IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

LPA-265-2023 (O & M)
Reserved on: 22.10.2024
Pronounced on: 13.11.2024

STATE OF PUNJAB AND OTHERS .....Appellants

Versus

UJALJIT SINGH (SINCE DECEASED) THROUGH LRs. Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Maninder Singh, Sr. DAG, Punjab.

Mr. Malkeet Singh, Advocate
for the respondent.

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SURESHWAR THAKUR, J.

1. Through the filing of the instant Letter Patent Appeal, the appellant herein - State of Punjab prays for quashing of the order dated 24.05.2022, as passed by the learned Single Judge upon CWP No.24952 of 2014, titled as "Ujaljit Singh Vs. State of Punjab and Others", wherebys the writ petition filed by the respondent became allowed.

Brief facts of the case.

2. The respondent joined the Indian Air Force on 18.12.1959 and while he was serving, the First National Emergency was declared on 16.10.1962. The said emergency remained in force till 09.01.1968. The respondent served during the said period and ultimately was discharged on 08.03.1970. The respondent after rendering 10 years and 97 days of service in the Indian Air Force, applied for the post of Excise and Taxation Officer against a reserved vacancy and was

appointed on the said post on 31.08.1989. The respondent served the Department in the State of Punjab till attaining the age of superannuation i.e. 30.06.1999. After retirement, the respondent raised a grievance that as per the Punjab Recruitment of Ex-Servicemen Rules, 1982 (hereinafter for short called as the 1982 Rules) the respondent was entitled for counting the service which he had rendered during the First National Emergency rather both towards the granting of increments as well as towards the pensionary benefits. However, the said espousal became denied to him.

3. Feeling dis-satisfied, the respondent filed CWP-24952-2014 before this Court. The said writ petition became allowed vide order dated 24.05.2022. Aggrieved from the said affirmative order, the appellant-State of Punjab has filed thereagainst the instant appeal before this Court.

Grounds of Appeal.

4. The respondent after being discharged from the Indian Air Force on 08.03.1970, had joined the Department as Excise and Taxation Officer after a gap of more than 17 years. Therefore, the respondent was ineligible to get the benefit, as claimed under the relevant rules, thus governing the recruitment of Ex-servicemen to the State Civil Services and posts connected with the affairs of the State of Punjab. The said rules are extracted hereinafter.

Punjab Recruitment of Ex-Servicemen Rules, 1982

"8-A, Increments and pension – Period of military service rendered during the First National Emergency from 26 th

October, 1962 to 9th January, 1968 shall count for increments and pension as under :-

(i) Increments - The period spend by a person on military service (restricted to emergency period from 26th October, 1962 to 9 th January, 1968) 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) Pension - The period of military service mentioned in clause shall count toward pension only in the case of appointments to permanent services of posts, 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 service 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.

5. The learned State counsel further submits, that the learned Single Judge has erred in citing the judgment passed by a Co-ordinate Bench of this Court in ***CWP-6214-2012*** titled as ***Gulzara Singh Vs. State of Punjab***, as in the said case, the petitioner was enrolled in the

Indian Army as a Sepoy on 18.11.1963. He retired as a Junior Commissioned Officer (JCO) on 31.08.1986. Upon his being discharged from service, he was appointed as a Clerk in the Punjab Sainik Welfare Department on 11.11.1986, thus there was a gap of only three months, inter-se his becoming discharged from army and his becoming appointed as a Clerk in Sainik Welfare Department, whereas, since in the instant case there is an evident apposite difference of more than 17 years. Resultantly, he argues that the said gap inter-se the discharge of the present respondent from the Army and his re-appointment against a civil post, therebys does, in terms of the supra underlined Sub Rule, rather bar him, to claim that the term of the military service rendered by him during the First National Emergency be counted towards pension.

For the reasons to be assigned hereinafter, the judgment appealed before this Court does not require any interference and is required to be upheld.

6. In the provisions embodied in clause (3) of the 1982 Rules, thus expostulations occur qua in the event of a soldier after his discharge/superannuation from military service, is appointed to a service or post under the Government, thereupon, only when the said re-appointment is made upon a period of one year elapsing, since the happening of the discharge of the soldier, thus the period of rendition of military service hence is to be counted towards endowing the benefits of pension to the soldier, rather upon his superannuating from the civil post concerned. Moreover, there is a further power in the Government to, but only in exceptional circumstances, where a period of three years

elapse since discharge of the soldier from military service, and his re-appointment taking place, thus endow to the soldier, who has evidently served during the First National Emergency, the benefits/periods of his military service rather becoming counted for the purpose of increments or for purposes of pension.

7. However, the said provisions are required to be read down, as they both are oppressive and arbitrary, inter alia, on the following grounds :

a) They create an onerous burden upon the military soldier, who evidently served during the First National Emergency, to ensure, that within one year from the date of his discharge and/or within three years of his discharge, rather his ensuring his appointment being made to any service or post in the Government, for therebys making the relevant rendered military service during the First National Emergency, thus reckonable for the purpose of increments and pension.

b) Even if assumingly some civil posts, did become advertised before the supra elapsings taking place, especially in the interregnum inter-se his discharge from military service and upto his becoming appointed against a civil post, whereupon, with the present respondent evidently not applying against the said post, thus the said bar may have become attracted against him. However, yet there was a requirement qua the existence of evidence on record, personifying that despite the apposite advertisement of civil post(s) being made but before the elapsings of one or three years from the date of discharge of

the present respondent from military service, yet the present respondent not applying for the said advertised posts.

c) Since the said evidence does not surge forth nor obviously is brought on record, therebys when in the supra phase rather no civil posts became advertised, to enable the applicant to apply thereagainsts, thus after his discharge from military service. Contrarily, when it naturally appears that the civil post(s) became advertised after 17 years elapsing, in the interregnum since his discharge upto the makings of an advertisement. Consequently, when the advertisement of post(s) falling to the category of the present respondent, but was an imperative necessity rather obviously for enabling the present respondent to apply thereagainst. However, when for reasons (supra) no post(s), thus falling to the ex-servicemen category, rather became advertised, before the elapsing of either one or three years since the date of discharge of the present respondent from military service.

8. In sequel, if yet it is pressed that the present respondent is, to be barred from receiving the benefit of his rendered military service during the first National Emergency, thereupon, it would result in grave prejudice being heaped upon the present respondent. Moreover, therebys the Rule (supra) would work as an exacting oppression, thus against the monetary interest of a soldier, who evidently served during the First National Emergency.

9. In the face of the above, the said Rules are required to be read down in the manner (supra) but favourably vis-a-vis the present respondent, thus given the piquant facts and circumstances at hand.

10. Moreover, a perusal of records reveals that even the bar encapsulated in clause (1) of Rule 8-A of the 1982 Rules, is also not attracted, inasmuch as, it is not evidently demonstrated that the respondent was receiving any pension in respect of the military service as became rendered by him. Therefore, upon superannuation of the present respondent taking place from the civil post, therebys, his rendition of service during the First National Emergency lasting upto 9th January, 1968 but was required to be counted both towards endowing to the present respondent, the benefits of increments as well as the benefits of pension.

11. In view of the above, this Court finds no reason to interfere with the order passed by the learned Single Judge.

Final Order of this Court.

12. In aftermath, this Court finds no merit in the appeal and with the observation(s) aforesaid, the same is dismissed.

13. The impugned order, as passed by the learned Single Judge is maintained and affirmed.

14. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

13.11.2024
kavneet singh

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