

**(1982) 10 P&H CK 0002**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Writ Petition No. 5141 of 1978

Biru Ram Pathak and others

APPELLANT

Vs

The State of Punjab and another

RESPONDENT

**Date of Decision:** Oct. 4, 1982

**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 Demobilized 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

(b) x xx

2(a) x xx

(b) x xx

(c) "release" (with its 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.

(c) x xx

(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 personnel 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 hold 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.