

RSA-104-1994(O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-104-1994(O&M)
Date of order:-05.02.2024

R.P. Sikand

...Appellant

Versus

Punjab State Electricity Board, Patiala and others

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present :- None for the appellant.

Mr.B.S. Mittal, Advocate
for the respondents.

SUVIR SEHGAL, J.(ORAL)

1. Plaintiff - appellant is before this Court by way of the instant second appeal challenging the judgment and decree passed by the First Appellate Court.
2. Brief facts may be noticed.
3. R.P. Sikand, plaintiff – appellant served the Indian Air Force from 10.01.1963 to 09.01.1972 before joining Punjab State Electricity Board (hereinafter referred to as the defendants – respondents) on 01.12.1972 as a Lower Division Clerk. He was granted the benefit of the military service rendered by him for the entire period from 1963 to 1972 under the Punjab Government National Emergency (Concession) Rules, 1965 (for short “the Rules of 1965”) by order dated 05.02.1983. The amount of gratuity received by him from the Indian Air

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Force was duly deposited by him with the defendants - respondents and his pay, seniority etc. were re-fixed. He was promoted as Upper Divisional Clerk (UDC) and by order dated 19.02.1991, previous order was modified and the benefit of service rendered by him with the Air Force was limited to the period from 10.01.1963 to 10.01.1968 and he was asked to refund the additional amount paid to him. He filed a suit for declaration to the effect that the said order is illegal, void etc. and claimed all rights and benefits granted to him by order dated 05.02.1983.

4. Upon notice, defendants – respondents contested the suit by filing written statement, wherein it was submitted that the order dated 19.02.1991 was passed keeping in view the judgments of the Supreme Court after affording adequate opportunity to the plaintiff – appellant. Various preliminary submissions were also taken by the defendants – respondents. On the basis of the pleadings of the parties, issues were framed and after they led evidence, Trial Court by judgment and decree dated 05.08.1991 decreed the suit. A declaration was issued to the effect that order dated 19.02.1991, is illegal and the plaintiff was found entitled to the entire approved military service. Aggrieved, defendants – respondents filed a first appeal, which was accepted on 20.08.1993 and the judgment and decree of the Trial Court was set aside. It is in this background that the plaintiff – appellant is before this Court by way of present regular second appeal.

5. I have heard counsel for the respondents – defendants and examined the record with his able assistance.

6. The legal proposition before this Court is no longer *res integra*. Hon'ble Supreme Court in **Dhan Singh and others Versus**

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State of Haryana and others, 1991 (1) S.C.T. 137 has held that it is only the service rendered during the period of emergency that is to be taken into account for the purpose of grant of benefits under the Rules of 1965. It has been clarified by the Supreme Court that the services rendered after the lifting of emergency could not be counted for determining the pay, seniority and other benefits under the said rules.

7. Adverting to the facts of the present case, it cannot be disputed that the first emergency was imposed from 26.10.1962 and remained in force till 10.01.1968. The plaintiff – appellant had joined the Indian Air Force on 10.01.1963 though continued in service till 1972. He was, therefore, entitled to the benefit of the service rendered by him with the Indian Air Force only during the proclamation of the first emergency.

8. In view of the above position, this Court is of the view that there is no illegality or perversity in the judgment and decree passed by the First Appellate Court, which deserves to be upheld.

9. Finding no merit in the appeal, it is hereby dismissed with no order as to costs.

10. Pending miscellaneous application(s), if any, stands disposed of.

(SUVIR SEHGAL)
JUDGE

05.02.2024

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Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No