

Chittaranjan Singh Chima and Another

Vs

State of Punjab and Others

Civil Appeal No. 2474 of 1981

(S. Saghir Ahmed, K. Ramaswamy JJ)

06.02.1997

ORDER

1. The appellants, Dalip Singh Sidhu and Chittaranjan Singh Chima were enrolled in Indian Air Force on 7-12-1957 and 3-9-1959 respectively. After completing 15 years of service, they were released from the Air Force in their ranks as Sergeants on 25-1-1974 and 31-12-1974 respectively. When recruitment to the posts of sports personnel was advertised, they came to be appointed as Junior Sports Officers by the Punjab Government on 30-9-1974 and 29-10-1976 respectively. They filed Writ Petition No. 2860 of 1979 in the High Court claiming past service in the Air Force as demobilised defence personnel. The Division Bench by judgment dated 9-12-1980 following its earlier judgment in State of Punjab v. Pritam Chand (LPA No. 401 of 1976) dismissed the writ petition. Thus, this appeal by special leave.

2. Shri A. P. Mohanty, learned counsel for the appellants, contended that the Government had applied the Punjab Demobilised Armed Forces Personnel (Reservation of Vacancies in Punjab State Non-Technical Service) Rules, 1977 dated 20-4-1977 with retrospective effect dated 28-2-1973. Rule 2(c) reads as under :

"2. (c) 'release' means (with its grammatical variations) release as per the scheduled year of release after a spell of service, 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."

3. He contends that the said rule has no application to the persons who were appointed before the 1977 Rules came into force. The High Court, therefore, was not right in denying the benefit of the past service and the consequential benefits ensured thereunder. The question is whether the appellants are entitled to the benefit of their past service rendered in the Military for the computation of their seniority in the civil service and resultant consequential benefits.

4. The Punjab Government National Emergency (Concession) Rules, 1965, the rules under which the appellants came to be appointed, define "military service" to mean 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 on 26-10-1962 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". It would, thus, be

seen that for the purpose of military service, it would be an officer enrolled or commissioned in any of the three wings of the Indian Armed Forces and rendered service during the period of operation of the proclamation of emergency and such of the military service as may be declared thereafter by the Government for the purpose of the entitlement under the Rule. Since the appellants came to be appointed under this, they have not been given any benefit of reckoning of the military service for the purpose of seniority and consequential benefits in the civil service. The 1968 Rules and 1977 Rules contemplate of giving the reservation and also consequential benefit of seniority reckoning the military service to such of those officers who rendered service in the military during emergency with a view to encourage the personnel who came forward to serve the country at the time of emergency. Admittedly, the appellants came to be appointed not during the emergency but in the regular process.

5. This Court in *Ram Janam Singh v. State of UP*<sup>1</sup> to which one of us (K. Ramaswamy, J.) was a member, had held that preferential treatment be given to those who joined armed forces during emergency and that grant of notional seniority in civil services by taking into account service rendered in armed forces is constitutionally valid but such benefit cannot be extended to those who joined armed forces during normal times.

6. The counter-affidavit filed in the High Court does indicate that on completion of 15 years of service, at their own request they were released from Indian Army (Air Force) and they are getting pension as pensioners. Under these circumstances, they are the regular personnel who have taken military service as a career and after retirement, they came to be appointed in the quota prescribed for demobilised military personnel. The question of seniority of service rendered in the military cannot be extended to the personnel like appellants since they were not recruited during emergency to whom the benefit of seniority and consequential benefits were given. Therefore, the High Court, though for different reasons was justified in refusing to grant the relief sought for. 7. The appeal is accordingly dismissed. No costs.