



984 IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA-662-2006 (O&M)
Reserved on:22.10.2024
Pronounced on: 29.10.2024

State of Haryana and others ...Appellants

Versus

Babu Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR J.

1. The present regular second appeal is preferred by the appellant-State against the judgment and decree dated 07.11.2005 passed by the learned Additional District Judge, Ambala whereby the judgment and decree dated 26.02.2005 passed by the learned Civil Judge (Sr. Division), Ambala, were upheld.

FACTUAL BACKGROUND

2. The respondent joined the Indian Army on 14.12.1962 as a combatant clerk and after serving for 16 years and 16 days, he retired from the said services on 02.01.1979. Thereafter, he was re-employed as LDC/Junior Clerk in civil services on *ad-hoc* basis on 06.08.1982. Subsequently, he was regularised on 01.11.1986 and he finally retired from service on 31.03.1999. During the proclamation of Emergency, the respondent was in the Army and rendered emergency military services from 14.12.1962 to 10.01.1968. He was granted benefits for the said period w.e.f. 04.10.1981. The Chief Secretary, Haryana issued a letter dated 16.02.99 vide which it was directed that the



services rendered as a combatant clerk shall be considered equivalent to services rendered as a clerk in civil post, irrespective of the pay drawn by him while in the Army. The respondent moved a representation before the appellant-State seeking benefits to be issued accordingly. However, his pay and pension was fixed without taking the entire period of military service into consideration

3. Consequently, the respondent filed a suit before the learned Civil Court seeking declaration to the effect that the respondent is entitled to pay fixation w.e.f. 06.08.1982 after taking into account the entire period of military service rendered by him. The following issues were framed for the consideration of the Court-

- 1. Whether plaintiff is entitled for the relief of declaration, as prayed for ? OPP*
- 2. Whether suit is not maintainable in the present form? OPD*
- 3. Relief.*

The said issues were decided in favour of the respondent and the suit was decreed in his favour vide judgment dated 26.09.2005 whereby it was held that the respondent is entitled to pay fixation w.e.f. 06.08.1982 i.e. the date of his initial appointment and not the date of his regularisation. The pension of the respondent was also ordered to be re-fixed accordingly and the arrears were directed to be paid along with interest at the rate of 9% p.a.

4. Aggrieved by the same, the appellants preferred an appeal before the lower Appellate Court, which was dismissed vide judgment dated 07.11.2005, upholding the judgment and decree dated 06.08.1982 passed by the learned Civil Judge (Senior Division), Ambala. Subsequently, the present second appeal was preferred before this Court. However, during the pendency



of the same, the respondent passed away on 11.07.2011 and his legal representatives were impleaded, accordingly.

CONTENTIONS

5. 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 letter dated 27.07.1998 (Annexure A-1) whereby it was directed that the benefit of military service is only to be given from the date of regularization on or after 20.05.1974. Moreover, the service rendered by the respondent in ad hoc capacity cannot be taken into for the purpose of calculating the duration of his service or seniority as his pay was fixed vide order dated 09.10.2001. Learned State counsel places reliance on the judgment rendered by the Hon'ble Supreme Court in ***State of Haryana vs. Haryana Veterinary and A.H.T.S. Association 2000(4) SCT 664***.

6. There was no representation on behalf of the legal representatives of the deceased respondent-Babu Singh.

OBSERVATIONS AND ANALYSIS

7. Having heard learned State counsel and after perusing the record with his able assistance, it transpires that the respondent retired from military service on 02.01.1979 but was induced into civil service w.e.f. 06.08.1982 on ad hoc basis. It is clear that appointment of the respondent as a civil clerk w.e.f. 06.08.1982, even though on ad hoc basis, was not a makeshift arrangement and that he has been in continuous service from the date of his appointment (06.08.1982) to the date of his retirement (31.03.1999).

8. 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 ad hoc 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.”

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**. Therefore, the services rendered by the respondent from the date of his appointment i.e. 06.08.1982 to the date of his regularization i.e. 01.11.1986, must be taken into consideration while fixing his pay.



9. Undisputedly, 16 years and 16 days of military service rendered by the respondent was taken into consideration while fixing pay. The benefit for the same was granted to the respondent w.e.f 01.11.1986 while his pay was fixed w.e.f. 01.11.1970. This Court in *Balbir Singh vs. State of Punjab 1998(2) SCT 116* 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. As such, the issue of consideration of military service stands settled.

CONCLUSION

10. In view of the discussion above, the present appeal is dismissed and the judgment and decree dated 07.11.2005 passed by the learned Additional District Judge, Ambala, are upheld.
11. Pending miscellaneous application(s), if any, shall also stand disposed of.

Reserved on : 22.10.2024
Pronounced on : 29.10.2024
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(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No