

**RSA-589-2006(O&M) -1-
982 IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**RSA-589-2006(O&M)
Reserved on:21.10.2024
Pronounced on: 29.10.2024**

State of Haryana and others ...Appellants

Versus

Sat Narain and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikas Bhardwaj, AAG, Haryana

**Mr. Parbeen Dharwal, Advocate,
with Mr. Ashish Arora, Advocate
and Ms. Gunjan Mehta, Advocate for the respondents.**

HARPREET SINGH BRAR J.

1. The present regular second appeal is preferred by the appellant-State against the judgment and decree dated 07.10.2005 passed by the learned District Judge, Rohtak whereby the judgment and decree dated 28.02.2005 passed by the learned Additional Civil Judge (Sr. Division), Rohtak decreeing the suit of respondents, were upheld.

FACTUAL BACKGROUND

2. Respondent No.1 rendered military service from 17.07.1963 to 10.01.1968 and 03.12.1971 to 19.09.1975 while respondent No.2 served in Army from 22.07.1964 to 10.01.1968 and 03.12.1971 to 23.07.1974, during the Emergency. On their retirement from the Army, the respondents joined the office of appellant No.2-Settlement Officer, Consolidation of Holdings, Rohtak, as Clerks, on ad hoc basis, on 05.08.1976 and 18.08.1976, respectively. Subsequently, their services were regularized on 01.01.1980 and 15.09.1982, respectively.

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3. The respondents were granted benefits of the military service rendered by them from the date of their first appointment i.e. 05.08.1976 and 18.09.1976 respectively, in accordance with the National Emergency Rules. However, subsequently, the benefits were ordered to be extended only from the date of regularization i.e. 01.01.1980 and 15.09.1982, respectively.

4. Consequently, the respondents filed a suit before the learned Civil Court seeking declaration of the change of date for grant of benefits from date of appointment to date of regularization, as illegal and not binding upon the respondents-plaintiffs. The following issues were framed for the consideration of the Court-

1. Whether the impugned order dated 23.7.98 altering the dates of grant of emergency services benefits are illegal, unconstitutional, discriminatory and not binding on the plaintiffs? OPP.

2. If issue No.1 is proved, whether plaintiffs are entitled to the relief claimed? OPP.

3. Whether the order dated 23.7.98 has been passed in compliance of pay fixation order dated 12.5.98 and is legal, constitutional binding on the plaintiffs? OPD.

4. Whether the benefit of military services have been given from the date of regularisation, if so to what effect? OPD.

5. Whether plaintiffs have no cause of action? OPD.

6. Whether suit is not maintainable? OPD.

7. Whether no notice u/s 80 CPC was served upon the defendants? OPD.

8. Relief.

After amendment of plaint was permitted, following additional Issue

No.2-A was framed on 14.2.2008:



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2-A. Whether plaintiff is entitled to incremental benefit equal to the number of completed years of service rendered by plaintiffs in armed forces on the ground mentioned in the plaint ?OPP.

The said issues were decided in favour of the respondents and the suit was decreed in their favour vide judgment dated 28.02.2005 whereby the alteration of dates for grant of benefits, denying grant of benefits of Emergency services rendered in the period 03.12.1971 to 03.07.1977, was held illegal. It was also held that the appellants have erred in not counting the entire service rendered by respondent No.1 as a Combatant Clerk and withdrawing standard scale vide impugned order dated 02.12.1998.

5. Aggrieved by the same, the appellants preferred an appeal before the lower Appellate Court, which was dismissed vide judgment dated 07.10.2005, upholding the judgment and decree dated 28.02.2005 passed by the learned Additional Civil Judge, (Senior Division), Rohtak. Subsequently, the present second appeal was preferred before this Court.

CONTENTIONS

6. Learned State counsel for the appellants *inter alia* contended that the learned Courts below have erred in not duly appreciating the instructions issued by the Government of Haryana vide Memo No. 8217-E-3/87/24992 dated 19.08.1997 whereby it was directed that the benefit of military service is only to be given from the date of regularisation. Accordingly, the case of the respondents was reconsidered and vide orders dated 08.02.1988 and 23.07.1998 requisite changes were made. He further submitted that the said orders were duly communicated to them in the year

1998. Further, respondent No.1(retired) has been awarded the benefits of



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the military service rendered by him from 17.07.1963 to 10.01.1968 in compliance of order dated 27.08.1998. Accordingly, his pay has been fixed by appellant No.3 in compliance of the pay fixation order dated 12.05.1988. Therefore, entitlement to benefits only commences from the date of regularization as held by the Hon'ble Supreme Court in ***State of Haryana vs. Haryana Veterinary and A.H.T.S. Association 2000(4) SCT 664*** and the State deserves to be allowed to recover the excess amount granted.

7. *Per contra*, learned counsel for the respondents submitted that the benefits of the military service rendered by the respondents ought to be bestowed from the date of appointment, even if the appointment was on ad hoc basis. Moreover, it is settled law that the seniority has to be calculated from the date of appointment and not date of confirmation. Therefore, the respondents ought not to be denied benefits merely for the ad hoc nature of appointment. Reliance in this regard is placed on the judgment rendered by this Court in ***Balbir Singh vs. State of Punjab 1998(2) SCT 116*** and ***State of Haryana and others vs. Surinder Kumar Mishra and others 2013(1) SCT 563***.

OBSERVATIONS AND ANALYSIS

8. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that undisputedly, the respondents served in the military during the declaration of two National Emergencies i.e. 26.10.1962 to 10.01.1968 and 03.12.1971 to 03.07.1977. However, they were appointed as civil clerks with the office of appellant



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No.2 on 05.08.1976 and 18.08.1976, respectively, and their services were regularized on 01.01.1980 and 15.09.1982 respectively.

9. It appears that the appellants had previously granted benefits of military service to the respondents from the date of their appointment i.e. 05.08.1976 and 18.08.1976. This factum has not been denied by the appellants. However, the same was changed to date of their respective regularization i.e. 01.01.1980 and 15.09.1982. Nothing available on the record indicates that the respondents were given a reasonable opportunity to be heard before such an adverse order is passed against them. A two Judge bench of the Hon'ble Supreme Court in ***State of Orissa vs. Dr. Beenapani Dei and others AIR 1967 SC 1269*** has held that principles of natural justice cannot be circumscribed when an administrative order, bound to have civil consequences and cause prejudice to a person, is sought to be passed by the State. Speaking through Justice J.C. Shah, made the following observations:

“9....An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function



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intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act Judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

10. The State has undoubtedly authority to compulsorily retire a public servant who is superannuated. But when that person disputes the claim he must be informed of the case of the State and the evidence in support thereof and he must have a fair opportunity of meeting that case before a decision adverse to him is taken.”

10. Moreover, a Full Bench of this Court in **Kesar Chand vs. State of Punjab 1988(5) SLR 27** has held that once an employee has been regularized, it would not meet the objective standards of logic and reason to deprive him of the benefits that would accrue on considering the services rendered by him as an adhoc employee. Speaking through Justice G.R. Majithia, the following was held:

“19...Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strike at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Government had to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who are eligible for lesion and those who started as work-charged employees and their services regularised subsequently, and the others is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work - charged employee have been regularised, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness, and for these reasons the provisions of sub rule (ii) of rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution.”



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Reliance in this regard can also be placed on the judgment rendered by this Court in ***Rakesh Kumar Singla vs. State of Haryana 1995(4)SCT 285.***

11. Moreover, it has not been denied that the respondents were in continuous service of the appellants since their adhoc appointments in 01.01.1980 and 15.09.1982, respectively. They were awarded annual increments and other benefits for their military service. In fact, a perusal of the record shows that the benefits and concessions were being bestowed upon the respondents from the dates of their initial appointment and pay was fixed accordingly. This Court in ***Balbir Singh(supra)*** has categorically held that the military services rendered by a person during the Emergency period would be considered and entitle him to the benefits accrued. A reference can also be made to the judgment rendered by a Full Bench of this Court in ***Jang Singh vs. State of Punjab etc. 1997(4) SCT 313*** wherein it was held that the military services during President's Rule, rendered by an employee who had subsequently joined civil services, shall be entitled to the benefits of the military service from the date of appointment and not regularization, in accordance with The Punjab Government National Emergency (Concessions) Rules, 1965. Finally, a two Judge Bench of the Hon'ble Supreme Court in ***State of Punjab and others vs. Rafiq Masih (White Washer) etc. (2015) 4 SCC 334*** has opined that even if the State has mistakenly granted excess benefit to the employee, the order of recovery cannot be absolutely made subsequently, especially against employees belonging to Group C and Group D. Speaking through Justice K.S. Khehar, the following was held:

“8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the concerned employee. If the effect of the recovery from the concerned employee would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover”

CONCLUSION

12. In view of the discussion above, the present appeal is dismissed and the judgment and decree dated 07.10.2005 passed by the learned District Judge, Rohtak, are upheld.
13. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

29.10.2024
Ajay Goswami

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>