
(2008) 04 P&H CK 0039

High Court Of Punjab And Haryana At Chandigarh

Case No: None

State of Haryana and Another

APPELLANT

Vs

Sube Singh

RESPONDENT

Date of Decision: April 10, 2008

Citation: (2008) 2 PLR 757

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Kumar Jain, J.

The defendants are in appeal. The case set up by the plaintiff in the plaint is that he had served in the Indian Army during proclamation of National Emergency from 25th March, 1963 to August, 1975 and thereafter joined Civil Service as Driver in the office of Chief Medical Officer, Civil Hospital, Kamal on 18.9.1980 and had been working upto 9.2.1984. His service was dispensed with but subsequently by order of the Labour Court he was taken back into service with continuity on 11.7.1985. The plaintiff had retired from government service on 31.7.1998 after attaining superannuation. The plaintiff has claimed that he be given benefits of military service towards pay fixation, seniority, pension and be released arrears of pay and allowances. Suit was contested by both the defendants No. 1 and 2 by filing a written statement in which it was stated that all the benefits to which the plaintiff was entitled have been duly given by Director General Health Services, Haryana vide his letter dated 10.12.1999. The plaintiff filed replication, while denying the averments of the written statement, plea taken in the plaint were reiterated.

2. On the pleading of the parties, the trial Court framed following issues:

1. Whether the plaintiff served the army during proclamation of National Emergency from 25.3.63 to August, 1975? OPP

2. If the issue No. 1 is in affirmative then whether the plaintiff is entitled to the benefit of proclamation of emergency? OPP

3. Whether the suit is not maintainable? OPD

4. Whether the plaintiff has no cause of action against the defendants? OPD

5. Relief.

3. Both the Courts have decreed the suit of the plaintiff. It has been held that the plaintiff is entitled to get the incremental benefits which considering his date of appointment i.e. 11.7.1985 and military benefits shall be counter which treating the relevant date as 11.7.85 with 12% interest on the amount due from the date of accrual till the date of final realisation.

4. Arguing on behalf of the appellants, Sh. Kulvir Narwal, Additional Advocate General, Haryana asserted that judgment and decree of both the Courts are illegal on the ground that the actual date for counting the benefit of military service is the date of regular appointment i.e., 31.12.1990. Counsel for the appellants drew the attention of this Court to para 7 of the grounds of appeal where questions of law involved have been framed, which are reproduced as under:

i) Whether the judgment and decree passed by the Ld. Trial Court as upheld by the First Appellate Court are based on surmises, conjectures and wrong appreciation of facts/law?

ii) Whether as per the 1965 Rules the plaintiff/respondent is entitled to the grant of benefit of increment of military service when he was working on adhoc basis or from the date when he was appointed on regular basis?

iii) Whether the action of the appellant deptt. in granting the benefit of Military service for benefit of increment and seniority taking into consideration the regular date of appointment is 31.12.90 is justified and suffers from any illegality?

iv) Whether the judgment relied upon by the Ld. Courts below i.e. Raj Pal Sharma v. State of Haryana reported as 1985 3 S.L.R. 573 is applicable to the facts and circumstances of the case?

5. Counsel for the appellants has primarily relied upon instructions issued by the Government vide letter Ex.D3 dated 16.1.1990 whereby it was decided that benefit of military service cannot be given to the employees appointed on adhoc basis.

6. On the contrary, counsel for the respondent relied upon the Punjab Government National Emergency (Concession) Rules, 1965 adopted by the State of Haryana and has referred to Rule 4 which is reproduced as under:

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 Vol.11. This concession shall, however, be admissible only on first appointment.

7. It was further argued that the military service is to be taken into consideration for the purposes of increments and seniority of the person who has rendered military service and the only condition which has been attached in the Rule is that concession shall be admissible on the first appointment. It was also pointed out that DW1 Sumitra Verma has admitted in the cross examination that respondent was appointed first time in the Department on 18.9.1980 for a period of six months thereafter his service was terminated on 1984 and was taken back into service on 8.7.1985 as temporary employee but his service was regularized on 31.12.1990. Counsel for the respondent has also relied on a decision of Hon"ble Supreme Court in the case of Raj Pal Sharma etc. etc. v. State of Haryana AIR 1995 SC 1263 and argued that appointment to any service or post does not further qualify that conditions have been attached with it as permanent appointment, temporary appointment of adhoc appointment. Once a person is appointed to any post, he is entitled to benefits of military service.

8. I have heard both the counsels for the parties and have perused the record. There is no dispute that Rule 4 of the Punjab Government National Emergency (Concession) Rules, 1965 has been adopted by the State of Haryana which provides that the period spent by person in military service shall be counted for increments provided it is the first appointment. The fact regarding the first appointment of the respondent has been admitted by the defendants witness DW11 and the benefit of seniority has been granted to the Plaintiff on the basis of military service.

9. So far as the questions of law that has been raised by the learned Counsel for the appellants are concerned, these have been aptly answered by both the courts below to the effect that the instructions Ex. D3 cannot over ride the statutory rules which was enacted at the time of emergency period. This also find support from the law laid down by Hon"ble Apex Court in the case of [Punjab Water Supply and Sewerage Board, Hoshiarpur Vs. Ranjodh Singh and Others](#), and by a Division Bench of this Court in the case of Chhalinder Singh v. State of Punjab 2005 (3) R.S.J. 733. Therefore, the argument of the counsel for the appellants is totally misplaced that the benefit of military service for benefit of increments has to be considered from the regular date of appointment as per Ex. D3.

10. In view of the discussion above, I do not find any error in the judgment and decree of the Courts below and hold that no question of law much less substantial is involved in this appeal. Therefore, the same is hereby dismissed without order as to costs.