

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Regular Second Appeal No.2351 of 1990 (O&M)
Date of decision: 08.07.2015**

Surinder Singh

.....Appellant

Versus

The State of Haryana and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Aditi Girdhar, Advocate-Amicus Curiae,
for the appellant.

Mr. Samarveer Singh, DAG, Haryana,
for the respondents.

Ritu Bahri, J.

Plaintiff-appellant has come up in regular second appeal against the judgment of reversal dated 30.07.1990 passed by the Additional District Judge, Sirsa, whereby appeal filed by State of Haryana-defendant against the judgment and decree dated 23.04.1990 passed by the Sub Judge Ist Class, Sirsa, has been accepted.

In brief, facts of the case are that after serving in the Indian Army from 29.05.1963 to 02.11.1969, Surinder Singh-plaintiff (appellant herein) was discharged on compassionate ground. Thereafter, he joined in the Education Department, Haryana w.e.f. 08.11.1977 and finally, he joined the Fisheries Department, Haryana on 05.10.1978. His services were regularized w.e.f. 31.12.1989. The plaintiff-appellant made an application for grant of benefit of Military service, which was rejected by the Director, Fisheries Department-defendant No.2 vide order dated 04.03.1987. Thereafter, the

plaintiff filed this suit challenging the aforesaid order being illegal, null and void and sought benefit of Military service towards increment, seniority and promotion etc.

Upon notice, defendants-respondents filed written statement taking the stand that since, the plaintiff had been released on compassionate grounds from the Military services, therefore, he was not entitled to any benefit of that service.

From the pleadings of the parties following issues were framed by the trial Court:-

1. Whether the impugned order of the defendant No.2 is illegal, invalid and liable to be set aside as alleged? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether the plaintiff has no locus standi to file the present suit? OPD
4. Whether the plaintiff is estopped to file the present suit by his own act and conduct? OPD
5. Whether the suit is bad for non-joinder of necessary parties? OPD
6. Relief.

Trial Court decreed the suit of the plaintiff in view of the judgment passed by the Hon'ble Supreme Court in **Raj Pal Sharma and others Vs. State of Haryana**, AIR 1985 Supreme Court 1263. On appeal, the lower appellate Court reversed the findings of the trial Court and allowed the appeal. It was held that the plaintiff was not entitled to the benefits with retrospective effect as had been held in review petition in case **Ex. Capt. A.S. Parmar and others Vs. State of Haryana and others**, 1986

Heard, counsel for the parties.

A perusal of the judgment passed by the Hon'ble Supreme Court in **A.S. Parmar's** case (supra) shows that the Hon'ble Supreme Court had clarified the position with regard to grant of benefit under the Punjab Government National Emergency (Concession) Rules, 1965, adopted by State of Haryana in the year 1976. As per Rule 4 (ii) of the aforesaid Rules, before it was amended in 1976, "the period of military service mentioned in clause (i) was to be taken into consideration for the purpose of determining the seniority of a person who had rendered military service." Military service was defined by Rule 2, which is as follows:-

"For the purposes of these rules, the expression 'military service' means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including service as a Warrant Officers) rendered by a person during the period of operation of the proclamation of emergency made by the President under Article 352 of the Constitution of India on October 26, 1962 or such other service as may hereafter be declared as military service for the purposes of these rules. Any period of military training followed by military service shall also be reckoned as military service."

The Hon'ble Supreme Court went ahead to clarify that it was only military service rendered during the period of 'emergency', which was liable to be counted for the purpose of giving increments, seniority and pension to a person. After the emergency was lifted on 10.01.1968, no benefit of military service rendered was to be counted. Hence, it was clarified in the aforesaid judgment that military service rendered subsequent to the lifting of emergency cannot be taken into account for the purpose of reckoning the seniority in the civil post. The Hon'ble Supreme Court by making clarification in **A.S. Parmar's** case (supra) had nowhere reviewed the judgment given in **Rajpal Sharma's** case (supra). In **Raj Pal Sharma's** case (supra), the Hon'ble Supreme Court had examined the notification dated

05.11.1976 issued by the Governor of Haryana amending Punjab Rules by inserting a proviso to Rule 4, whereby persons who had been released from military service on compassionate grounds were not entitled to any concession under the above rule. The proviso added to Rule 4 is reproduced as under:-

“Provided that a person who has been released from military service on compassionate grounds shall not be entitled to any concession under this rule.”

The Hon'ble Supreme Court held that the above said amendment was violative of Articles 14 and 16 of the Constitution and was therefore, bad. It was further observed that the military services of ex-servicemen, who were released on compassionate ground, were also entitled for the benefit of military services rendered during emergency i.e. from 26.10.1962 to 10.01.1968. The earlier two amendments, viz. the first and the second amendments brought in 1976 were held to be bad and *ultra vires* the Constitution in **K.C. Arora Vs. State of Haryana**, (1984) 3 SCC 281.

The following substantial question of law arises for consideration in this appeal:-

“Whether the benefit of military service can be denied to Surinder Singh-plaintiff on the ground that he was discharged on compassionate ground?”

The Hon'ble Supreme Court in **Raj Pal Sharma's** and **A.S. Parmar's** case (supra) had set aside the amendment made in Rule 4 (ii) of the Punjab Government National Emergency (Concession) Rules, 1965, whereby the persons who had been released from military service on compassionate grounds were singled out for being deprived of the benefits of that rule. In **A.S. Parmar's** case (supra), it was clarified that only it is the

10.01.1968 which shall be counted for the purpose of seniority etc. and not the service after lifting of the emergency on 10.01.1968. This judgment has not been correctly applied by the lower appellate Court on the facts of the present case. Therefore, in the peculiar facts and circumstances of this case, the judgment passed by the lower appellate Court deserves to be set aside.

Accordingly, the impugned judgment passed by the lower appellate Court is set aside, the suit of the plaintiff is decreed and the respondents-defendants are directed to calculate and give the benefits of military service admissible to the plaintiff-appellant along with interest at the rate of 9% per annum from the date of filing of the suit till its realization, within four months of receipt of certified copy of this judgment.

Appeal stands allowed accordingly.

08.07.2015
ajp

(RITU BAHRI)
JUDGE