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

RSA-1493-2000 (O&M)
Date of decision: 25.03.2025

State of Punjab and another

...Appellants

Versus

Gulzar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Surya Kumar, AAG, Punjab, for the appellants.

Mr. Amandeep Singh Manaise, Advocate for the respondent.

VIKAS BAHL, J. (ORAL)**INDEX**

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CHALLENGE IN THE PRESENT REGULAR SECOND APPEAL:-

1. The defendants i.e., State of Punjab and District Education Officer, Gurdaspur have filed the present Regular Second Appeal under Section 41 of the Punjab Courts Act, 1918, challenging the judgment dated



12.06.1998 passed by the First Appellate Court vide which the appeal filed by the respondent-plaintiff had been partly allowed and the suit filed by the respondent-plaintiff had been partly decreed and the judgment of the trial Court had been set aside and the respondent-plaintiff had been held entitled to the benefits of increments and seniority on account of his military service rendered during the period of emergency and since the plaintiff had retired on 30.11.1987 thus, he had been granted arrears for the period from 20.02.1987 to 30.11.1987.

ARGUMENTS ON BEHALF OF THE STATE-APPELLANTS/DEFENDANTS:-

2. Learned State Counsel appearing on behalf of the appellants has submitted that the judgment of the First Appellate Court is illegal and deserves to be set aside solely on the ground that the benefit had been given by the First Appellate Court to the respondent-plaintiff under the Punjab Government National Emergency (Concession) Rules, 1965 (hereinafter to be referred as “the 1965 Rules”) and that the said benefit could have only been given to a person who was appointed during the period of Emergency whereas the present respondent-plaintiff even as per his own case was appointed in the Indian Army w.e.f. 25.06.1951 and at the said time, the Emergency was not in operation. It is submitted that the suit filed by the plaintiff had been rightly dismissed by the trial Court and the said judgment had been wrongly set aside by the First Appellate Court.

ARGUMENTS ON BEHALF OF THE RESPONDENT-PLAINTIFF:-

3. Learned counsel for the respondent, on the other hand, has submitted that in the present case, the respondent-plaintiff had served the



Indian Army w.e.f. 25.06.1951 to 30.06.1979 and after his retirement, he was appointed as a Teacher on 08.05.1980 in the State of Punjab and since the Notification dated 20.07.1965 (i.e., the 1965 Rules) is applicable to the State of Punjab, thus, the same is to be applied in the present case. It is submitted that in the State of Punjab, the definition of 'military service' is provided in Rule 2 of the 1965 Rules and as per the said definition, 'military service' means enrolled or commissioned service in any of the three wings of the Indian Armed Forces rendered by a person during the period of operation of the Proclamation of Emergency made by the President. It is submitted that as far as the State of Haryana is concerned, an amendment had been made in the Rules vide Notification dated 09.08.1976 and as per the said amendment, which has a retrospective effect from 01.11.1966, the phrase "enrolled or commissioned service during the period of operation of the Proclamation of Emergency" was replaced by the phrase "who had been enrolled or commissioned during the period of operation of the Proclamation of Emergency" and thus, the judgments which have been passed with respect to State of Haryana, interpret the 1965 Rules as amended on August 9, 1976 whereas as far as the State of Punjab is concerned, it had been affirmatively held that even a person who had entered the military service prior to the Proclamation of Emergency would be entitled to the benefit of military service, provided that he had served during the period of Emergency, which the present plaintiff/respondent had admittedly done. It is submitted that thus, the judgment of the First Appellate Court is in accordance with law and deserves to be upheld and the present Regular Second Appeal being meritless, deserves to be dismissed.



ANALYSIS & FINDINGS:-

4. This Court has heard learned counsel for the parties and has perused the paper book and is of the opinion that the judgment of the First Appellate Court is in accordance with law and deserves to be upheld and the present Regular Second Appeal being meritless, deserves to be dismissed for the reasons stated hereinafter.

5. The respondent-plaintiff had filed a suit for declaration to the effect that the respondent-plaintiff was entitled to all the benefits including increments, promotion, seniority, pay-scale, gratuity and other benefits of military service rendered by him during the period of National Emergency i.e. in the years 1962, 1965 and 1971 and an alternative prayer was also made for mandatory injunction directing the defendants to count the military service of the plaintiff towards seniority, promotion, increments, pay-scale, gratuity and other retiral benefits. It was the case of the respondent-plaintiff, which is not disputed before this Court, that the plaintiff-respondent had served the Indian Army w.e.f. 25.06.1951 to 30.06.1979 and was even holding the rank of J.C.O. (JC-62246 Subedar) and that he had retired from service on 30.06.1979. It is also not disputed that the plaintiff-respondent had rendered services during the National Emergency of 1962, 1965 and 1971 and after retirement from the military, he had served in the Education Department from 08.05.1980 to 30.11.1987 as a Social Studies Master. It was the case of the respondent-plaintiff that he was entitled to the benefits under the 1965 Rules with respect to increments, promotion, payscale etc. and that for the said purpose, the plaintiff had



approached the defendants on several occasions and had even served legal notice dated 07.02.1989, however, the defendants served a letter on 25.08.1989 to the Headmaster, Government High School, Sahowal, refusing to grant any benefits of military service and accordingly, the present suit was filed on 21.04.1990.

6. The trial Court had dismissed the suit vide judgment and decree dated 25.07.1995. The respondent-plaintiff filed an appeal and the First Appellate Court vide judgment & decree dated 12.06.1998 was pleased to grant the following relief:-

“9. In view of the aforesaid discussion, I hold that the appeal of the appellant-plaintiff is liable to be accepted in part. Accordingly the judgment and decree of the learned trial court is set aside and the suit of the plaintiff for declaration that he is entitled to the benefits of increments and seniority on account of his military service rendered during the period of emergency is decreed. However, the plaintiff shall be entitled to arrears only for the period 20.2.1987 to 30.11.1987 because an employee can claim arrears only for a period of 3 years and two months. The plaintiff retired on 30.11.1987 and as such, he can ask for arrears only for the period from 20.1.1987 to 30.11.1987. However, the parties are left to bear their own costs. Decree sheet be drawn accordingly and then file be consigned to the Record Room.

Announced.”

A perusal of the above would show that the arrears were granted to the plaintiff/respondent only for the period from 20.02.1987 to 30.11.1987, as the suit was filed on 21.04.1990 and it was observed that the arrears could only be claimed for the period of three years and two months



prior to the filing of the suit. The First Appellate Court had taken into consideration that the said relief could have been granted only till the date of retirement i.e. 30.11.1987. Prayer made by the plaintiff to the effect that the military service be counted for the purpose of pension, was rejected.

7. While granting relief under the 1965 Rules, the First Appellate Court had taken into consideration the judgments passed with respect to the State of Haryana and it was observed that with respect to State of Haryana, the subsequent amendment provided that only the persons “who had been” enrolled or commissioned during the period of Proclamation of Emergency by the President would be granted the benefits whereas there was no such amendment in the 1965 Rules as applicable to the State of Punjab. It was thus, held that since the plaintiff-respondent had carried out his duties in the State of Punjab, thus, he was entitled to the benefits of 1965 Rules. While allowing the appeal, even the arguments on behalf of the defendants-State to the effect that the 1965 Rules had been repealed on 12.02.1982 was rejected by observing that the plaintiff-respondent had been appointed as a Teacher on 08.05.1980, prior to the repeal of the 1965 Rules on 12.02.1982 and that the benefits of the 1965 Rules which were applicable at the time of entering into service could not be taken away on repeal of the said Rules and that the plaintiff would continue to get the benefits of the 1965 Rules.

8. It would be relevant to note that the learned counsel for the respondent-plaintiff has referred to the Punjab Recruitment of Ex-Servicemen Rules, 1982 (hereinafter to be referred as the “1982 Rules”) and has specifically highlighted Rule 9 of the said 1982 Rules, which is reproduced hereinbelow:-



“9.General.-(1) In matters not specifically provided for in these rules, a person appointed against a reserved vacancy shall be governed by the concerned Service Rules.

(2) All concerned Service rules shall be subject to the provisions of these rules and the said rules shall be construed accordingly.

(3) Nothing in these rules shall be construed as depriving any person to whom these rules apply of any right which had accrued to him under the rules, notifications or orders in force immediately before the commencement of these rules.”

A perusal of the above Rule 9 would show that under Rule 9(3), it has been stated that nothing in these 1982 Rules shall be construed as depriving any person to whom these Rules apply of any right which had accrued to him under the Rules, Notifications or orders in force immediately before commencement of these Rules and thus, the right which had accrued under the 1965 Rules to the respondent-plaintiff has been saved. The said aspect has not been challenged by the State of Punjab in the present appeal.

9. The primary issue raised in the present case is “as to whether the plaintiff-respondent who had served in the Indian Army w.e.f. 25.06.1951 to 30.06.1979 and had entered military service prior to the Proclamation of Emergency but had served during the period of Emergency, was required to be granted the benefit of his military service under the Punjab Government National Emergency (Concession) Rules 1965 or not?”. Rule 2 of the said Punjab Government National Emergency (Concession) Rules 1965 reads as under:-

*“2. Definition:- For the purposes of these rules, **the expression***



'military service' means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including service as a warrant officer) rendered by a person during the period of operation of the Proclamation of Emergency made by the President under Article 352 of the Constitution on the 26th October, 1962, or such other service as may hereafter be declared as military service for the purposes of these rules. Any period of military training followed by military service shall also be reckoned as military service."

A perusal of the said rule would specifically show that the phrase which is being used in the said provision is "enrolled or commissioned service during the period of operation of the Proclamation of Emergency" and the same nowhere states that 'military service' would mean the services rendered by a person "who had been" enrolled or commissioned during the period of operation of the Proclamation of Emergency. Thus, the bare reading of the abovesaid Rule would clearly show that even a person who has entered into the military service prior to such declaration but has served during the period of Proclamation of Emergency, would be entitled to count the said service as "military service" and would be entitled to claim benefits under the 1965 Rules, which would include the increments, seniority etc. as provided under Rule 4 of the said 1965 Rules. The said Rule 4 is reproduced hereinbelow:-

"4. Increments, seniority and pension:- Period of military service shall count for increments, seniority and pension as under:-

(i) Increments:- The period spent by a person on military service, after attaining the minimum age prescribed for appointment to any service or post, to which he is appointed,



shall count for increments. Where no such minimum age is prescribed the minimum age shall be as laid down in rules 3.9, 3.10 and 3.11 of the Punjab Civil Services Rules, Volume II. This concession shall, however, be admissible only on first appointment.

(ii) Seniority:- The period of military service mentioned in clause (i) shall be taken into consideration for the purpose of determining the seniority of a person who has rendered military service.

(iii) Pension:- The period of military service mentioned in clause (i) shall count towards pension only in the case of appointments to permanent services or post under the Government subject to the following conditions:-

(1) The person concerned should not have earned a pension under military rules in respect of the military service in question;

(2) Any bonus or gratuity paid in respect of military services by the defence authorities shall have to be refunded to the State Government;

(3) 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 under the orders of the Government.”

10. The Division Bench of this Court in the case of **Jamiet Singh Vs. District & Sessions Judge, Amritsar**, reported as **1995(1) SCT 462**, had answered the question, to the effect whether a person who had been enrolled or commissioned in any of the three Wings of Indian Armed Forces prior to the Proclamation of Emergency and had joined a civil post in the State of



Punjab after his discharge/retirement from the Armed Forces, was entitled to the benefits of pay and seniority etc. under the 1965 Rules, in the favour of the employee. In the said case, the Division Bench had taken into consideration the 1965 Rules, more so, the definition of ‘military service’ as given in Rule 2 of the said 1965 Rules and after considering the same, had come to a positive conclusion that a person who had joined a civil post in the State of Punjab, was entitled to the benefits of military service rendered by him during the operation of the Proclamation of Emergency, even if he had entered the military service prior to such declaration. While deciding the said case, the Division Bench of this Court had also taken into consideration the cases with respect to State of Haryana and had observed that in the State of Haryana, a notification had been issued on 09.08.1976 by which the definition of military service was amended with a retrospective effect from 01.11.1966 and in Rule 2, it was specifically mentioned that ‘military service’ would mean the service rendered by a person “**who had been** enrolled or commissioned during the period of operation of the Proclamation of Emergency” and had thus, come to the conclusion that there was distinction in the language of the Rules as applicable to the State of Punjab and to the State of Haryana.

11. The judgment of the Division Bench applies on all fours in the present case and the sole argument raised on behalf of the State deserves to be rejected on the said basis. Relevant portion in Jamiet Singh’s case (Supra) is reproduced hereinbelow:-

“Is a person who had been enrolled or commissioned in any of the three Wings of the Indian Armed Forces prior



to the proclamation of the Emergency on October 26, 1962 and joins a civil post in the State of Punjab after his discharge/retirement from the Armed Forces, entitled to the benefits of pay and seniority etc. under the Punjab Government National Emergency (Concession) Rules, 1965? This is the short question that arises in this petition under Article 226 of the Constitution. A few facts may be noticed.

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5. *At the outset, it is apt to notice Rule 2 of the 1965 Rules.*

It reads as under:-

“2. Definition- For the purposes of these rules, the expression ‘military service’ means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including service as a warrant officer) rendered by a person during the period of operation of the Proclamation of Emergency made by the President under Article 352 of the Constitution on the 26th October, 1962, or such other service as may thereafter, be declared as military service for the purposes of these rules. Any period of military training followed by military service shall also be reckoned as military service.

6. *A perusal of the above provision shows that the period of service ‘rendered’ by a person during the operation of the Proclamation of Emergency made by the President on October 26, 1962 as an enrolled or commissioned member of the Indian Armed Forces qualifies to be treated as ‘military service’. Even if a person had joined Army prior to the Proclamation of Emergency and had continued to serve after its cessation on January 3, 1968, the period of service rendered by him from October 26, 1962 to January 8, 1968 falls within the above provision and has to be treated as ‘military service’. As a result, the benefits of increments, seniority and pension etc. as admissible under Rule 4, are due*



to him.

7. *On behalf of the respondent, it has been contended that the benefit under Rule 4 is admissible only to such persons as had been enrolled or commissioned during the period of operation of the Emergency and not to others. Reliance in support of this contention has been placed on the three decisions as noticed above.*

8. ***Before proceeding further to consider these decisions, it is apt to notice that the State of Haryana in exercise of its powers under Article 309 of the Constitution, issued a notification on August 9, 1976 by which the definition of 'military service' was amended with retrospective effect from November 1, 1966. It was provided as under:***

*"2. Definition-For the purpose of these rules the expression 'military service' means the service rendered by a person, **who had been enrolled or commissioned** during the period of operation of the proclamation of emergency made by the President under Article 352 of the Constitution of India on October 26, 1962 in any of the three wing 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."*

9. ***A plain reading of the above provision shows that the State of Haryana had specifically decided to grant the benefit of military service only to such persons as had been enrolled or commissioned during the period of operation of the proclamation of Emergency. As such, the benefit was clearly confined to the particular class and was not available to those who had been enrolled in the Indian Army prior to the proclamation of the Emergency. The distinction between the***



Rules as prevalent in the State of Punjab and the State of Haryana, is thus, clear. While in the State of Punjab, the benefit is admissible to a person who has rendered service during the period of operation of the proclamation of Emergency which by necessary implication means that he may have been enrolled even earlier, it is not so in the case of employees in the State of Haryana wherein the benefit is available only if the person had been enrolled or commissioned during the period of operation of Emergency. Since the Rules has not been amended by the State of Punjab, the provision as introduced by the State of Haryana can have no application to the persons serving in the State of Punjab. In our view, there is a basic distinction between the provisions as made by the two States. As a result, the rules prevalent in the State of Haryana can have no application to the employees in the State of Punjab.

10. *It is in the background of this basic distinction that the question raised in the present case has to be considered.*

11. *The petitioner had admittedly rendered service during the proclamation of Emergency. After his release from the Army, he had joined a civil post in the State of Punjab. In our view, he was entitled to the benefits of military service as envisaged under Rule 4.*

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16. *Accordingly, we answer the question posed at the outset in the affirmative and hold that a person who joins a civil post in the State of Punjab, is entitled to the benefit of military service rendered by him during the operation of the proclamation of emergency from October 26, 1962 to January 8, 1968 even if he had entered to military service prior to such declaration.*

17. *The writ petition is, accordingly, allowed. The impugned order is set aside. The respondent is directed to re-determine*



the petitioner's pay and seniority by giving him the benefit of the service rendered from October 26, 1962 to January 8, 1968. Consequential benefits shall follow.”

12. The First Appellate Court had thus, rightly considered all the issues in question and had rightly partly allowed the suit filed by the respondent-plaintiff. Prayer for grant of pension to respondent-plaintiff had been rightly rejected by the First Appellate Court as the plaintiff-respondent had been given pension by the Armed Forces and had not filed any appeal against the said finding.

13. Keeping in view the abovesaid facts and circumstances, the judgment of the First Appellate Court is in accordance with law and deserves to be upheld and the present Regular Second Appeal being meritless, deserves to be dismissed and is accordingly, dismissed.

14. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

25.03.2025

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No