

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-802-2005
Reserved on:-08.01.2024
Date of Pronouncement:-15.01.2024

State of Haryana and others

...Appellants

Versus

Prakash Chand, Instructor

...Respondent

CORAM : HON’BLE MR. JUSTICE SUVIR SEHGAL

Present :- Mr.Sharad Aggarwal, DAG, Haryana
for the appellants.

Mr.R.S. Sangwan, Advocate
for the respondent.

SUVIR SEHGAL, J.

1. Judgment was reserved on 08.01.2024, after hearing State – appellants.
2. Today, at the time of pronouncement, Mr.R.S. Sangwan, Advocate, has put in appearance on behalf of the respondent and has argued the matter. He has been heard.
3. While admitting this appeal, the following substantial question of law was framed:

“Whether the plaintiff – respondent is entitled to the benefit for the period of second emergency in view of the ratio of law laid down by the Full Bench of this Hon’ble Court in PLR 1992 (1) 754.”

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4. Brief facts may be noticed.

5. Prakash Chand, plaintiff (hereinafter referred to as the plaintiff – respondent) filed a civil suit by pleading that he joined military service on 07.06.1965 during the first emergency and continued serving during the second emergency. He was discharged on 01.07.1985 and was employed by the Government of Haryana (hereinafter referred to as “the appellant – State”) w.e.f. 09.12.1985 and retired from civil service on 30.04.2001. He has claimed for counting the service rendered with the Military during the first emergency from 07.06.1965 to 10.01.1968 and during emergency period from 03.12.1971 to 03.07.1977 as well as period from 01.07.1985 to 09.12.1985, when he was unemployed, for the purposes of calculation of pensionary benefits by filing a suit for declaration. Upon notice, suit was contested by the State – appellant by filing a written statement wherein, besides taking numerous preliminary submissions, it has been submitted that the Punjab Government National Emergency (Concession) Rules 1965 (for short “the Rules”) have been amended in the State vide notification dated 04.08.1976 and the plaintiff – respondent is not entitled to the benefit of second emergency as well as the period during which he remained unemployed. It has been further submitted that the plaintiff – respondent has been granted the benefit of military service rendered by him during the first emergency and claim for grant of second emergency benefit was declined by office memorandum dated 15.05.2001. His service was regularised on 30.09.1998 and the admissible scale of pay was granted to him. Prayer was made for the dismissal of the suit. After the parties led evidence, the trial Court by

judgment and decree dated 21.08.2003 dismissed the suit. In appeal, the lower Appellate Court by judgment and decree dated 27.07.2004, came to the conclusion that the plaintiff – respondent is entitled to benefit of military service rendered by him during the second emergency and the appeal preferred by him was partly allowed to this limited extent. It is in this background that the State – appellant is before this Court challenging the judgment and decree passed by the lower Appellate Court.

6. Counsel for the appellant – State has urged that the Appellate Court has followed the judgment rendered qua employees of State of Punjab although there is a there is difference in the rules formulated by both the States. By making a reference to the judgment in *Jang Singh Versus State of Punjab 1997(4) SCT 312*, he submits that this distinction has been noticed by a Full Bench of this Court. Still further by relying upon *Rajender Kumar S.I. Versus The State of Haryana and others, 1992(2) PLR 754*, he urges that benefit of military service rendered during the second emergency cannot be granted to the plaintiff – respondent, who is employed in Haryana.

7. Appeal has been opposed by learned counsel for the respondent.

8. I have considered the submissions made by the counsel for the parties and perused the record with their able assistance.

9. By notification dated 04.08.1976, Haryana Government amended the definition of military service. This amendment was brought about with retrospective effect from 01.11.1966, when the rules came into force and restricted the benefits of military service upto 10.01.1968,

when the first emergency was lifted. The amendment reads as under:

“For the purpose of these rules expression ‘military service’ means the service rendered by a person, who had been enrolled or commissioned during the period of operation of proclamation of emergency made by the President under Article 352 of the Constitution of India on October 26, 1962 in any of the three 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. The amended rules were questioned before the Supreme Court in **Dhan Singh and others Versus State of Haryana and others, 1991(1) SCT 137** and it was held that those who had enrolled or were commissioned during the emergency was so on account of the call of the nation and had joined the Army at the critical juncture of national service to save the motherland by taking a greater risk than those who were already in military service. The Apex Court held that the benefit of the military service is only meant for such persons. Prayer for reconsideration of this judgment has been rejected by the Supreme Court in **Bhagat Singh (HAV.) Versus State of Haryana and another** (Civil Appeal No.7390 of 1994, decided on 15.03.1996). Taking a similar view in **(Ex.) Capt. Randhir Singh Dhull Versus Shri S.D. Bhambri, 1981(1) S.L.R. 384**, it was held that military service for the benefit of

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seniority, promotion and increments is admissible only in respect of military service rendered during the operation of emergency. Matter was also referred to a Full Bench of this Court in Rajender Kumar's case (supra) and it was held as under:

“4. After hearing the learned counsel for the parties, we find that the points raised by Mr.Yadav have substance. The facts of (Ex.) Capt. Randhir Singh Dhull's case (supra) would reveal that he had staked his claim for the benefits in service on account of his having rendered military service from 1963 to 1974. While dealing with the matter, the Supreme Court held that concession of seniority was admissible in respect of military service rendered during the operation of emergency only and not for any military services after the termination of emergency and only if the service in the military is as enrolled or commissioned service in any of the three wings of the Indian Armed Forces. Captain Randhir Singh Dhull was held entitled to the benefit of military service that he had rendered during the period of first emergency. In Dhan Singh's case (supra) as well, Supreme Court held that only those who were enrolled or commissioned during the emergency, and, had on account of the call of the nation joined the army at that critical juncture of national emergency to save the motherland by taking a greater risk were entitled to the benefit of military service under the Rules and those who were already in army were not entitled to such benefits. Admittedly, when the second emergency was declared, petitioner was already in service. Therefore, he was not entitled to the benefits of military service that he had rendered

during the period of second emergency....”

11. On the basis of the judicial interpretation, Haryana Government issued instructions dated 19.02.1991 (Ex.D-3) clarifying as follows:

“The benefit of military service would be admissible to those ex-servicemen who joined the military service during the period of emergency i.e. 26.10.1962 to 10.01.1968. The credit of military service would be limited to the period of service rendered during emergency period only.”

12. In view of the above settled position, the question of law framed by this Court is answered in favour of the appellant and against the plaintiff – respondent.

13. Finding merit in the submissions made by the State counsel, appeal is allowed. Judgment and decree passed by the learned Additional District Judge, Bhiwani is set aside and that of the Trial Court is restored. As a consequence, suit is dismissed.

14. There shall be no order as to costs.

(SUVIR SEHGAL)
JUDGE

15.01.2024

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Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No