

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

RSA No.2945 of 1999(O&M)

Date of Order: 08.12.2023

Haryana State and another**.Appellants****Versus****Ganga Ram(deceased) through LRs****..Respondent****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**Present: Ms. Vibha Tewari, AAG, Haryana
Mr. Jaspal Singh Pannu, AAG, Haryana
for the appellants.**

Mr. Pankaj Bali, Advocate, for the respondent.

ANIL KSHETARPAL, J

1. The State of Haryana (defendant in the civil suit) assails the correctness of the judgment passed by the First Appellate Court. The issue that requires consideration is “whether the respondent Ganga Ram (plaintiff in the civil suit) is entitled to the benefit of advanced increments, seniority and pensionary benefits for the period of service rendered by him in military?”

2. The plaintiff joined the military service on 28.01.1948, and he continued to serve till 11.05.1971. Thereafter, he joined as fitter in the PWD (B&R). On 03.07.1980, his services were regularised, whereas he retired from the service on 31.01.1989. The suit was filed by the plaintiff on 16.10.1990. The trial court partly decreed the suit and held that the plaintiff is entitled to calculation of the period of service rendered by him from 11.09.1971 to 31.01.1989 towards the pensionary benefits, gratuity and other consequential benefits.

3. Two appeals were filed before the First Appellate Court. The First Appellate Court held that the plaintiff is entitled to the benefit of the period rendered by him in military service from 1948 to 1971.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

5. It may be noted here that the learned counsel representing the State of Haryana does not dispute that the judgment passed by the trial court granting the benefit to the respondent for the period from 1971 to 1980 is correct. However, she submits that the respondent could not be granted benefit of military service from 28.01.1948 to 11.05.1971. While relying upon the judgment passed by the Supreme Court in **Bhagat Singh (Hav.) vs. State of Haryana and another, (Civil Appeal No.7390 of 1994, decided on 15.03.1996)**, she contends that the respondent did not join the military service during the period of emergency and therefore, he is not entitled to the aforesaid benefit. She submits that the validity of Rule 2 of Punjab National Emergency (Concession) Rules, 1965 (hereinafter referred to as 'the 1965 Rules') has been upheld. However, if the employee has already been granted the benefit, then the same shall not be withdrawn.

7. On the other hand, the learned counsel representing the respondent submits that the instructions Ex.P1 and P2 help the respondent as the entire period of service in military is required to be counted.

8. The learned counsel representing the respondent has read over the instructions Ex.P1 and P2 issued by the State Government. It has been clarified that the individuals who joined military service between 26.10.1962 to 10.01.1968 are entitled to the benefit. In one paragraph, it has been stated that if the benefit has already been granted to the employee, then these

instructions will not apply retrospectively and the benefit already extended shall not been withdrawn. Thus, it is evident that those instructions are not contrary to the rules. At this stage, Rule 2 of the 1965 Rules is extracted as under:-

“For the purposes of these Rules the expression 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 of India on October 26, 1962 or such other service as may hereafter be declared as Military Service for the purposes of these Rules. Any period of Military Training followed by Military Service shall also be reckoned as Military Service.”

9. On 04.08.1976, the aforesaid Rule was amended, which reads as under:-

“For the purposes of these rules the expression 'Military Service' means the service rendered by a person who had been enrolled or commissioned during the period of operation of the proclamation of Emergency made by the President under Article 352 of the Constitution of India on October 26, 1962 in any of the 2 Wings of the Indian Armed Forces (including the service as a Warrant Officer) during the period of the said emergency 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.”

10. In the beginning the retrospective application of the amended definition of the military service was considered by the Supreme Court in

Ex. Capt. K.C.Arora and another vs. State of Haryana and others, (1984)

3 SCC 281. Subsequently, the matter was once again considered by the Supreme Court in Dhan Singh and others vs. State of Haryana and others, 1991 (Supl.) (2) SCC 190. It was held that there shall be no rationale behind the definition of military service if the military personnel chose it as a career much before the declaration of emergency and then continued to serve during the period of emergency. However, the Supreme Court in Bhagat Singh's case (supra) declared that such instructions issued by the Government do not suffer from any error. It has been declared that the military personnel who were already in service prior to the emergency had opted it as a career and therefore, they are not entitled to the benefit.

11. The learned counsel representing the respondent failed to draw the attention of the court to any judgment laying down otherwise.

12. Keeping in view the aforesaid facts and discussion, the judgment passed by the First Appellate Court is set aside and that of the trial court is restored.

13. With these observations, the appeal is allowed.

14. All the pending miscellaneous applications, if any, are also disposed of.

December 08, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO