

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 20577 of 2008 (O&M)

Date of decision : 13-07-2016

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Jhabu Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Manoj Chahal, Advocate for the petitioner.

Mr. M.S Sidhu, Addl. A.G. Haryana.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

The petitioner is seeking writ of certiorari to quash the order dated 25.1.2008 (Annexure P-3) by which the claim of the petitioner to count the military service rendered by him during emergency period for the purpose of pensionary benefits was rejected.

The petitioner-Jhabu Singh was appointed as Physical Training Instructor w.e.f 1.1.1981 with the Department of Education, Government of Haryana, Chandigarh. His services were regularized

w.e.f 1.11.1986. He filed a Civil suit No.877 of 1989 for grant of benefit of military service towards increment and seniority. This suit was decreed vide order dated 16.1.1991 by the Senior Sub Judge, Bhiwani with a direction to the defendants to provide the petitioner all the benefits of military service rendered by him during emergency period from 26.10.1962 to 10.1.1968 towards seniority and increment under Rule 4 of the Punjab Govt. National Emergency (Concession) Rules, 1965. He retired on 30.4.2002 after attaining the age of superannuation. After the retirement the respondent-Department did not count the military service rendered by the petitioner during the emergency period as length of service for the pensionary benefits. The petitioner represented the respondent-Department with a prayer to count his military service rendered during emergency period for the purpose of pensionary benefits. In this regard, the petitioner served a legal notice dated 26.2.2007 to the respondents and ultimately filed CWP No. 18347 of 2007 in this Court which was disposed of with a direction to the respondents to decide the legal notice by keeping in mind the ratio of the judgment in the case of ***Harikesh vs. State of Haryana and others (CWP No. 2327 of 2005)*** decided on **19.5.2006**.

The case of the petitioner was considered in the light of the judgment in Harikesh's case (supra). Vide impugned order dated 25.1.2008 (Annexure P-3) the petitioner was not held entitled to the relief as claimed in the legal notice dated 26.2.2007 as it was observed that Harikesh's case (supra) is quite different from the

present case. Because the petitioner had joined the military service on 18.3.1962 prior to emergency period whereas in the Harikesh's case, the petitioner had joined the military service during the emergency period. According to Instructions dated 7.10.1991, the benefit of Military service cannot be granted to the petitioner towards pensionary benefits. Thus vide the impugned order, it was held that the claim of the petitioner had no value and merit according to Rules and Instructions mentioned above and resultantly, the claim of the petitioner was rejected.

On notice, written statement has been filed by the respondents, wherein it has been mentioned that a clarification has been issued by the State of Haryana in regard to grant of military service benefits to Ex Servicemen under Punjab Govt. National Emergency (Concession) Rules 1965 vide Instructions dated 7.10.1991, in which it is clarified that "benefit of military service would be admissible only to those ex-servicemen who joined the military service during the period of emergency (i.e 26.10.1962 to 10.1.1968). However, the benefit of Military service already granted to those Ex-servicemen who had joined Army before emergency (i.e 26.10.1962) and were appointed to State services after the issuance of notification dated 4.8.1976 may be withdrawn. The petitioner had joined the Military service on 18.3.1962 (i.e prior to emergency period) and joined the Civil service on 1.1.1981 (i.e after the issuance of notification 4.8.1976). Thus the petitioner is not entitled to the benefit of the military service rendered during the emergency period

towards pensionary benefits according to Instructions dated 7-10-1991. As per Rule 4 (iii) (i) & (2) of the Punjab Govt. National Emergency Concession Rules 1965, the period of emergency military service (i.e 26.10.1962 to 10.1.1968) is to be counted towards pension subject to the condition if the Ex-servicemen should not have earned a pension under Military service rules. Moreover, if any bonus or gratuity had been paid in respect of military service in question by the defence authorities, the same shall have to be refunded to the State Govt. In the present case, the petitioner has been getting military pension and had also received the gratuity amounting Rs.4805/- from the defence authority at the time of discharge. In ***Harikesh's case (supra)***, the petitioner had been appointed on 14.1.1964 during the period of emergency and had deposited the amount of gratuity in favour of the State. The petitioner has not deposited the gratuity received from the defence authorities and was also receiving the military pension. His case is not covered by the judgment in the case of Harikesh's case (supra) and was thus rejected.

Heard counsel for the parties. In the present case, Civil Suit No.877 of 1989 filed by the petitioner for the grant of benefit of military service towards increment and seniority had been decreed vide order dated 16.1.1991 and he was granted benefit of military service rendered by him during emergency period i.e from 26.10.1962 to 10.1.1968 towards seniority and increment. The respondent-department is denying the petitioner the benefit of

military service rendered by him during the emergency period for the purpose of pensionary benefits on the ground that he is getting pension and also received gratuity amounting to Rs.4805/- from the defence authority at the time of discharge.

A Division Bench of this Court in **Harikesh's case (supra)** decided on 19.5.2006 has considered this aspect where the benefit of military service during the emergency period can be refused on the ground that the candidate was drawing a separate military pension. This embargo on the pensionary benefits has been removed by the notification under the CCA Pension Rules 1972. In this case the petitioner was granted benefit of military service for the purpose of increments and seniority. His claim for benefit of this service for pension, he deposited the gratuity of 19648/- which he received from the Army with the Panchayat Department. The Government has issued a notification in which it had been clarified that there will be no limitation for civil employees drawing separate military pension. Even the gap between the two periods of service was liable to be condoned and the writ petition was allowed.

The case of the petitioner is squarely covered by the above said division Bench judgment passed by this Court. Thereafter this Court in the case of Surinder Singh vs. State of Haryana and another (RSA No. 2351 of 1990) decided on 8.7.2015 had allowed the appeal in view of the judgment passed by the **Ex. Capt. A.S Parmar and others vs. State of Haryana and others, 1986 AIR (SC) 1183**, where it has been held that as per Rule 4 (ii) of

the Punjab Government National Emergency (Concession) Rules, 1965 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. Supreme Court further clarified that it was only the 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. The case of the petitioner is squarely covered by the aforesaid judgment as well.

Writ petition is allowed. A direction is being given to the respondents to count the military service rendered by the petitioner during emergency period from 26.10.1962 to 10.1.1968 towards seniority increment and pension. The petitioner, at the same time shall deposit the gratuity which he received from the department in accordance with law and thereafter the respondents shall pass appropriate orders within a period of three months.

13-07-2016***ritu*****(RITU BAHRI)
JUDGE**