

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

208

CWP-3217-2016

Date of Decision : March 05, 2020

OM PARKASH TYAGI

.....Petitioner

VERSUS

STATE OF HARYANA AND ORS

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

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

Mr. Gaurav Jindal, Addl. A.G., Haryana.

NIRMALJIT KAUR, J. (Oral)

The prayer in the present petition is for granting benefits of Military Service from 17.9.1963 to 8.1.1968 towards pension and consequently order with respect to payment of full pension with the further prayer to quash the order dated 20.10.2015 vide which the request of the petitioner for extension of the said benefits was declined.

The written statement has been filed. The reason why the benefit of Military Service from 17.9.1963 to 8.1.1968 was denied is clearly evident from para No.3 of the written statement, which is reproduced below:-

“Pension:- The period of Military Service mentioned in clause(i) shall count towards pension only in case of appointments to permanent services or posts under the Govt. subject to the following conditions:-

(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 refund 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 Govt. 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.”

From the above, it is evident that the petitioner qualifies clause(i) that he does not get any Military Service pension.

With respect to clause(ii) pertaining to the deposit of the gratuity, admittedly, the petitioner has since deposited the same. The only objection is that it should have been deposited at the time of entry in the State Government service. However, the same can always be rectified by directing the petitioner to pay the interest on the said gratuity.

With respect to (iii) condition that the gap between the Military Service and the post under the State Government was more than one year is factually incorrect. It is not disputed that the petitioner had discharged from military service on 3.5.1971. It is also not disputed that the petitioner joined the Government service on 4.11.1971 which is within one year. The respondents have arbitrarily taken the date of joining the service as 26.5.1973 for reason best know. It is not disputed that he had otherwise joined the Government service on 4.11.1971. The said period from 4.11.1971 to 26.5.1973 has already been counted

towards pension. Therefore, to say that the gap was more than one year is arbitrary discriminatory on the face of it and does not appear to appeal to any reason.

In view of the above, there is no reason for not counting his Military Service from 17.9.1963 to 8.1.1968 towards pension.

Accordingly, the present writ petition is allowed with the following directions:-

- (a) The petitioner shall deposit the interest on the gratuity amount @ 6% from the date it should have been deposited within one month from today; and
- (b) The respondents shall extend the benefits of Military Service from 17.9.1963 to 8.1.1968 towards pension.

Needful shall be done within another one month of the deposit of the interest on the gratuity. The said arrears shall thereafter be released alongwith 6% interest from the date they were due till actual payment. In case, the needful is not done within the stipulated period of two months from today, the respondents shall be liable to pay 12% interest on the said arrears after expiry of two months' period.

March 05, 2020
ajay-1

(NIRMALJIT KAUR)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No