

CWP No. 19192 of 2011 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 19192 of 2011 (O/M)

Date of decision : 16.8.2016

Rameshwar

..... Petitioner (s)

Versus

State of Haryana and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Munish Jolly, Advocate, for the petitioner.

Mr. Naveen Sheoran, Deputy A.G. Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J.

The petitioner seeks the issuance of a writ of mandamus, directing the respondents to grant him pension with effect from 1.2.2002 alongwith interest at the rate of 12% per annum on the arrears till the date of payment.

The petitioner joined the Indian Army as Sepoy on 4.1.1963 during the period of National Emergency. After rendering more than 26 years of service, he retired as a Naib Subedar from the Indian Army on 31.1.1989. He was granted pension by the Army authorities. Later on, he was appointed as a Welfare Organizer in Zila Sainik Board, Bhiwani, vide letter dated December 22, 1995 (Annexure-P-2). He joined the said post on 1.1.1996. He retired from the post of Welfare Organizer on 31.1.2002 after

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rendering the service of 6 years and 1 month. As per Rule 6.16 of Punjab Civil Services Rules, Part-II, the petitioner was required to complete 10 years of service, to be eligible for grant of pension. The petitioner claims that he had served in the Indian Army from 4.1.1963 to 10.1.1968 for 5 years and 6 days during the National Emergency and then during Bangladesh war in 1971. As per the Notification No. 12/113/89-4GS-II dated 7th October, 1991, issued by the Government of Haryana, he is entitled to benefit of military service rendered by him during the National Emergency. Therefore, his service of 5 years and 6 days be counted for the purpose of grant of pension and his service becomes 11 years and, therefore, he is entitled to pension. The petitioner also relies upon Rule 7.19 of the Punjab Civil Services Rules, Volume-2, Part-I, which allows him to get pension in the civil department also.

The respondents, on the other hand, has taken the stand that as per Rule 6.16 of the Punjab Civil Services Rules, Part-II, the pension can be granted only when the petitioner completes qualifying service of 10 years. The petitioner had rendered service of only 6 years and 1 month in Zila Sainik Board, Bhiwani, as a Welfare Organizer. Therefore, he does not qualify for pension. It is stated that the benefit of emergency period in the Army from 4.1.1963 to 10.1.1968 cannot be granted to the petitioner for pensionary benefits. According to Rule 4 (iii) (i) of the Punjab National Emergency (Concession) Rules, 1965, the period of military service is to be counted, subject to conditions mentioned therein, which are not attracted in the present case as the gap between the discharge from the military service and appointment in civil service is more than one year and that he is already earning pension from the military service.

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I have heard the learned counsel for the petitioner, the learned State counsel and have also carefully gone through the case.

The dispute in the present case is as to whether the service rendered by the petitioner during National Emergency from 4.1.1963 to 10.1.1968 in the Indian Army is to be counted as a qualifying service for grant of pensionary benefits ?

Rule 4 (iii) (1) of the Punjab National Emergency (Concession) Rules, 1965, is reproduced as under :-

“4 (iii) Pension : The period of military service mentioned in clause (i) shall count towards pension * (in case of first or any subsequent appointment to any service or post) under the Government, subject to the following conditions :-

(1) The person concerned should not have earned a pension under military rules in respect of the military service in question.

(2) Any bonus or gratuity paid in respect of military service by the defence authority shall have to be refunded to the State Government.

(3) The period, if any between the date of discharge from military service and the date of appointment to any service or post under the Government shall count for pension, provided such period does not exceed one year. Any period exceeding one year but not exceeding three years may also be allowed to count for pension in exceptional cases under the orders of the Government.

** (Provided that a person who has been released from Military service on compassionate grounds shall not be entitled to any concessions under this rule).”

The perusal of the said rule shows that for the purpose of pension, some conditions have been laid down in the rule. The first condition is that the person should not have earned the pension under the

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military rules, which goes against the petitioner as he is already earning pension from the military service. The third condition is that the gap between the discharge from the military service and appointment to any service or post under the Government should not exceed one year.

Here, the present petitioner was discharged from the military service on 31.1.1989 and joined the civil service as a Welfare Organizer on 1.1.1996 i.e. little less than 7 years of being discharged from the Indian Army. It being so, I am of the view that the petitioner is not entitled for counting of his service, rendered by him in the Indian Army during National Emergency as a qualifying service for the purpose of pension. Under Rule 7.22 of the Civil Services Rules, Volume-II, to qualify for the pension in the civil service, he must render the minimum qualifying service, which in the present case is 10 years.

In view of the foregoing discussion, the present writ petition is dismissed.

(KULDIP SINGH)
JUDGE

16.8.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes