

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-18917-2014

Date of decision: - 10.12.2018

Man Singh

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. D.R. Bansal, Advocate, for the petitioner.

Mr. Sunil K. Vashisth, Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present case, the challenge is to the order dated 27.03.2014 (Annexure P-9) by which, the request of the petitioner for counting the period spent by him as a Combatant Clerk in military from 30.01.1971 to 07.03.1987 to be counted for the grant of ACP Scales, has been rejected.

As per the averments in the writ petition, the petitioner served military as a Combatant Clerk from 30.01.1971 to 07.03.1987. After being discharged from the military, the petitioner joined the Department of Education of Haryana as a Clerk on 01.01.1991.

The Government of Haryana, vide letter dated 26.08.1996 (Annexure P-2) had decided to grant increment equivalent to the number of period service rendered in Armed Forces to the Ex-Combatant Clerks,

who were appointed to the various services in the Government of Haryana on or after 20.05.1974. As the relief was not being granted to the petitioner and the other similarly situated persons, therefore, the petitioner alongwith the others filed CWP No.1640 of 1997 before this Court. This writ petition was allowed by this Court on 10.07.1997. While implementing the said order passed by this Court, the respondents passed an order dated 09.12.1997 granting the petitioner and other similarly situated persons the benefit of increment for the period which they spent in military as a Combatant Clerk.

It has been pleaded by the petitioner that the respondents/State of Haryana framed Haryana Civil Services (Assured Career Progression) Rules, 2008 (hereinafter referred as 'Rules of 2008'). Those Rules of 2008 were to come into effect w.e.f. 01.01.2006 and the employees were entitled for the higher scales after a completion of 10, 20 and 30 years of service. As mentioned in para 6 of the writ petition, the petitioner has attached a letter dated 29.05.2009 (P-5) by which a clarification was given in respect of the Rules of 2008, according to which the military services rendered by an employees as a Combatant Clerk, will also be counted for the purpose of the grant of ACP scales. The said letter reads as under:-

“Govt of Haryana (Seal) Haryana Govt.
Finance Department

Sub: Regarding benefit of Military Service towards ACP Scales.

Finance Department observes that Military service rendered before joining government service counted for granting seniority/pay fixation shall also be counted as regular satisfactory

service for the purpose of grant of ACP scales. AD files is returned herewith.

Senior Accounts Officer (PR)
For Financial Commissioner & Principal Secy. to Govt.
Haryana Finance Department

To
The Financial Commissioner,
Principal Secretary to Govt. Haryana
Education Department

UO No.1/2/2009-4-PR(FD) Dated Chandigarh the 29.05.09”

Counsel for the petitioner contends that after the issuance of the said clarification, the petitioner who was in service on 01.01.2006, became entitled for the benefit of counting of his service rendered as a Combatant Clerk in military from 30.01.1971 to 07.03.1987 for the grant of the said ACP scales. By the grant of said benefit, the petitioner pay will increase and consequently, the petitioner will be entitled for a higher pension as well as pensionary benefits.

Petitioner represented the respondents for the grant of the said benefit, but the respondents rejected the said request vide order dated 27.03.2014 (Annexure P-9), which is under challenge.

Upon the issuance of notice of motion, the respondents have filed the reply.

In the reply, an objection has been taken that only the military service of ex-servicemen, who retired during the emergency period i.e. 06.10.1962 to 10.01.1968 can be counted and the services rendered by the petitioner as a Combatant Clerk cannot be taken into consideration for the grant of ACP. It has been admitted that keeping in view the order passed by this Court allowing the writ petition filed by the

petitioner, he (petitioner) has already been granted the increments for the period which he spent as a Combatant Clerk in military.

The above-mentioned writ petition came up for hearing before this Court on 15.11.2016 on which date it was noticed that the petitioner is placing reliance upon clarification (Annexure P-5), given by the Government of Haryana reproduced above, for the counting of the service rendered by the petitioner as a Combatant Clerk for the purpose of grant of ACP scales and the State should clarify as to whether, these instructions were issued and are applicable upon the petitioner or not.

In compliance of order dated 15.11.2016, an affidavit has been filed by Sh. Virender Chaudhary, Deputy Secretary to Government Haryana, Secondary Education Department, Panchkula.

Again in the said affidavit, it has been mentioned that only the service rendered during the emergency is to be counted and the service rendered by the petitioner for which the benefit is being sought for was not during the emergency as the appointment of the petitioner is after the said emergency was over. In para 6 of the said affidavit, the issuance of the letter dated 29.05.2009 stands admitted and the objection taken for the non-grant of the benefit to the petitioner is that the letter was issued on 29.05.2009 whereas the petitioner had already retired before the said date on 31.10.2008 and therefore, no benefit of the said letter can be extended to the petitioner. The relevant paragraphs 5 to 7 of the said affidavit as under: -

“5. That as per record, the petitioner served the Military for the period of 16 years and 1 month from 30.01.1971 to 07.03.1987 and he was retired on 31.10.2008 after serving the

Education Department from 26.03.1987 to 31.10.2008. Hence, the petitioner was granted benefits of 16 increments in salary and accordingly, his pension was fixed.

6. That the Finance Department, Haryana, vide U.O. NO.1/2/2009-4 PR(FD) dated 29.5.2009 observed that Military service rendered before joining Govt. services counted for granting seniority/pay fixation shall also be counted as regular satisfactory service for the purpose of grant of ACP scales.

7. That the Finance Department issued the abovesaid U.O. NO. on 29.05.2009, whereas the petitioner had retired from the services after attaining the age of superannuation on 31.01.2008 and thus the instructions issued by the Finance Department are not applicable to the case of the petitioner.”

I have heard learned counsel for the parties and gone through the record.

In the present case, the reliance by the petitioner is on the letter issued by the Government of Haryana dated 29.05.2009 (Annexure P-5). The issuance of the said letter is not in dispute and it has been disputed by the counsel for the respondents that for the purpose of grant of ACP scales, even the time spent by a Combatant Clerk in military is to be taken into account for the grant of ACP Scales. The only objection taken is that by the time the said letter was issued, the petitioner had already retired from service and therefore, as the letter dated 29.05.2009 is prospective in nature, no benefit can be given to the petitioner. I am afraid, the said objection is totally misplaced. The government of Haryana had issued the Rules of 2008 for the grant of higher pay scales under the Assured Career Progression Scheme. Those were issued in the year 2008 but were effected from 01.01.2006. Clarification (Annexure P-5) has only

been issued to guide the department as to what kind of service can be included for computing the relevant 10, 20 and 30 years of service. Further, the said clarification has been issued to the various departments so as to implement the Rules of 2008 smoothly to all the employees, who are entitled for the benefit under the same. Once, it is a settled principle of law that the clarification, if any, issued by the competent authority, the same will relate back to the date on which the main rules were issued.

In this regard, reliance can be placed on judgment of the Hon'ble Supreme Court rendered in **Union of India and others Vs. N.R. Parmar and others**, 2012(13) SCC 340. Relevant portion of the judgment is as under: -

“Essentially, a clarification does not introduce anything new, to the already existing position. A clarification, only explains the true purport of an existing instrument. As such, a clarification always relates back to the date of the instrument which is sought to be clarified.”

In the present case, Clarification (Annexure P-5) will relate back to the date when the Rules of 2008 were issued and therefore, the objection taken by the respondents that the petitioner had already retired from service on 31.10.2008, prior to the issuance of the clarification/letter dated 29.05.2009 (Annexure P-5) holds no ground.

The second objection, which has been taken by the respondents, is that only the services which an employee had rendered during the emergency period is to be taken into account for the grant of benefit under the clarification/letter (Annexure P-5). The

letter/clarification had already been reproduced above and a bare reading of the same would show that there is no clause which says so that the service rendered by a Combatant Clerk during the period of emergency will be counted for the purpose of the grant of benefit under Rules of 2008. The language is clear that the service rendered by the Combatant Clerks in Army before their joining will be taken into account for the grant of benefits under Rules of 2008. There is no use of word “emergency” in the letter dated 29.05.2009 (Annexure P-5). Therefore, the objection is totally an afterthought and cannot be taken into account to deny the legitimate right which the respondents-State have themselves given while issuing the letter/clarification dated 29.05.2009 (Annexure P-5).

Keeping in view the above, letter/order dated 29.05.2009 (Annexure P-5) is set aside and the respondents are directed to grant the benefit of ACP to the petitioner by counting his service rendered by him in military as a Combatant Clerk. The pay of the petitioner shall be re-fixed and after the re-fixation, the pensionary benefits shall also be refixed. However, in the present circumstances, only the arrears will be restricted to three years and eight months prior to the filing of the present writ petition.

In view of the above, the present writ petition stands allowed.

(HARSIMRAN SINGH SETHI)

JUDGE

December 10, 2018

naresh.k

Whether reasoned/speaking?

Yes

Whether reportable?

Yes