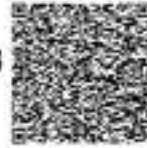


LPA-1287-2017 (O&M)

2024.PHHC.127595-DB



**214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**LPA-1287-2017 (O&M)
Date of Decision: September 24, 2024**

State of Punjab and others Appellants

Versus

Raj Kumar Respondent

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. R.S. Pandher, Sr. DAG, Punjab.

Mr. R.K. Arora, Advocate for the respondent.

LISA GILL, J.

1. Prayer in this appeal is for setting aside order dated 27.02.2017 passed by learned Single Judge whereby CWP-80-2014 filed by respondent (writ petitioner) has been dismissed.

2. Respondent (writ petitioner) filed above said writ petition for setting aside communication dated 23.12.2013 whereby his claim for grant of increments and pension in respect of military service rendered by him during Second National Emergency was rejected. Respondent joined Armed Forces on 30.11.1967 and was discharged from military service on 10.07.1974 on extreme compassionate grounds. He thereafter joined civil service with Agriculture Department in the State of Punjab on 31.08.1976 as tractor Driver on regular

LPA-1287-2017 (O&M)

basis. On bifurcation of Agriculture Department into Horticulture, services of writ petitioner with Agriculture Department were transferred to Horticulture Department. He ultimately retired from service as tractor Driver on 31.07.2005 on attaining the age of superannuation. Vide notification dated 15.10.2009 issued by Government of Punjab, it was decided that benefit in regard to Second National Emergency w.e.f. 03.12.1971 to 25.03.1977 would be afforded to Ex-serviceman who had served the nation during said period and subsequently joined civil services. Writ petitioner sought the said benefit, which was rejected vide communication dated 23.12.2013.

3. Learned Single Bench while considering the facts and circumstances found the stand of respondents in the writ petition (present appellants) to be unjustified. Denial of benefit was on the ground that writ petitioner had been discharged from service on extreme compassionate grounds from military service on 10.07.1974 i.e. before Second National Emergency ceased to exist i.e. 25.03.1977. Accordingly, writ petition filed by respondent was allowed. It was held as under:-

“ It being so, the impugned letter dated 23.12.2013 (Annexure P-3) is hereby set aside and on the deposit of said bonus or gratuity, granted to the petitioner under the military Rules, with interest, the services of the petitioner rendered during the second national emergency are ordered to be counted as qualifying service for grant of pension and other service benefits. Accordingly, after adding the said service, pension of the petitioner shall be recalculated and the revised pension and other pensionary benefits shall be paid to the petitioner.

Since, the petitioner approached this Court by way of filing of this writ petition, in the year 2014, therefore, the petitioner will not be entitled for any interest on the arrears from the date of his retirement i.e. 31.07.2005 till the date of filing of the present writ

LPA-1287-2017 (O&M)

petition i.e. 08.01.2014. Thereafter, interest on the delayed payment of retiral dues shall carry interest @ 9% per annum till the date of actual payment.”

4. Aggrieved of decision dated 27.02.2017, present appeal has been filed.

5. Learned counsel for appellant submits that learned Single Bench has not considered the controversy in correct perspective. Once the employee had been discharged from service in the middle of period of Second National Emergency, he could not be held entitled to the benefit in question. It would be available only if he had completed the said period i.e. 03.12.1971 to 25.03.1977. It is, thus, prayed that this appeal be allowed.

6. Learned counsel for respondent opposes the appeal while submitting that matter is squarely covered in favour of writ petitioner in view of Division Bench order dated 13.11.2014 in CWP-17661-2013 titled Rajinder Singh versus State of Punjab and others alongwith 14 connected matters. Dismissal of the appeal is sought.

7. We have heard learned counsel for parties and have gone through the file with their able assistance.

8. The factual aspect as narrated above is not in dispute. It is a matter of record that writ petitioner was in service at the time of start of Second National Emergency i.e. 03.12.1971. Relevant and applicable provision i.e. Rule 8B(a) and (b) of Punjab Recruitment of Ex-serviceman Rules, 1982 as amended on 15.10.2009 reads as under:-

“8-B Increments and pension – Period of military service rendered during the Second National Emergency from 3rd December, 1971 to 25th March, 1977, shall count for increments and pension as under:-

LPA-1287-2017 (O&M)

- a) **Increments** - The increments for the aforesaid service shall be paid to those persons only, who joined and rendered service during the afore mentioned period. This benefit will, however, be given only at the time of making first appointment on regular basis on a civil post or service under the Government. However, these increments will be taken into account when the pay of a person is subsequently fixed on account of his promotion, selection, new recruitment or revision of pay scale or otherwise; and
- b) **Pension** - The period of military service, referred to above, shall count towards pension only in case of an appointment to a permanent post under the Government, subject to the following conditions, namely:-
 - (i) the person concerned should not have earned a pension under military rules in respect of the military service in question.
 - (ii) any bonus or gratuity paid in respect of military service by the defence authorities shall have to be refunded to the Government.
 - (iii) the period, if any, between the date of discharge from military service and the date of appointment to any service or post under the Government, shall count for pension; provided such period does not exceed one year. Any period exceeding one year, but not exceeding three years, may also be allowed to count for pension in exceptional cases as per orders of the Government.”

9. Perusal of Rule does not reveal any such bar for release of benefit for the period of second National Emergency for which the employee served. There is no such stipulation that proportionate benefit in question cannot be released to a person who has not completed service for the entire period from 03.12.1971 to 25.03.1977.

LPA-1287-2017 (O&M)

10. Argument that the benefit would be available to the employee only if he had joined Armed Forces during the period in question, is devoid of any merit especially keeping in view the order dated 13.11.2014 passed in CWP-17661-2013. Controversy sought to be raised in any case is no longer res integra, keeping in view the decision of Hon'ble Supreme Court in **Raj Pal Sharma and others versus State of Haryana 1985 AIR SC 1263**, wherein it has been categorically held that mere factum of employee being released from military service on compassionate ground cannot disentitle him from the benefit in question.

11. Learned counsel for appellant is unable to point out any infirmity or irregularity in impugned order dated 27.02.2017 which calls for interference.

12. No other argument has been raised.

13. In the given facts and circumstances as above, impugned order dated 27.02.2017 is upheld. Appeal is, accordingly, dismissed being devoid of any merit.

14. Pending application(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

September 24, 2024
Rts

(SUKHVINDER KAUR)
JUDGE

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