

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1)

RSA No.632 of 2000

Date of Decision:13.03.2019

Mohinder Singh, Works Manager (Retd.)

...Appellant

versus

State of Punjab and another

...Respondents

2)

RSA No.835 of 2000

The State of Punjab and another

...Appellant

versus

Mohinder Singh, Works Manager (Retd.)

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. D.K. Nagar, Advocate,
for the appellant in RSA no.623 of 2000 and
for the respondent in RSA no.835 of 2000.

Ms. Anju Arora, Addl. AG, Punjab,
for the appellants in RSA no.835 of 2000 and
for the respondent in RSA no.632 of 2000.

Amol Rattan Singh, J.

These are two cross appeals filed by the plaintiff and the defendant State, both arising out of a suit filed by the plaintiff (i.e. the appellant in RSA no.632 of 2000), seeking a declaration to the effect that the order dated 12.07.1993 passed by the respondent-defendants refusing the benefit of the services rendered by him in the Indian Army, be declared to be illegal, null and void and against the rules and instructions issued by the Government from time to time; and a further decree of mandatory injunction,

directing the defendant State to release such benefits to him, be issued.

The suit of the plaintiff having been dismissed by the learned Sub Judge 1st Class, Chandigarh, vide a judgment and decree issued on July 23, 1997, he filed an appeal which was considered by the learned Additional District Judge, Chandigarh, who vide a judgment and decree issued on October 06, 1999, allowed such appeal, holding that the plaintiff was entitled to his pay being fixed after granting him the benefit of military service, but restricting the arrears of such benefit to be paid for a period of 3 years and 2 months prior to the filing of the suit.

Hence, the plaintiff has filed the second appeal challenging that part of the judgment and decree of the learned 1st appellate court, whereas the State of Punjab and its Director State Transport, i.e. the defendants in the suit, challenge the entire judgment and decree, on the ground that the benefits allowed by the 1st appellate court, to the plaintiff, are inadmissible.

2. As per the case of the appellant in RSA no.632 of 2000 (Mohinder Singh, hereinafter to be referred to as the plaintiff), he joined military service on June 20, 1950 and served till July 31, 1978, i.e. for a period of about 28 years and 6 months, retiring on the substantive rank of Subedar Major, within him having been also designated as an honorary Captain.

Thereafter, upon retirement from the Army, he was selected as a Works Manager in the State of Punjab through the Punjab Public Service Commission, and joined as such on September 28, 1978.

However, his services were terminated on 22.09.1982, with him having challenged the said order, which was thereafter set aside.

Eventually, he superannuated from service on February 28, 1990.

3. He had next contended that as per the Punjab Government National Emergency (Concession) Rules, 1965 (hereinafter to be referred to as the Emergency Concession Rules), he was entitled to count the period of military service spent by him during the emergency declared in the country, for the purpose of increments and seniority, in his civil post.

The next contention was that as per Rule 7.19 (b) of the Punjab Civil Services Rules Volume II, he was entitled to protection of the last pay drawn in military service, with his pay to be therefore fixed accordingly.

Having made several representations towards that end, he further contended in the plaint that the benefit of the emergency period was granted to him vide an order passed on 12.08.1992 but the benefits thereof were not actually released. Thereafter, his representation was rejected on 12.07.1993, by a non-speaking order.

Lastly, it was contended that similar benefits had been released to other employees but not to him and consequently, the suit was instituted.

4. Upon notice having been issued to the defendants by the trial court, they filed a written statement and raised preliminary objections that the suit was time barred with the plaintiff having joined civil service in the year 1979 but having claimed the benefit after a lapse of more than 12 years.

It was further contended that as he himself had been appointed as a Works Manager, he was estopped by his own act and conduct from claiming military service benefit towards pay fixation at that stage. Lastly, a preliminary objection was also taken that notice under Section 80 of the

Code of Civil Procedure had not been issued “legally and validly”.

On the merits of the contentions made in the plaint, it was admitted that the plaintiff was in military service prior to civil service but that he had actually joined on 28.09.1979 and not 1978.

It was further contended that his services were terminated after adopting due procedure but he was reinstated upon an order passed by this court, after which he retired from service on superannuation on 28.02.1990.

5. As regards the claim under the Emergency Concession Rules of 1965 (supra), it was contended by the defendant State that they were only admissible to those ex-servicemen who had joined military service during the period of emergency between 26.10.1962 to 09.01.1968, whereas the plaintiff had joined that service admittedly on 20.01.1950, from where he was relieved on 31.07.1978.

It was next contended that he never having claimed the benefit during the entire period of civil service but only towards his retirement therefrom, it was correctly rejected vide the order dated 30.01.1993.

6. Note I (A) of Rule 7.20 (b) of the Punjab Civil Services Rules, Volume II, was referred to by the respondent-defendants to further submit that persons who were in service at the time of issuance of the first amendment to the rule in 1980, were given a right to exercise an option within 4 months from the date of the amendment, for fixation of pay according to the rule, and since the plaintiff did not exercise such option for fixation of his pay as per Rule 7.20 (b), his pay was fixed as per the rules prevalent “at that time”.

It was yet further contended that the said rule had thereafter

been deleted from the rule book w.e.f. 24.10.1989 and consequently, the plaintiff could not claim any benefit thereunder at such a belated stage.

7. The plaintiff having filed a replication denying the contents of the written statement and reiterating those of the plaint, the following issues were framed by the learned trial court:-

- “1. Whether the plaintiff is entitled to the injunction prayed for? OPP
2. Whether the plaintiff is entitled to the mandatory injunction prayed for? OPP
3. Whether the suit is within time? OPP
4. Whether the plaintiff is estopped by his acts and conduct to file the present suit? OPR
5. Whether the notice under Section 80 CPC is not legal and valid? OPD
6. Whether the suit is not maintainable? OPD
7. Relief.

8. In order to prove his case, the plaintiff examined himself and closed his evidence with the defendants in fact not having examined any witness.

9. Upon considering the matter, the learned trial court, while deciding issues no.1 and 2 together, found that as regards the facts of the plaintiff joining military service, his discharged therefrom, his joining civil service as a Works Manager, they were all proved; with the joining report however being of 28.09.1979 and not 1978.

10. As regards the primary issue in the suit as to whether the plaintiff was entitled to the benefit of the Emergency Concession Rules, it was held that as he had joined military service on January 20, 1950, i.e. much before the declaration of the national emergency (on 26.10.1962), he

was not entitled to the said benefit.

The aforesaid finding was based upon a judgment of this court in **Nirmal Singh v. Punjab State Electricity Board 1992 (1) SLR 24.**

Hence, the first two issues were decided against the plaintiff.

11. As regards whether the suit instituted was within time, it was held that the Emergency Concession Rules having come into operation w.e.f. 20.07.1965 and the plaintiff having joined service on 28.09.1978 (the year is again given as 1978 while deciding issue no.3, though while deciding issues no.1 and 2 it had been shown to be 1979), the suit seeking any kind of declaration could have been filed upto 28.09.1981, but with it having been presented only on 13.01.1995, it was hopelessly time barred.

To hold as above, a judgment of the Supreme Court in **State of Punjab v. Baldev Singh AIR 1992 SC 111** was cited by that court. Issues no.4, 6 and 5 were however decided in favour of the plaintiff, holding that as regards the notice issued by the plaintiff under Section 80, it was not seen to be defective and as regards the plaintiff being estopped by his own act and conduct from instituting the suit and it not being maintainable, it was not pressed by the learned Government Pleader.

Upon the aforesaid findings, the suit was dismissed by the learned trial court, both on merits, as also on account of it being time barred.

12. In the first appeal filed by the plaintiff, the learned Additional District Judge, after noticing the pleadings, issues framed by the learned trial court and the judgment delivered by it, held that contrary to the judgment of this court in *Nirmal Singhs'* case (supra), a Division Bench of this court in **State of Haryana v. Prem Raj Verma 1998 (4) SCT 8,** had held that a

person who had served the country in the Army, during the period of emergency, was entitled to the benefit of the Emergency Concession Rules, with the same view having been taken by another Division Bench in **Jamiet Singh v. The District & Sessions Judge, Amritsar** 1995 (1) SCT 462.

13. On the issue of the suit having been instituted beyond limitation, the finding of the trial court was reversed with regard thereto also, on the ground that the plaintiff being entitled to get his pay fixed for benefits of salary and pension, it was a recurring cause of action to him (whereby he would get lesser salary if military service benefit was not granted to him) and consequently, though the arrears of pay were to be restricted to 3 years and 2 months prior to the date of the filing of the suit (as already noticed earlier), the suit itself was held to be not barred by limitation.

To hold as aforesaid, a judgment of a Full Bench of this court in **Saroj Kumari and others v. The State of Punjab and others** 1998 (2) ILR 262 (P&H), as had been cited before the lower appellate court, was relied upon by it, while holding the judgment of the Supreme Court cited by the learned Government Pleader, in **State of Punjab and others v. Gurdev Singh and Ashok Kumar** AIR 1992 SC 111, to be not applicable (that being a judgment to the effect that a suit for declaration was governed by Article 113 of the Schedule to the Limitation Act).

14. Consequently, in essence, the judgment of the trial court was reversed by the 1st appellate court, with the suit of the plaintiff thereby decreed in his favour, holding that arrears of pensionary benefits as had become due to him by then, could be recovered by him for a period of 3 years and 2 months prior to the filing of the suit (obviously other than the

benefit of a higher salary/pension being available to him even thereafter).

15. Thus the judgment of the learned 1st appellate court has been assailed essentially by the State of Punjab on merits, with the plaintiff having restricted his appeal to the question of arrears payable to him alone as already said, he also having challenged the fact that the learned courts below (specifically the lower appellate court), have given no finding whatsoever on the prayer in the suit that he is entitled to fixation of pay in terms of Section 7.20 (b) of the Punjab Civil Services Rules Volume II.

16. Both the appeals, i.e. the one filed by the plaintiff as also one filed by the State, were admitted to regular hearing on the first date that they come up before this court, i.e. on 26.04.2000, with no interim order seen to be passed in either appeal.

17. When the appeals finally came up for hearing on 13.03.2019, the following order had been passed by this court:-

“Today, Ms.Anju Arora, learned Addl.AG, Punjab, has relied upon a judgment of the Supreme Court in Chittaranjan Singh Chima vs. State of Punjab, AIR 1997 SC 1309, wherein it was held as follows in relation to the rules applicable to the State of Punjab itself:-

“4. The Punjab Government National Emergency (Concession) Rules, 1965, the rules under which the appellants came to be appointed, connotes of the definition of “military service” means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including service as a warrant officer) rendered by a person during the period of operation of the Proclamation of Emergency made by the President under Article 352 of the Constitution on the 26th October, 1962 or such other service as may hereafter be declared as military service for the purpose of these rules. Any period of military training followed by military service shall also be reckoned as military service.” It would, thus be seen that for the purpose of military service, it would be an officer enrolled or commissioned in any of the

three wings of the Indian Armed Force and rendered service during the period of operation of the proclamation of emergency and such of the military service as may be declared thereafter by the Government for the purpose of the entitlement under the Rules. Since the appellants came to be appointed under this, they have not been given any benefit of reckoning of the military service for the purpose of seniority and consequential benefits in the civil service. 1968 Rules and 1977 Rules contemplate of giving the reservation and also consequential benefits of seniority reckoning the military service to such of those officers who rendered service in the military during emergency with a view to encourage the personnel who came forward to serve the country at the time of emergency. Admittedly, the appellants came to be appointed not during the emergency but in the regular process.

5. This Court in Ram Janam Singh v. State of U.P., JT 1994(1) 187 : (1994) 2 SCC 622 : 1994(2) SCT 68 (SC), to which one of us (K.Ramaswamy, J.) was a member, had held that preferential treatment be given to those who joined armed forces during emergency and that grant of notional seniority in civil services by taking into account service rendered in armed forces is constitutionally valid but such benefit cannot be extended to those who joined armed forces during normal times.”

Naturally, the ratio of the aforesaid judgment was followed by the Full Bench of this Court in Punjab State Power Corporation Limited, Jalandhar, vs. Waryam Chand (LPA No.1042 of 2012, decided on 12.3.2013), thereby holding that the judgment of the Division Bench of this Court in State of Punjab and others vs. Malkit Singh, 2011(2) SCT 40, does not lay down good law.

Though learned counsel for the respondent in the State appeal, and the appellant in RSA No.632 of 2000 submits that there are judgments which state to the contrary, he has not been able to show any judgment of the Supreme Court which lays down law other than what has been held in Chittranjan Singh Chimas' case (supra).

That being so, RSA No.835 of 2000 filed by the State of Punjab is allowed, with RSA No.632 of 2000 filed by the plaintiff being dismissed. (Detailed order to follow).

A photocopy of this order be also placed on the file of the other

connected matter.”

Thus, both the appeals had been disposed of on that date in terms of the ratio of the judgment of the Supreme Court in *Cheemas'* case, with the detailed judgment left to be passed later, thereby giving the background of the appeal, pleadings before the learned courts below and consideration of the issues by those courts.

18. That having been done by this order, nothing further actually needs to be said by this court, except to the effect that the judgments of the Supreme Court having already been referred to in the aforesaid order dismissing the appeal filed by the plaintiff and allowing that filed by the State, the judgments of this court referred to by the learned 1st appellate court in *Nirmal Singh and Saroj Kumaris'* cases (supra) obviously stand overruled by the ratio of the judgment in *Chittaranjan Singh Chimas'* case (supra), specifically pertaining to the Emergency Concession Rules of the State of Punjab itself.

Hence, it is very obvious that though the judgment in *Chittaranjan Singh Chimas'* case was very much in existence at the time when the first appeal was decided by the lower appellate court on 06.10.1999, however it was not brought to the notice of that court, and the suit of the plaintiff therefore had been allowed by it.

It also needs further notice that though in the grounds of appeal filed by the plaintiff before this court in RSA no.632 of 2000, non-decision by the learned lower appellate court on the issue of the benefit of Rule 7.20 (b) of the Punjab Civil Services Rules Volume II, is not seen to be actually an issue raised before either of the courts below, with it not having been

argued before this court either. However, the said ground has been seen to be actually incorporated in the grounds of appeal (in the plaintiffs' appeal), only at the time of dictation of this order, after dismissal of the appeal on March 13, 2019.

Yet, with not even an issue having been framed on that question by the trial court, and the rule itself having been deleted in the year 1989 (though now shown to be reinserted w.e.f. December 22, 2015 in the 'rule book', i.e. more than 15 years after the plaintiff retired from civil service also), I do not find it possible to give any finding in favour of the plaintiff on that question, it not having been raised even as a question of law before this court.

19. Having said that, with the appeal of the State already having been allowed on March 13, 2019 and the appeal of the plaintiff having been dismissed, now it is to be only formally stated that the judgment and decree issued by the learned lower appellate court is set aside, with that of the trial court dismissing of the suit of the plaintiff, reinstated.

The parties are left to bear their own costs.

A decree-sheet be prepared accordingly.

March 13, 2019

pk/dinesh

(AMOL RATTAN SINGH)

JUDGE

1. Whether speaking/reasoned?

Yes/No

2. Whether reportable?

Yes/No