
(2010) 10 SHI CK 0098
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 4480 of 2008

Sukh Dev

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Citation : (2010) 10 SHI CK 0098

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Judgement

Kuldeep Singh, J.—The Petitioner has prayed mainly following reliefs:

- i) That the cut-off date i.e. November 01, 1962 as prescribed in Rule 3 of the Demobilized Armed Forces Personnel (Reservation of Vacancies in Himachal State Non-Technical Services), Rules, 1972 may be struck down being ultra vires the Constitution after applying the principle of severability.
- ii) That the applicant may be held entitled to the benefits of Rule 5 of the Demobilized Armed Forces Personnel (Reservation of Vacancies in Himachal State Non-Technical Services) Rules, 1972 after treating the applicant duly recruited under these Rules.
- iii) That the Respondents may be directed to count the approved military service towards fixation of pay and seniority of the applicant along with other consequential benefits.

2. The petition was filed by Petitioner, Sukh Dev, who died and his wife Rattani Devi was brought on record. The case of the Petitioner, Sukh Dev was that he was enrolled in the Indian Army on 26.12.1961 and was discharged on 5.9.1983. The case of the Petitioner for granting him benefit of Demobilized Armed Forces Personnel (Reservation of Vacancies in Himachal State Non-Technical Services) Rules, 1972 (for short, the Rules) is covered against him by the judgment of Apex Court in State of H.P. v. Piar Singh 2002 (6) SLR 24. It has been submitted

that in view of instructions issued under the Rules, Sukh Dev was entitled to only relief of pay protection as per judgment, dated 1.9.2010 in CWP (T) No. 4964 of 2008, titled Kishori Lal Sood v. The Secretary, Himachal Pradesh State Electricity Board, Vidut Bhawan.

3. Thus, in view of Kishori Lal Sood (supra), it can be safely held that Sukh Dev was entitled to only pay protection for the service rendered by him in the Army and not for any other relief. In these circumstances, the Respondents are directed to protect the pay of Sukh Dev on account of service rendered by him in the Army and fix his pay accordingly within a period of two months from the date, the Petitioner will supply a copy of the judgment to the competent authority and also pay arrears to the heirs of Sukh Dev in another three months failing which, the Respondents shall pay interest @ 9% on such arrears. The petition stands disposed of, so also the pending application(s), if any.