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2023:PHHC:166931

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-5713-2014 (O&M)
DECIDED ON: 16.12.2023

JANGJEET SINGH

.....PETITIONER

VERSUS

HARYANA STATE AGRICULTURAL MARKETING BOARD AND
ANOTHER

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. J.S. Saneta, Advocate, for the petitioner.

Ms. Khushboo, Advocate for
Mr. Padamkant Dwivedi, Advocate
for respondents No.1 and 2.

Mr. Kapil Bansal, DAG, Haryana.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Articles 226/227 of the Constitution of India has been invoked for issuance of a writ in the nature of *Mandamus*/Certiorari seeking quashing of the order dated 21.02.2014 (Annexure P-10), whereby the benefit of the Military Service rendered by him for the purpose of grant of increments and to count the service for the grant of pensionary benefits was declined.

2. The case of the petitioner is that he joined Indian Army as Sepoy Clerk and served as such w.e.f. 26.05.1972 till 01.11.1994. The Punjab Government National Emergency (Concession) Rules 1965 (herein after referred as Rules) prescribed that the period spent in Military Service

be counted towards increments and pension, if the ex-serviceman is reemployed in civil service after serving in the Indian Army during the period of National Emergency. After retirement from Indian Army, the petitioner was appointment as Accountant in the office of the respondent-department vide memo dated 16.11.2004 (Annexure P-2). On 23.11.2006 the Government of Haryana issued an instruction that in case of Indian Army Personal is reemployed then the pension received by ex-servicemen may be ignored in fixing their pay on reemployment in the Civil Department and while fixing the initial pay of reemployed pensioners, the pension equivalent of gratuity may not be deducted from the pay so fixed. It was ordered that option of the employee should be asked to opt these instructions issued by the government and if they opt, their pay re-determined (Annexure P-3). The petitioner submitted a representation to the Chief Administrator, Haryana State Agricultural Marketing Board, Sector 6, Panchkula that after his discharge from Army, he was re-employed as Accountant through a selection process and he has not been given the benefit of service rendered in the Army towards his increments, so that he may get the pay scale from which he was getting from the Indian Army (Annexure P-4). When the petitioner did not receive any reply of the representation then he sent a legal notice. A letter dated 25.09.2012 (Annexure P-6) was received by the petitioner that he may give his option under the government instructions dated 23.11.2006 within 3 months. On 01.10.2012 (Annexure P-7) the petitioner submitted the option to seek the benefit of service of Indian Army that his basic pay was Rs. 1620/- at the time of his retirement from the Indian Army. It was stated that the option

was not taken by the department earlier. In spite of the letter written by the petitioner for giving his option to add the military service towards increments and pension, that benefit has not been given to the petitioner. Ultimately the petitioner has approached this Court by way of filing of Civil Writ Petition No. 25581 of 2013, which was disposed off vide order dated 21.11.2013 (Annexure P-9) with a direction to Chief Administrator of Haryana State Agriculture Marketing Board, to decide the legal notice by passing a detailed speaking order within a period of 3 months. 21.02.2014. Thereafter, the Chief Administrator of Haryana State Agriculture Marketing Board vide letter dated 21.02.2014 (Annexure P-10) has illegally and unlawfully denied the benefit of Armed Forces on the ground that the petitioner had retired as Naib Subedar not as Clerk and he has joined the HSAMB as Accountant not as Clerk. Thus, he is not entitled for grant of service benefit. Hence, the present petition.

3. It has been contended by learned counsel for the petitioner that as per law, the service rendered by an employee in the Indian Army is liable to be counted for the purpose of grant of pension, therefore, he is entitled to the grant of pension from the Board from 16.11.2004 and is also entitled to the release of arrears of pension.

4. On 19.07.2017, this Court has passed the following order:-

“It is to be noticed that while disposing off the CWP No.25581 of 2013 on 21.11.2013 (Annexure P-9), earlier filed by the petitioner, it was directed by this Court that respondent-Board shall ensure that the right of the petitioner as reflected in the legal notice is to be finally considered in accordance with the relevant provisions of law.

The petitioner has now relied upon the instructions dated 20.07.1965 (Annexure P-1) to claim the benefit of the 22 years of service in the Indian Army for the purpose of the above-said relief. The respondent-Board has denied the relief on the basis of the instructions dated 27.08.1998 (Annexure P-11).

From the perusal of the paper-book, it would go on to show that while representing to the respondent-Board after having served for 6 years, the respondent-Board had itself referred to the instructions dated 23.11.2006 (Annexure P-3) and the petitioner also submitted his option (Annexure P-7). Thereafter, even in the representation dated 04.05.2013 (Annexure P-8), the petitioner had pointed out to the Board that his option had not been asked and prayed that his pay be revised as per the Government Instructions and all other benefits as applicable be given to him.

Mr. Dwivedi fairly has also referred to the instructions dated 23.11.2006 (Annexure P-3) that the pay was liable to be re-fixed on the basis of the said instructions, in cases of Military pensionaries, who were already on re-employment and an option had to be taken as such.

In the impugned order dated 21.02.2014 (Annexure P-10), the respondents have relied upon the provisions of the Civil Service Rules that the minimum qualification of the service is required for at least 10 years for the purpose of grant of pensionary benefits, apart from the fact that the petitioner was retired as Naib Subedar and not a Clerk and had joined as Accountant, which is the higher post and the instructions apply only to the ex-combatant Clerks and, therefore, he is not entitled to count the Military service for the purpose of grant of increments or to count the defence service for grant of pensionary benefits.

However, the respondents have failed to take into

consideration various instructions, which have been issued, which would govern the said controversy. The first instructions were issued on 11.04.1963 by the Deputy Secretary to the Government of India, Ministry of Finance, which was followed upon on 20.05.1974. Similarly, on 01.07.1992, the Financial Commissioner, Government of Haryana also followed the instructions issued on 01.07.1992 for fixation of pay of Military pensionaries on re-employment in Civil Department, which was followed up on 27.08.1998 (Annexure P-11). The position was clarified on 16.02.1999, apart from the instructions dated 23.11.2006. Thereafter, also on 20.05.2009, it was clarified that the Military service rendered before joining the Civil Department is entitled for seniority/pay fixation and also for the purpose of grant of ACP scale. Thereafter, on 22.05.2014, it was clarified that the Military service is also to be counted towards civil service for grant of casual leave. Thus, the intent of the Government is to be seen as to how the benefits are to given to the ex-serviceman.

In such circumstances, let the respondent-Board reexamine the case of the petitioner with open mind as to his entitlement as such regarding his re-fixation of his pay and if benefit is liable to be granted on the strength of the 22 years of service with the Indian Army. The respondent-Board shall also re-examine whether the benefit of 1965 Rules is to be granted and whether the petitioner is to be placed at any disadvantage on account of the instructions dated 27.08.1998 (Annexure P-11), merely because he belongs to a particular rank and whether the benefit is to be granted as such to persons who have served in the Indian Army, irrespective of their rank, keeping in view the instructions issued from the year 1963 onwards till 2014 as noticed above.

Let, the needful be done within a period of six weeks from today and necessary affidavit be filed regarding this

aspect. In case the petitioner is not entitled for any benefits, then a reasoned order be passed, accordingly.

Adjourned to 13.09.2017.”

5. Though the petitioner has relied upon the instructions dated 20.07.1965 (Annexure P-1) to claim the benefit of 22 years of service in the Indian Army but from perusal of instructions issued by the Government of Haryana vide No. 12/2/96-4GS-II dated 27.08.1998 and 16.02.1999, it is evident that the service rendered only as Combatant Clerk (Sepoy & above and equivalent ranks in Navy and Air Force) has been treated as equivalent to service as LDCs/Junior Clerks in Civil Departments and the benefit are accordingly conferred on such ex-combatant Clerks on their joining as LDC/Junior Clerk/Clerk in Civil Department. In the case in hand, the petitioner was appointed as Accountant in HSAMB, which is higher in rank than the post of LDC, thus, the benefit of these instructions cannot be granted to the petitioner.

6. It is crystal clear that no reduction in the initial pay of the petitioner as Accountant in HSAMB, was made on account of his military pension. Therefore, the benefit of the instructions dated 04.10.1978, 27.05.1983, 01.07.1992 and 23.11.2006 has already been conferred on the petitioner. As far as the instruction dated 22.05.2014 is concerned, the said instruction deals with the entitlement of casual leave, as such, the same is of no use for the petitioner being already retired from service on 31.03.2011.

7. Moreover, the petitioner had joined the military service on 26.05.1972 and retired on 31.10.1994. The National Emergency (Concession) Rules, 1965 are not applicable in the present case since the

petitioner joined military service on 26.05.1972 whereas the Second Emergency period was from 26.10.1962 to 10.01.1968. Even otherwise the petitioner is not entitled for benefit under the 1998 instructions since he retired from the rank of Naik Subedar whereas the said instructions relate to the Ex-combatant Clerks reemployed on Civil post under Haryana Govt. as Clerk. The petitioner having retired from a higher post than Clerk is thus not entitled for benefit of 1998 instructions.

8. In view of the discussions made hereinabove, this Court does not find any merit in the present petition, as such the same is dismissed being devoid of any merits.

(SANDEEP MOUDGIL)
JUDGE

16.12.2023
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- 1. Whether speaking/ reasoned : Yes / No
- 2. Whether reportable : Yes / No