

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.6935 of 2012

Date of Decision:-11.07.2016

Ramesh Chand Dhadwal.

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. R.S. Chauhan, Advocate for the Petitioner.

Mr. Vaibhav Sharma, Deputy Advocate General, Punjab.

JASWANT SINGH, J.(ORAL)

Petitioner joined the Education Department, Government of Punjab as S.S. Master on 5.3.1997 and retired after attaining the age of superannuation on 30.04.2006.

Prior to the joining of service with the Government of Punjab, he had served the Indian Army for the period 2.1.1968 till 31.1.1992, when he attained the age of superannuation. He thus claims, the benefit of the period of second emergency w.e.f. 3.12.1971 to 25.03.1977 towards pensionary benefits.

His claim has been declined vide speaking order dated 16.01.2012 (P-9), hence the present petition.

Upon notice reply has been filed by the State.

It is not in dispute that the petitioner has been extended the

benefit of first National Emergency period towards grants of pension and increments by the State Government and the dispute is only with regard to the period of second National Emergency.

Counsel for the parties heard at length.

It cannot be disputed that for the second national emergency period w.e.f. 3.12.1971 to 25.03.1977 a specific provision for the first time was introduced vide notification dated 15.10.2009 (P-3) whereby the Punjab Recruitment of Ex-Servicemen (First Amendment) Rules 2009 were promulgated and Rule 8-B was inserted in the Punjab Recruitment of Ex-Servicemen Rules 1982. The same reads as under:-

*“ 8-B, **Increments** – The increments for the aforesaid service shall be paid to those persons only, who joined and rendered service during the aforementioned period. This benefit will, however, be given only at the time of making first appointment on regular basis on a civil post or service under the Government. However, these increments will be taken into account when the pay of a person is subsequently fixed on account of his promotion, selection, new recruitment or revision of pay scale or otherwise; and*

*(b) **Pension** - The period of military service referred to above, shall count towards pension only in case of an appointment to a permanent post under the Government, subject to the following conditions, namely:-*

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

(ii) any bonus or gratuity paid in respect of military service by the defence authorities shall have to be refunded to the State Government; and

(iii) 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. ”

A perusal of the aforesaid provision makes it abundantly clear that the benefit of the military service rendered during the second national emergency was to be extended only to those persons who had joined and rendered service during the aforementioned period.

In the present case, it is not in dispute that the petitioner had enrolled in the army way back in the year 1968 and, therefore, does not meet the condition under the provisions of Rule 8-B. As regards the judgment rendered by a Co-ordinate Bench of this Court in **Sukhdev Singh Vs. State of Punjab 2010(1) SCT 631**, it has been duly considered while passing of the impugned order and declining the claim for grant of benefit of second emergency period. It is not in dispute that before rendering of the judgment in **Sukhdev Singh's case (supra)**, Rule 8-B stood inserted and was not brought to the notice of the Bench while rendering the judgment. It is settled principle of law that any judgment dehors a statutory provision does not lay down a binding precedent.

In view of the above, no case for grant of relief as prayed by

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way of writ petition is made out.

Dismissed.

**(JASWANT SINGH)
JUDGE**

July 11, 2016
Vinay