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Biru Ram Pathak and others Vs The State of Punjab and another

Civil Writ Petition No. 5141 of 1978

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 4, 1982

Citation: (1982) 10 P&H CK 0002

Hon'ble Judges: S.S. Sandhawalia, J; S.S. Kang, J; D.S. Tewatia, J

Bench: Full Bench

Advocate: Kuldip Singh, for the Appellant; K.K. Cucuria for the State and Mr. J.L. Gupta for the Respondent No. 2, for the Respondent

Judgement

S.S. Sandhawalia, C.J.
A supposed conflict of view betwixt the Division Bench judgments of this Court in Dr. Jagmohan Singh v. The

State of Punjab 1980 (3) S.L.R. 400 and The State of Punjab and another v. Shri Pritam Chand 1980 (3)S.L.R. 802 alone has necessitated this

reference to the Full Bench.

2. Since we discern no discordance betwixt the two judgments it is wholly unnecessary to advert to the facts. At the very threshold it deserves

highlighting that the same learned Judges who constituted the Division Bench in the aforesaid two cases were construing the distinct and separate

definition clauses of rule 2 of the Demoblized Armed Forces Personnel (Reservation of Vacancies in the Punjab State Non-Technical Services)

Rules 1968 as amended by by Rules of 1977. To bring this in sharp focus the relevant provisions which fell for construction in each of the two

cases may be juxtaposed against each other:--

2(a)x xx 2(a) x xx

(b) x xx (b) x xx

(c) "release" (with its (c) x xx

grammatical variations)

means release as per

Scheduled year of release

after a spell of services,

from the Armed Forces of

the Union but does not

include release during or

at the end of training, or

during or at the end of

Short Service Commission

granted to cover "periods"

of such training prior to

being taken in actual

service or release on

account of misconduct or

inefficiency or at the

request of a released

Indian Armed Forces

Personnel himself.

(d) "Released Indian

Armed Forces Personnel"

means the Indian Armed

Forces Personnel who were

commissioned to or who

joined the Armed Forces of

the Union, as the case may

be, on or after the first day

of November, 1962 but

before the 10th day of

January, 1968 and who

were released on

demobilisation thereafter

but does not include.

(i) x xx

(ii) Indian Armed Forces

Personnel who before their

appointment against

vacancies reserved under

these rules:-

(a) x xx

(b) joined or join a Civil

service of the Union or a

Civil service of a State or a

Civil post under the Union

or a State after their release

from the Armed Forces of

the Union

With the aforesaid statutory background it suffices to recall that in Dr. Jagmohan Singh"s case it was specifically the constitutionality of sub-clause

(ii)(b) of the rule 2(d) which alone had fallen for consideration. After an exhaustive discussion it was held that this provision, which sought to

restrict these concessions only to the first appointment in the Civil service after the release from the Armed Forces did not in any manner promote

the objects of the rules and indeed tended to defeat the same. Consequently the conclusion arrived at was as under:--

For the foregoing reasons, I hold that rule 2(d)(ii)(b) of the Demobilised Armed Forces Personnel (Reservation of Vacancies in the Punjab State

Non Technical Services) (1st Amendment) Rules, 1977 is ultra vires I strike down the same.

3. On the other hand in Pritam Chand"s case the aforesaid provision did not even remotely come up for consideration. Therein the sole challenge

was directed mainly to clause (c) of rule 2 quoted above. Upholding its validity it was opined that the classification of Armed peronnel on account

of their having been released at their own request on compassionate grounds was valid and reasonable. In so opining the Bench had followed the

Full Bench judgment in Sant Ram Nehra v. The State of Haryana (1980) 2 ILR Punj. & Hary. 247, wherein a somewhat similar provision in the

rules made by a Haryana amendment had been upheld.

4. It would thus appear that herein there is no conflict of judicial opinion. The Division Bench in Dr. Jagmohan Singh"s case and that in Pritam

Chand"s case were construing altogether different and independent clauses of rule 2. Indeed the learned counsel for the parties ultimately were

unanimous in submitting that in fact no divergence of judicial opinion arises and that they were somewhat remiss to even suggest the same before

the learned Single Judge.

5. Accordingly we bold that both the cases are in consonance with each other and direct that the matter be now placed before the learned Single

Judge for decision on merits.

D.S. Tewatia, J.

6. I agree.

S.S. Kang, J.

7. I also agree.