

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 24823 of 2013
Date of Decision: 21.02.2015

PS Parmar

... Petitioner

Versus

State of Punjab & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Avneesh Jhingan, Advocate,
for the petitioner.

Mr. Sushant Maini, Sr. D.A.G., Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

It is not disputed that the petitioner served during the first and second emergency and he was inducted in civil service of the State after discharge from the Air Force when he was appointed as an Excise and Taxation Officer. It may be noted that he served the Indian Air Force from 7th January 1964 to 20th April 1974 during the emergencies. He joined the Department of Excise and Taxation, Punjab in 1979 by which time he had earned the qualification of graduation. After retirement, he stated a claim for grant of notional benefits by giving his deemed date of promotion as Excise & Taxation Officer with retrospective effect from 11th April, 1970. This plea was rejected by the State Government on the ground that in 1970, the petitioner was not a graduate and the essential qualification for the post of Excise & Taxation Officer prescribed under the rules of service was minimum graduation from a recognized University or Institution.

Aggrieved by the order of rejection of his request, the petitioner has filed the present petition after retirement. Having, in the first round, Government to face the Court where they received the direction to decide the legal notice of the petitioner and in case the legal notice is decided in his favour, he would be entitled to all the arrears or monetary benefits of 38 months prior to the service of the legal notice.

Mr. Jhingan appearing for the petitioner submits that the issue is not *res integra* as it stands settled by the Supreme Court in SLP(C) No.7413 of 1991, ***Charan Singh & anr. Vs. State of Punjab & ors.***, decided on 10.5.1995, where it has been held as under:-

“We have already dismissed the special leave petitions on 5th May, 1995 stating that reasons would follow. We set out the reasons as under:

The Demobilized Armed Forces Personnel (Reservation of Vacancies in the Punjab State (Non-Technical Services) Rules, 1968 (hereinafter referred to as the “Rules”) apply to all posts which are filled in by direct recruitment after 1st November, 1966. Although the Rules apply to the posts filled in after 1st November, 1966, the seniority to be given to the demobilized army personnel under Rule 5 of the Rules may take effect from a date prior to 1st November, 1966, depending upon when the first available opportunity to occupy the post in question as per Rule 3 became available to the person concerned.

Rule 4 requires that the individual concerned must be qualified to appear for the examination for the posts in question after he is demobilized. However, he should not have been above the upper age limit fixed for the said posts when he joined the military service. Reading of Rule 4 (a) and (b) and Rule 5 together would suggest that it is not necessary that he should have been qualified to apply for the post when the first opportunity to occupy the said post became, available to him while he was in military service.

Rule 5 confers seniority on the individual concerned from the date the said post was filled in for the first time after the individual joined the military service.

Hence, the Special Leave Petitions have to be dismissed.”

In view of the legal position explained by the Supreme Court, the stand of the respondent-State in the impugned order and in the written statement filed before this Court, is not a correct one. It was not necessary for the petitioner to hold a graduate degree in 1970, which requirement has been delinked from the concept of educational qualification as existing on the first opportunity to occupy the post, which has become available to him while he was serving in defence services.

Mr. Sushant Maini is unable to wriggle out of the judgment of the Supreme Court and offers no further resistance.

Accordingly, this petition is allowed. The impugned orders Annexures P-2 and P-8 are set aside by issuance of a writ of certiorari and a writ of mandamus is issued to the respondents to grant admissible benefits as now allowed notionally from the retrospective dates. The arrears be calculated and the monetary benefits accruing from the date already fixed in the first round of litigation in terms of order dated 29th January, 2013 passed by this Court in CWP No.3813 of 2012 (P.S. Parmar vs. State of Punjab & ors.) the previous litigation instituted by the petitioner in which a direction was issued to the respondents to decide his representation. Since the legal position has been known to the State of Punjab since 1995 and yet they have resisted the claim of the petitioner not on account of the fact that the petitioner has approached court after retirement but on merits, it would be justified that the petitioner should have both interest on the monetary benefits @ 9% per annum and costs of Rs.20,000/- for being compelled to approach this Court and engage a counsel to suffer needless expense and for using his money and causing delay. Let the accruing benefits/arrears of pay/refixation of pay and pension be computed and paid within two months and the actual financial benefits be handed over to him within the next one month, so that the actual total monetary dues is discharged before the end of the 3rd month. Both the limbs of the exercise be carried out within a span of three months from the date of receipt of certified copy of this order.

21.02.2015
monika

(RAJIV NARAIN RAINA)
JUDGE