

(2020) 10 SHI CK 0296

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2930, 3461 Of 2020

Vijay Kumar And Others

APPELLANT

Vs

State Of H.P. And Others

RESPONDENT

Date of Decision : 06-10-2020

Acts Referred:

Central Civil Service (Pension) Rules, 1972 — Rule 5(2)
Fundamental Rules Vol-I — Rule 48, 48A, 56(j), 56(k), 56(l) , 56(m)

Citation : (2020) 10 SHI CK 0296

Hon'ble Judges : Tarlok Singh Chauhan, J;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Lakshay Parihar, Amit K. Vaid, Ashok Sharma, Vinod Thakur, Rathore, Shiv Pal Manhans, Bhupinder Thakur, Seema Sharma, Yudhbir Singh Thakur

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

1. Since common question of law and facts arise for consideration in both these petitions, therefore, with the consent of the parties, the same are taken up together for consideration and are being disposed of by a common judgment.

2. Brief facts of the case are that the Superintendent of Police, Una sent the original record of the petitioners to the Commandant 4th IRBn Jangalberi, District Hamirpur for issuance of the appointment letter and for further necessary action vide its office letter No. OASI/Rect./20-13670 dated 7. 03.2020. However, the Commandant, 4th IRBn, Jangalberi, District Hamirpur sent back the original record of the petitioners to S.P. Una vide office letter No. OASI/2020-6490 dated 11.3.2020, whereby it was intimated that the petitioners were discharged from Army service on 31.12.2016 and as per the criteria prescribed by the Himachal Pradesh Govt. vide letter No. Home-A-A(3)4/2011 dated 24.05.2013, the maximum age limit for recruitment of Ex-servicemen in the rank of Constable in the Police Department shall be 45 years, if they present themselves for re-

enrollment and are found medically fit within two years of voluntarily taking their discharge. The petitioners had completed two years and one day as on 01.01.2019 i.e. the cut off date, after the discharge from Army service. Thereafter, the Superintendent of Police, Una vide its office letter dated 12.3.2020 took up the matter with the office of the Deputy Inspector General of Police Northern Range, Dharamshala for further clarification in the aforesaid matter. Accordingly, the Superintendent of Police, Una gave clarification vide letter No.P-II (3) Ex-servicemen/389/Part-III/2019- 21774 dated 17.09.2020. Pursuant to the aforesaid clarification, the petitioners were found ineligible for the post of Constable reserved for Ex-servicemen and accordingly the Superintendent of Police, Una informed the petitioners vide letter No. OASI/12-19/16-70615-16 dated 18.09.2020 about the rejection of their candidatures for the post of Constable reserved for Ex-servicemen.

3. Now, the moot question is whether the rejection of the case of the petitioners on the ground that they had only completed two years and one day as on 01.01.2019, i.e. the cut off date, after their discharge from the Army service is sustainable in the eyes of law. To say the least, the interpretation proposed by the respondents is absolutely erroneous and this question has already been considered and decided by this Court in number of petitions.

4. Reference in this regard can conveniently be made to a judgment passed by this Court in CWP No. 1494 of 2020 titled Ex. Hav.Balwan Singh vs. State of H.P. and others, and other connected matters, decided on 17.08.2020, wherein it was observed as under:

"8. It would be noticed that the petitioners had been in active service upto 31.12.2016. Once that be so, then obviously it is only on 01.01.2017 that they ceased to be in service and acquired the status of Ex-servicemen.

9. A similar question came up before the Hon'ble Supreme Court in S. Banerjee vs. Union of India and others 1989 Supp (2) SCC 486 wherein the petitioner therein sought voluntary retirement and was so retired on 31.12.1985, he acquired the benefit of the recommendation of the Pay Commission, which came into force w.e.f. 01.01.1986. The question was whether the petitioner therein could be said to have been in service on 01.01.1986 or ceased to be in service for practical purpose on 31.12.1985 itself. Referring to the contentions, the Hon'ble Supreme Court observed as under:

"3. After the retirement of the petitioner, the Fourth Central Pay Commission (for short 'Pay Commission') gave its report recommending the revision of salaries and pension of the Government employees. It is not disputed that the above recommendations of the Pay Commission have been accepted by the Government and that the benefit thereof is also available to the employees of this Court. Paragraph 17.3 of Chapter 17 of Part II at page 93 of the Report of the Pay Commission provides as follows:

"17.3 In the case of employees retiring during the period January 1, 1986 to

September 30, 1986, Government may consider treating the entire dearness allowance drawn by them up to December 31, 1985 as pay for pensionary benefits."

4. The petitioner claimed the benefit of the recommendation of the Pay Commission as contained in the said paragraph 17.3, but it was not allowed on the ground that he did not, as he was not entitled to, draw salary for January 1, 1986 in view of the proviso to rule 5(2) of the Central Civil Service (Pension) Rules, 1972, hereinafter referred to as 'the Rules'. Rule 5(2) reads as follows:

"5(2). The day on which a Government servant retires or is retired or is discharged or is allowed to resign from service, as the case may be, shall be treated as his last working day. The date of death shall also be treated as a working day.

Provided that in the case of a Government servant who is retired prematurely or who retires voluntarily under clause (j) to (m) of Rule 56 of the Fundamental Rules or Rule 48 (or Rule 48-A) as the case may be, the date of retirement shall be treated as a non- working day."

5. At the hearing of the writ petition, it has also been vehemently urged on behalf of the respondents that as in view of the proviso to rule 5(2) of the Rules, the date of retirement of the petitioner should be treated as a non- working day or, in other words, as the petitioner was not entitled to the salary for the day of his retirement, he was not entitled to the benefit of the recommendation of the Pay Commission as contained in paragraph. 17.3 of the report extracted above.

6. Under paragraph 17.3, the benefits recommended will be available to employees retiring during the period, January 1, 1986 to September 30, 1986. So the employees retiring on January 1, 1986 will be entitled to the benefit under paragraph 17.3. The question that arises for our consideration is whether the petitioner has retired on January 1, 1986. We have already extracted the order of this Court dated December 6, 1985 whereby the petitioner was permitted to retire voluntarily from the service of the Registry of the Supreme Court with effect from the forenoon of January 1, 1986. It is true that in view of the proviso to rule 5(2) of the Rules, the petitioner will not be entitled to any salary for the day on which he actually retired. But, in our opinion, that has no bearing on the question as to the date of retirement. Can it be said that the petitioner retired on December 31, 1985? The answer must be in the negative. Indeed, Mr. Anti Dev Singh, learned counsel appearing on behalf of the respondents, frankly conceded that the petitioner could not be said to have retired on December 31, 1985. It is also not the case of the respondents that the petitioner had retired from the service of this Court on December 31, 1985. Then it must be held that the petitioner had retired with effect from January 1, 1986 and that is also the order of this Court dated December 6, 1985. It may be that the petitioner had retired with effect from the forenoon of January 1, 1986 as per the said order of this Court, that is to say, as soon as January 1, 1986 had commenced the petitioner

retired. But, nevertheless, it has to be said that the petitioner had retired on January 1, 1986 and not on December 31, 1985. In the circumstances, the petitioner comes within the purview of paragraph 17.3 of the recommendations of the Pay Commission."

10. After placing reliance on the judgment in S. Banerjee case (supra), the Full Bench of Andhra Pradesh High Court in Principal Accountant General, A.P. and another vs. C. Subba Rao, 2005 Lab I.C. 1224, held that when the employee has retired on the last date of the month, his date of retirement has to be treated as first date of the succeeding month.

11. In view of the aforesaid discussion, we find merit in these petitions and the same are accordingly allowed. The impugned order dated 14.4.2020 whereby the candidatures of the petitioners have been found ineligible for the post of Constable reserved for Ex-servicemen, is quashed and set-aside and consequently, the respondents are directed to give appointment to the petitioners for the post of Constable in the Department."

5. In view of the aforesaid discussion and taking into consideration the consistent view that has been expressed by this Court, we find merit in these petitions and consequently the same are allowed. The impugned order dated 18.09.2020, Annexure R-6, whereby the candidatures of the petitioners have been found ineligible for the post of Constable reserved for Ex-servicemen, is quashed and set-aside and the respondents are accordingly directed to give appointment to the petitioners as Constable in the Department.

6. Both these petitions stand disposed of in the aforesaid terms, so also the pending application(s), if any.

7. For compliance, list on 10.11.2020.