5 of the Demobilised Armed Forces Personnel (Reservation of Vacancies in Himachal Pradesh State Non- Technical Services) Rules, 1972.

4. The parties are ad-idem that issue raised in the present petition, as has been

taken note hereinabove, stands duly adjudicated by Co-ordinate Bench of this Court in CWPOA No.231 of 2019, titled as Sh. Amar Nath and others versus State of Himachal Pradesh and others and CWPOA No.237 of 2019, titled as Sh. Jeet Ram and others versus State of Himachal Pradesh and others, vide judgment 15.7.2020, whereby Co-ordinate Bench of this Court while holding action of the respondent-State to not to give benefit of past approved military service for the purpose of pay fixation arbitrary and not sustainable in the eye of law, has categorically held that the right stands conferred upon the petitioner by virtue of provisions of Sub-rule (1) of Rule 5 of the 1972 Rules and such, right still exists in the Rules in issue.

5. Co-ordinate Bench of this Court in aforesaid judgment has clarified that though Hon'ble Division Bench of this Court in CWP No.488 of 2011,titled as Shri V.K.Behal and others vs. State of Himachal Pradesh and others, decided on 29.12.2008, has held the grant of benefit of approved military service towards fixation of seniority in the case of Ex-servicemen, who did not join Armed Forces in emergency to be unconstitutional, but it did not comment upon that part of sub-rule (1) of Rule-5, which specifically deals with the grant/ benefit of approved military service towards fixation of pay.

6. Consequently, in view of the aforesaid, this Court finds no impediment in accepting the prayer made in the petition and accordingly same is allowed by making the directions in Amar Nath and Jeet Ram's cases (supra) mutatis mutandi applicable, also to the present petition. Pending applications, if any, also stand disposed of accordingly.