
(2013) 09 P&H CK 0495
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 596 of 2013 (O and M)

State of Punjab and Others	Vs	APPELLANT
Sukhwinder Singh and Others		RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Citation : (2014) 1 SCT 525

Hon'ble Judges : Surya Kant, J; Surinder Gupta, J

Bench : Division Bench

Advocate : J.S. Puri, A.A.G. Punjab, for the Appellant; Parwinder Singh Toor, for the Respondent

Final Decision : Dismissed

Judgement

Surya Kant, J.—This order shall dispose of LPA Nos. 470, 471 & 596 of 2013 which are directed against the order dated 19.11.2012 passed by learned Single Judge whereby a bunch of writ petitions involving common question of law have been allowed. The question that arises for consideration is whether the respondent/ex-servicemen are within the age limit prescribed for recruitment to the post of Constables in Punjab Police?

2. With a view to appreciate the controversy, the following facts in respect of one of the respondents, namely, Sukhwinder Singh S/o. Kirpal Singh (in LPA No. 596 of 2013) may be noticed on illustrative basis.

3. The first respondent was born on 03.05.1968. He joined the Indian Army as a Sepoy on 23.09.1986. He was discharged from the Army on 31.03.2007 after serving for a period of 20 years 6 months and 8 days. He applied for the post of Constable in response to the advertisement dated 12.09.2010 (Annexure P7) issued for recruitment of 5578 Constables in Punjab Police in District Police Cadre, out of which 13% posts were reserved for Ex-servicemen. Clause 4(b) of the advertisement pertaining to the minimum age limit reads as follows:-

Minimum age limit for appointment is 18 years and 25 years respectively. The

cut of date shall be 01.09.2010. Relaxation in upper age limit in case of Scheduled Castes/Scheduled Tribes and Backward Classes shall be as prescribed by the Government.

Relaxation of years spent during service plus 3 years will be granted to Ex-servicemen while considering their upper age limit. In spite of this the gap between re-employment and discharge service should not be more than 24 months (2 years).

(Emphasis applied)

4. The respondent/Ex-servicemen challenged the above reproduced later part of sub-Clause (b) which imposed an embargo that the gap between the discharge from Army and re-employment in Civil Service should not be more than 24 months (2 years). Learned Single Judge on interpretation of the relevant Service Rules has upheld the claim of the respondent/Ex-servicemen giving rise to these appeals.

5. The State of Punjab in exercise of its powers under proviso to Article 309 read with Articles 234 and 318 of the Constitution of India formulated the Punjab Recruitment of Ex-servicemen Rules, 1982 (in short, "the 1982 Rules"). These Rules have been notified for "regulating the recruitment of Ex-servicemen to the State Civil Services and Posts connected with the affairs of the State of Punjab." Rule 6 of the 1982 Rules pertains to the age limit for recruitment of Ex-servicemen and it reads as follows:-

For recruitment to any vacancy in the State Civil Services whether reserved or not under these rules an ex-serviceman shall be allowed to deduct the period of his service in the Armed Forces of the Union from his actual age and if the resultant age does not exceed the maximum age limit prescribed for direct appointment to such a vacancy in the concerned Service Rules, by more than 3 years, he shall be deemed to satisfy the condition regarding age limit.

(Emphasis applied)

6. It may also be mentioned at this stage, that recruitment to the post of Constable and other posts of Class-III rank in Punjab Police are governed under the Punjab Police Rules, 1934 (in short, "the 1934 Rules"). Rule 12.24 of the 1934 Rules pertains to "Enlistment of ex-soldier, reservists and ex-police officers" and it says that:-

Enlistment of ex-soldiers, reservists and ex-police officers.-

(1) Re-enrolment in the rank of constable is permitted and past service will count for pension under the following conditions, and subject to the further conditions as to pensions contained in Rules 9.2 and 9.29:-

(a) Ex-soldiers of the Indian Army and ex-members of police forces (including Military Police), paid for from the general revenues of India, may be enlisted as constables on production of a discharge certificate showing their previous service

to have been "good" or of higher classification, and if they fulfill the physical and other standards required by these rules for first appointments. They must also be passed medically fit by the same standards as are applied to recruits.

(b) Age on the date of re-enrolment in the police must be below 30, but ex-Punjab police officers, and, with the special sanction of the Inspector-General in each case, ex-soldiers and ex-members of other police forces may be re-enlisted up to the age 55, if they present themselves for re-enrolment and are found medically fit within two years of voluntarily taking their discharge.

(c) The break of service between the date of enrolment in the police and the date of discharge from previous Army employ shall not exceed two years, and there must not have been more than two breaks of service in all.

(d) No claim to count previous service for pension shall be allowed unless the previous service claimed was declared and verified at the time of enrolment in the police.

(e) Service in a body of additional police shall be counted for increments in the case of a constable transferred to the regular force immediately on such transfer.

(2) No class A Army reservist or member of the Indian Territorial Force may be enrolled in the police until he has resigned his appointment in such force.

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(Emphasis applied)

7. While it was urged on behalf of respondent that the 1982 Rules being specially enacted for recruitment of Ex-servicemen only, they shall have overriding effect over the general Rules of 1934 which apply to every one, hence their eligibility for recruitment as Constable, with reference to the maximum age limit, has to be determined in accordance with Rule 6 of the Rules *ibid*, the Police Department pressed into aid Clause (b) and (c) of sub-rule (1) of Rule 12.24 of the 1934 Rules to contend that the benefit of age relaxation under Rule 6 of the 1982 Rules shall be admissible only if the break of service between the date of discharge from Army and enrolment as Constable does not exceed 2 years.

8. Having given our thoughtful consideration to the rival submissions, we are of the considered view that the learned Single Judge has rightly held that Rule 6 of the 1982 Rules holds the field and shall be determinative to adjudge the eligibility of Ex-servicemen candidates in respect of their age-limit for recruitment to civil posts.

9. We say so for the reason that the 1982 Rules have been formulated in the later point of time and exclusively pertain to the recruitment of Ex-servicemen. The extent and overriding effect of these Rules is explicitly discernible from their Rules 3 and 9 which are to the following effect:-

3. Extent of Application.- These rules shall apply to all the State Civil Services and posts connected with the affairs of the State of Punjab, except the Punjab Vidhan Sabha Secretariat Service and the Punjab Superior Judicial Service.

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9. General. (1) In matters not specifically provided for in these rules, a person appointed against a reserved vacancy, shall be governed by the concerned Service Rules.

(2) All concerned Service Rules shall be subject to the provisions of these rules and the said rules shall be constructed accordingly.

(3) Nothing in these rules shall be constructed as depriving any person to whom these rules apply of any right which had accrued to him under the rules, notifications or orders in force immediately before the commencement of these rules.

(Emphasis applied)

10. It may thus be seen that except recruitment to Punjab Vidhan Sabha Secretariat Service and the Punjab Superior Judicial Service, the 1982 Rules are applicable qua all other services and Service Rules of the concerned department "shall be subject to the provisions of these Rules and the said Rules shall be constructed accordingly".

11. We find that the language imported in Rule 9 is as good as a non obstante clause, hence the provisions of 1982 Rules, in the event of any conflict, shall have overriding effect over the provisions of 1934 Rules. To say it otherwise, the age limit of the respondent/Ex-servicemen for recruitment to Police service shall have to be determined in accordance with Rule 6 of 1982 Rules.

12. We, however, hasten to add that there is no conflict between Rule 12.24 of the 1934 Rules or 1982 Rules for the reason that Rule 12.24 is an independent provision granting some relaxation to the Ex-servicemen for the purpose of their enrolment in Punjab Police. That Rule would have been operative and could be applied if a more beneficial subordinate legislation like the 1982 Rules were not in existence. In other words, an Ex-servicemen could seek relaxation in age under Rule 12.24 also subject to other eligibility conditions mentioned therein even if the 1982 Rules were not in force. The 1934 Rules are thus not in head-on collision with 1982 Rules, rather are complementary and supplementary to each other.

13. For the reasons afore-stated, we do not find any merit in these appeals which are accordingly dismissed. Dasti.