
(1999) 05 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Amended Civil Writ Petition No. 8745 of 1987

Ravail Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 10-05-1999

Acts Referred:

Air Force Act, 1950 — Section 4

Citation : (1999) 123 PLR 290

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : Arun Nehra, for the Appellant; K.S. Ahluwalia, Addl. A.G. for Respondent No. 1, P.S. Patwalia and P.S. Brar, for the Respondent

Final Decision : Dismissed

Judgement

T.H.B. Chalapathi, J.—In this writ petition C.W.P. 8745/87 under Article 226 of the Constitution of India, the petitioners are seeking issuance of writ of certiorari to quash the order of the Punjab Government, dated 10.11.1987 declaring the seniority list dated 10.3.1987 as final in so far as the seniority of Rajinder Singh vis-a-vis the petitioner is concerned.

2. The petitioners are working as Assistants in the Civil Secretariat of Punjab with effect from 10.9.1969, 18.9.1969, 7.11.1969, 20.1.1970, 25.8.1973 and 8.10.1973 respectively whereas according to them, Rajinder Singh, the 2nd respondent joined as Assistant in the Civil Secretariat, Punjab on 19.12.1973. After joining the service, the 2nd respondent made a representation that he should be given the benefit of military service as he worked in the regular Armed Force namely the India Air Force. As envisaged under the Punjab Government National Emergency (Concession) Rules, 1965 (hereinafter referred to as the rules), the Government of Punjab granted the benefit of military service to the 2nd respondent and placed him as senior to the petitioners and the representation filed by the petitioners was rejected. The petitioners are challenging the same in this writ petition.

3. There is no dispute of the fact that the 2nd respondent joined the Auxiliary Air Force on 14.1.1962 and was released on 30th August, 1967. There is also no dispute of the fact that the 2nd respondent who was appointed as Assistant joined as such in the Government of Punjab on 19.12.1973.

4. The only point argued by the learned counsel for the petitioner before me is that the 2nd respondent is not entitled to the benefit of the aforesaid rules since he is not a member of the Armed Forces. In other words, according to the learned counsel for the petitioners the Auxiliary Air Force will not come within the service rendered by the 2nd respondent cannot be treated as military service.

5. For the purpose of applying 1965 rules, it is to be seen whether the services rendered by the 2nd respondent in the Auxiliary Air Force is a military service and whether he is entitled to the benefit of said service. Under 1965 Rules, the expression "military service" means enrolled or commissioned service in any of the three wings of the India Armed Forces including service as a Warrant Officer rendered by a person during the period of operation of the Proclamation of Emergency made by the President under Article 362 of the Constitution on 26th October, 1962.

6. There is no doubt that the Indian Air Force is also an Armed Force. u/s 4, the word "Air Force" is defined in sub-clause (IV) of the Air Force Act as follows :-

"Air Force means officers and airmen who by their commission, warrant, terms of enrolment or otherwise are liable to render continuously for a term air force service to the Union in every part of the world or any specified part of the world including persons belonging to (any Air Force Reserve or the Auxiliary (Air Force) when called out on permanent service."

7. Under Clause (xix) of Section 4, the "Force" means the regular Army, Navy and Air Force or any part of any one or more of them. Air Force Act, 1950 applies to all persons belonging to the Regular Air Force Reserve or the Air Defence Reserve or the Auxiliary Air Force in the circumstances specified in Section 26 of the Reserve and Auxiliary Air Force Act, 1952 (vide Section 2(c).

8. u/s 20 of the Reserve and Auxiliary Air Force Act, 1952, the President may grant to such person as he thinks fit a commission as an officer in the Auxiliary Air Force with the designation of rank corresponding to that of any commissioned officer in the Air Force. Section 21 of the said Act makes all the citizens eligible for enrolment in the Auxiliary Air Force if he satisfies the prescribed conditions. u/s 22 of the Act every officer and every enrolled person, is required to serve in the Auxiliary Force for a period of five years from the date of his appointment or enrolment. Section 26, makes every member of an Air Force Reserve or the Auxiliary Air Force is called for training and for service under the Act shall be subject to the Air Force Act, 1950 and the rules made thereunder in the same manner as the persons belonging to Air Force holding the same rank.

9. There is no dispute of the fact that the 2nd, respondent had served the

Auxiliary Air Force during the emergency. In view of the provisions of Indian Force Act, 1950 and the Reserve and Auxiliary Air Force Act, 1952 which have been referred to above, I have no manner of doubt that the persons who have been enrolled under the Reserve and Auxiliary Air Force Act, 1952 are members of Indian Air Force and, therefore, they have to be treated as members of the military service. I am, therefore, of the opinion that the Government of Punjab has rightly granted the benefit of military service to the 2nd, respondent.

10. On a consideration of the facts and circumstances of the case, I do not find any ground warranting interference with the impugned order (Annexure P-3) and the writ petition is liable to be dismissed.

11. It is pertinent to note that the 2nd respondent in this writ petition filed C.W.P. No. 2968 of 1986 claiming the benefit of military service rendered by him. The same relief has been granted to him in the impugned order. In view of the fact that the relief has already been granted to him, the writ petition filed by him becomes infructuous.

12. Accordingly, C.W.P. No. 8745 of 1987 is dismissed and C.W.P. No. 2968 of 1986 is dismissed as having become infructuous. No order as to costs.