

Ex-Capt. A. S. Parmar and Others

Vs

State of Haryana and Others

Review Petition Nos. 107, 107-A and 107-B of 1986. In Civil Misc. Petition Nos. 37521 of 1984 and 24308 of 1985. In Civil Appeal Nos. 3095-96 of 1980 and Writ Petition No. 8328 of 1981

(O. Chinnappa Reddy, V. B. Eradi JJ)

10.04.1986

ORDER

CHINNAPPA REDDY, J. -

1. These petitions have been filed by the State of Haryana to review an order made by us in CMP Nos. 37521 of 1984 and 24308 of 1985 in Civil Appeal 3095-96 of 1980 and Writ Petition 8328 of 1981. Ex-Captain A. S. Parmar and others were the appellants in Civil Appeals 3095-96 of 1980 and Hawa Singh Dhillon was the petitioner in Writ Petitioner 8328 of 1981. These civil appeal and writ petition along with some other civil appeals and writ petitions were disposed of by a judgment pronounced by us on April 26, 1984. The grievance of the appellants and the petitioners therein was that by an amendment of the Punjab National Emergency (Concessions) Rules, 1965 made in 1976, certain benefits which had been given to persons, who had volunteered for military service during the external emergency had been illegally taken away. This Court granted the following relief : (SCC p. 295, para 24)

The impugned Rule 4 (ii) of the Punjab Government National Emergency (Concessions) Rules, 1965, as amended by the Haryana Government Gazette Notification No. GSR 77/Const/Article 309/Amend/ (1) /76 dated March 22, 1976 and the Notification No. GSR 182/Const/Article 309/Amend/ (2) /76 dated August 9, 1976 amending the definition of the expression "military service" in Rule 2, are declared to be ultra vires the Constitution, insofar as they affect prejudicially persons who had acquired rights as stated above. A writ in the nature of mandamus is issued directing respondents 1 and 2 to prepare the seniority list afresh in the light of the decision of this Court taking into consideration the military service rendered by the petitioners as well as the appellants.

Alleging that the State of Haryana was not implementing the judgment of the court, the appellants in Civil Appeals 3095-96 of 1980 and the petitioners in Writ Petition 8328 of 1981 filed petitions praying that the court may proceed against the State of Haryana for contempt of court. On July 29, 1985, an order was made by this Court directing the respondents to give credit of the "entire military service" of the petitioners in reckoning their seniority and to give them all benefits accruing thereon. The order was directed to be carried out within three months from that day. The State of Haryana had filed the present applications for reviewing our order. It is pointed out that under the rules, both prior to and after the 1976 amendment, the service for which credit could be given to ex-army personnel was the service during the period of emergency only and not any period of service subsequent to the lifting of the emergency on January 10, 1968. The submission of the State of Haryana appears to be correct. Rule 4 (ii) of the Punjab National Emergency (Concessions) Rules,

1965 before it was amended in 1976 said, "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". Military service was defined by Rule 2 as follows :

For the purpose 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 of India on October 26, 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.

The words emphasised by us clearly show that it is only the service rendered during the period of emergency that could be taken into account and not any other period. No doubt there is provision for other service also being declared as military service, but no order of the government making any such declaration has been brought to our notice. Shri Shanti Bhushan, learned counsel for the respondents, argued that earlier the government themselves had counted the entire military service as service for the purpose of reckoning seniority but it was only after the 1976 amendment that the government went back upon the rule which they were hitherto following and refused to give credit to service rendered after the lifting of the emergency. He invited our attention to the principal judgment dated April 26, 1984 amendment that purported to bring about a change. Though no doubt, as urged by Shri Shanti Bhushan, the judgment appears to proceed as if the change was brought about in 1976 even in regard to the length of military service to be taken into account, that question was not actually decided. On the other hand in *Randhir Singh Dhull v. S. D. Bhambri* referring to Rule 2, it was expressly stated by this Court that the concession in regard to seniority was admissible in respect of the military service rendered during the operation of emergency only and not for any military service after the termination of the Emergency. Shri Shanti Bhushan invited our attention to a circular of the government in which it was said that the period of approved military service will count for increments, seniority and pension in the civil employment. But paragraph 4 of that very circular makes it clear that the concessions will apply in the case of all persons, who have joined or join military service during the emergency and will be in respect of approved military service rendered during the emergency and for such period thereafter as the government may prescribe. It is, therefore, clear that military service rendered subsequent to the lifting of emergency cannot be taken into account for the purpose of reckoning the seniority in the civil post. We, therefore, review our order dated July 29, 1985 and direct that credit will be for the military service rendered up to the date of the lifting of emergency only and not the entire military service.

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