

(1998) 12 P&H CK 0118

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 763 of 1991

Punjab Panchayati Raj Khed Parishad

APPELLANT

Vs

Shri Jasmohan Singh and Others

RESPONDENT

Date of Decision : 03-12-1998

Acts Referred:

Citation : (1999) 2 ILR (P&H) 293 : (1999) 121 PLR 747

Hon'ble Judges : N.C. Khichi, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Deepak Agnihotri, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—Was the respondent not entitled to the benefit of the Army Service rendered by him prior to his appointment as a Wrestling Coach with the Punjab Panchayati Raj Khed Parishad? This is the short question that arises for consideration in this Letters Patent Appeal. A few facts may be noticed.

2. The respondent had joined the Indian Army on July 11, 1966 as a ranker. He was discharged on July 31, 1975. On January 9, 1976, the Punjab Panchayati Raj Khed Parishad (hereinafter referred to as the Appellant) advertised posts of Coaches. 20% of these posts were reserved for Ex-servicemen. The respondents applied for being considered against one of the vacancies reserved for Ex-servicemen. He was selected. Vide order dated July 29, 1976, the respondent was appointed as a Wrestling Coach. He had actually joined on August 4, 1976.

3. Having joined the service, the respondent made a claim for the grant of benefit of military service rendered by him during the period from July 1966 to July 1975. Vide order dated April 28, 1978 copy of which has been placed on record as Annexure P.1/A, the appellant accepted the respondent's claim. He was deemed to have been appointed with effect from May 16, 1970. His seniority and pay were accordingly fixed.

4. While he was still working as Wrestling Coach, respondent applied for a post in the Punjab Agricultural University, Ludhiana. The application was sent through proper channel. He was selected, vide Order dated February 17, 1989, he was granted appointment. It was provided that his pay on the post already held by him shall be protected. On receipt of the letter of appointment, the respondent had resigned. Thereafter, on April 4, 1989, the respondent was informed that he was "not entitled to the said benefit" as he did not fulfil the conditions stipulated in Rule 5(1) of the Rules governing the grant of benefit of military service. He was called upon to explain as to why the benefit be not withdrawn. The respondent submitted his reply to the notice. Before any order could be passed, he approached this Court through a petition under Article 226 of the Constitution. It appears that vide order dated October 11, 1989, the Government decided to withdraw the benefit which had been granted to the respondent. A copy of this order is Annexure P. 11 with the writ petition.

5. The learned Single Judge after consideration of the matter held that "the advertisement for the post of Coaches was issued on 9th January, 1976 and the interview was also held on April 23, 1976. Though the appointment letter was issued later on, therefore, the amended Rule could not be applied in case of the petitioner. The argument of the petitioner's counsel was that since the vacancy which was sought to be filled (filled), had occurred prior to the amendment of 1968 Rules and in fact process of filling the vacancies had started prior to the amendment of 1968 Rules, the amendment could not be made applicable in the case of the petitioner and his case was covered by Rule 5 of the 1968 Rules, as it existed prior to May 3, 1976." The learned Single Judge, thus, held that the benefit had been rightly given to the employee. As a result, the order dated October 11, 1989, a copy of which has been produced on the record as Annexure O.11, was quashed.

6. Aggrieved by the judgment of the learned Single Judge, the Khed Parishad has filed the present Letters Patent Appeal.

7. Mr. Agnihotri has contended that the learned Single Judge has erred in holding that the respondent was not governed by the provisions of Rule 5 as amended vide notification dated May 3, 1976. Still further, it has been contended that the benefit of military service was not admissible to the respondent as he was neither a Commissioned Officer nor a Short-service Commissioned Officer. Still further, he was not invalidated owing to a disability attributable to or aggravated by military service. Consequently, his case was not covered by the provisions of Rule 5.

8. No one has appeared for the respondent to contest the case.

9. Admittedly, the Punjab Government had promulgated Demobilized Armed Forces Personnel (Reservation of Vacancies in the Punjab State Non-Technical Services) Rules, 1968. These rules were promulgated for "regulating the reservation of vacancies in Punjab State Non-Technical Services for the

Demobilised Emergency Commissioned Officers, Short-Service Regular Commissioned Officers, Junior Commissioned Officers, Non-Commissioned Officers and other Ranks of the Armed Forces of the Indian Union . . . , " Still further, Rule 3 categorically provides that 20% of the non-technical posts shall be reserved for the Released Indian Armed Forces Personnel who joined service on or after the 1st day of November, 1962 and are released at any time thereafter. The expression "Released Indian Armed Forces Personnel" does not exclude the persons who are not commissioned or belong to the ranks. Rule 5 as it initially stood, provided as under: -

"5(1) Seniority and pay of the candidates who are appointed against the vacancies reserved under Rule 3 shall be determined on the assumption that they joined the service or the post, as the case may be, under the State Government at the first opportunity they had after they joined the military service or training prior to the Commission.

(2) Seniority inter se of? candidates who are appointed against the vacancies reserved under Rule 3 and allotted to a particular year shall be determined on the basis of their dates of birth; the candidate older in age to be placed senior to the one younger in age;

Provided that in the case of candidates having the same date of birth, seniority shall be determined according to the merit list prepared by the recruiting authority on the basis of the result of the test or examination.

(3) All candidates appointed against the reserved vacancies under Rule 3 shall rank below the candidates appointed by direct recruitment in the year to which the former candidates are allotted."

10. Vide notification dated May 7, 1976, the Rule was amended. It provides as under;-

"1. These rules may be called the Demobilized Armed Forces Personnel (Reservation of Vacancies in the Punjab State Non-Technical Services) (First Amendment) Rules, 1976.

2. They shall be deemed to have come into force with effect from the 1st day of November, 1966.

3. In Rule 5 of the Demobilised Armed Forces Personnel (Reservation of Vacancies in the Punjab State Non-Technical Services), Rules, 1968, for sub-rule (1) the following sub-rule shall be substituted, narnely

(1) seniority and pay of the candidates who are appointed against the vacancies reserved under Rule 3 and who-

(i) in the case of Emergency Commissioned Officers, are released accordingly to a phased programme; or

(ii) in the case of Short Service Commissioned Officers, are released on the

expiry of the tenure of their service; or

(iii) are invalidated owing to a disability attributable to or aggravated by military service; shall be determined on the assumption that they joined the service or the post, as the case may be, under the State Government, at the first opportunity they had after they joined the military service or training prior to the Commission."

11. Thus, on May 7, 1976, the amended Rule was brought on the Statute Book. Still further, in view of Clause (2) as reproduced above, the amended rules were enforced with retrospective effect from November 1, 1966. The result is that the amended provision is to be deemed to have come into force with effect from November 1, 1966.

12. It is in the light of the aforesaid provisions that the correctness of the view taken by the learned Single Judge has to be considered. It is the admitted position that the posts had been advertised in January, 1976. The mere advertisement of the posts or appearance in the interview does not confer any right on any candidate. The process of selection is only calculated to find out the suitable persons. The process got crystallised when the selection was finalised on July 19, 1976. Thereafter, offer was made to the respondent on July 29, 1976. It is the rule in force on that date that would determine the conditions of service of the persons appointed to the posts. In fact, the respondent had joined on August 4, 1976. It is from that day that the question of determination of seniority could have arisen. At that time, the amended provision of the rule was admittedly in force. We find no ground for taking the view that the rule as existing on the date of advertisement or on the date of the interview shall determine the seniority of the person who is selected and appointed to the post. Firstly, it is the law in force at the time of joining the service that would determine the status of the employee. Secondly, so far as the present case is concerned, the amended provisions had been enforced with effect from November 1, 1966. So, by fiction of law, the amended provisions shall be deemed to be in force from the date of the coming into being of the State of Punjab. Every employee in the State would be governed by this provision. The respondent who had joined service on August 4, 1976 could not claim exemption from the amended provision.

13. In view of the above, we are unable to sustain the view taken by the learned Single Judge.

14. The question that still survives is - Was the respondent, entitled to the benefit of military service?

15. Admittedly, the rules have been promulgated to regulate the reservation of vacancies for "the Demobilised Emergency Commissioned Officers and other ranks of the Armed Forces of the Indian Army." Thus, the paramount purpose of the rule was to provide for reservation for the members of the Armed Forces. Under Rule 3, twenty per cent posts were reserved. Under Rule 5 as it originally stood, it was provided that seniority and pay of the candidates "who are

appointed against the vacancies reserved under Rule 3, shall be determined on the assumption that they joined the service or the post, as the case may be, under the State Government at the first opportunity they had after they joined the military service or training prior to the Commission." This rule provided for the grant of seniority and pay by introducing the legal fiction that the person shall be deemed to have been appointed on the day he had the first opportunity to compete. The benefit was admissible to all members of the Armed Forces who had to answer the description given in the preamble to the Rules.

16. The question that arises is - Did the amended provision take away the right? If yes, what could be the rationale?

17. The amended provision in Rule 5 undoubtedly refers to the Emergency Commissioned Officers, Short Service Commissioned Officers¹:? and all those who are "invalidated owing to disability ..." Thus, if so interpreted, even a soldier who has been invalidated owing to disability, shall be entitled to the benefit under Rule 5. Otherwise, there appears to be no rational for excluding, them from consideration. Thus, it cannot be said that the soldiers etc. have been excluded from the benefits under the Rules.

18. Mr. Agnihotri submitted that the respondent had not challenged the validity of the Rule. That being so, the amended provision has to be enforced as it exists.

19. The contention is not correct. A perusal of the petition shows that the challenge to the amended provisions has been made. However, we feel that if provisions of the rules are harmoniously construed, the members of the Armed Forces who may not be Emergency Commissioned Officers or the Short Service or Regular Commissioner Officers, are not excluded from the category of persons who are entitled to the benefit of seniority etc. as contemplated under Rule 5. Since the rules were promulgated to regulate the reservation of vacancies and to give benefit of the service rendered by the soldier, it would be unfair to deny them the benefit of the service merely because of the rank held by them at the time of their release from the Armed Forces.

20. It is not difficult to imagine that a soldier and an Emergency Commissioned Officer may compete for the same job. The soldier may secure a higher position in the merit list. According to Clause (2) of Rule 5, the inter se seniority of all candidates who are appointed against the reserved vacancies under Rule 3 and allotted to a particular year has to be determined on the basis of their dates of birth. Thus, a soldier who may be at No. 1 in order of merit and who may have been born earlier than the Emergency Commissioned Officer, would be senior. However, according to the interpretation placed on the rules by the appellant, the Officer alone shall be entitled to the benefit of the military service for the purpose of seniority, if this contention is accepted, the officer would become senior. The result would be contrary to that contemplated under Clause (2). Thus, the interpretation as placed on the rules by the appellant would lead to a

contradictory result.

21. In view of the above, we hold that the respondent was entitled to the benefit of seniority as admissible under Rule 5 despite the fact that he was not released as an Emergency Commissioned Officer or a Short-Service Regular Commissioned Officer.

22. Resultantly, we uphold the decision of the learned Single Judge in as much as the writ petition was allowed. However, the decision is based on reasons which are different from those adopted by the learned Single Judge. Consequently, the appeal is dismissed. However, we make no order as to costs. Sd/- N.C. Khichi,