

R. S. Dhull (Ex. Capt.)

Vs

State of Haryana

(Dr. A. S. Anand, Rajendra Babu JJ)

21.04.1998

ORDER

1. Leave granted. The appellant is an Ex-Servicemen. He was accepted as a Tehsildar candidate w.e.f. September 13, 1974 and allowed the benefit of military service for the purposes of seniority and was assigned the deemed date of May 27, 1973. It appears that certain adverse remarks came to be recorded in his Annual Confidential Reports for the years 1978-79, 1981-82, 1982-83, 1984-85. The appellant questioned the adverse remarks and sought their expunction by filing a writ petition in the High Court in 1987. The High Court on 2nd May, 1990 directed the expunction of the adverse entries in the Annual Confidential Report of the appellant. The High Court also set aside the orders passed by the competent authorities against refusal to expunge the adverse entries. The respondents were directed to grant consequential relief to the appellant. As a consequence of the judgment of the High Court dated 2nd May, 1990, the appellant was promoted as a District Revenue Officer on September 29, 1991 w.e.f. March 15, 1982. The appellant, however, was not satisfied with the orders made pursuant to the judgment of the High Court and he, therefore, filed a special leave petition in this Court being S.L.P. (C) No. 104/92 (C.A. No. 4292/92). A Bench of this Court granted leave and by an order dated 12.10.92 directed consideration of the appellant's name for promotion to H.C.S. (Executive Branch) without taking into account the expunged adverse remarks. After the judgment by this Court rendered in Civil Appeal No. 4249/92 on 12th October, 1992 the case of the appellant was taken up for consideration by the State Government and vide communication dated 28th of December, 1992 from the Chief Secretary, Government of Haryana, Chandgarh to the appellant, he was informed that the matter had been placed before the selection committee constituted under Rule 7(1) of the Punjab Civil Service (Executive Branch) Rules, 1930 for considering his name for recruitment to the H.C.S. (Executive Branch) from Register A-1 for the vacancies which occurred in the year 1980 and 1982 as also for the special recruitment to the H.C.S. (Executive Branch) held in 1983, without taking into account the adverse expunged remarks. The appellant was informed that the Selection Committee had considered his name for inclusion in the list of persons considered suitable for appointment to the H.C.S. (Executive Branch) against the vacancies for the said years but that-

"The Selection Committee in its meeting held on 16.12.1992 has found the record of other persons whose names had been prepared on 13.12.1982, 17.3.1987 and 24.2.1988, better than yours include your name in the said lists. Since your name has not been included in the list of persons considered suitable for appointment to the HCS (Executive Branch), you can not be considered for appointment to the HCS (Executive Branch) against the vacancies of Registrar A-1 for the years 1980, 1982 and special recruitment for the year 1983."

2. The appellant thereafter filed Civil Writ Petition No. 6977/93 in the High Court of Punjab and Haryana alleging that his name had been wrongly "excluded from the consideration for appointment

to the Haryana Civil Service for the years 1980, 1982, 1983." Various grounds were taken in support of the writ petition. The learned Single Judge of the High Court vide judgment dated 25th July, 1994 dismissed the writ petition. In the course of the judgment the learned Single Judge referred to Rule 7 of the Punjab Civil Service (Executive Branch) Rules, 1930 as amended and applied to the State of Haryana as well as to a comparative chart of the service record of the appellant and those who were selected to the Haryana Civil Service (Executive Branch) in the year 1980, 1982 and 1983. The learned Single Judge observed:

"Learned counsel for the petitioner could not refer to any material on the record to show that the service record of the petitioner was better than that of the persons who had been included in the list prepared by the Committee and sent to the Commission for Recommending in order of merit. Case of the petitioner was considered in terms of the Rules *ibid* but his service record was not found better than that of the candidates recommended to the Commission for selection. It is not the case of the petitioner that names of all the eligible candidates were to be sent to the commission for selection. Rule 7 of the Rules specifically provides that the Committee shall prepare a list of eligible candidates equal to twice the number of vacancies available and this is precisely that was done by the Committee. The lists prepared by the Committee were sent to the Commission for recommending in order of merit and equal to the number of vacancies the most suitable candidates entered in the list of being selected as candidates for entry into Register A-1. Petitioner had only a right of Consideration and his name was duly considered by the Committee. He was not considered suitable by the Committee and thus his name could not be sent to the Commission. The Government placed the record before this Court to know that the case of the petitioner was duly considered against the vacancies that occurred during the years 1980, 1982 and 1983 and that his name could not be included in the list prepared by the Committee."

3. A Letters Patent Appeal filed against the judgment of the learned Single Judge was dismissed on 7th September, 1994. The Division Bench agreed with the learned Single Judge and recorded a finding that consequent upon the expunction of the adverse remarks, the Selection Committee had considered the case of the appellant for inclusion of his name in the list prepared for the vacancies relating to the relevant years 1980, 1982 and 1983 and after due consideration he was not found suitable. The Bench rightly held that the appellant had only a right of consideration and since his name was duly considered by the High Powered Committee and he was not found suitable, he could not make any grievance against his non-selection. Aggrieved by the judgment of the Division Bench, the present special leave petition has been filed.

4. The appellant had filed the special leave petition in-person. We, however, found that the questions requiring consideration in the special leave petition were such which required assistance from a lawyer and, accordingly, we directed the Supreme Court Legal Services Committee to provide assistance to the appellant. Mr. Raju Ramachandran, learned senior advocate agreed to assist the Court and has appeared during the proceedings in this case.

5. While this appeal was pending in this Court learned counsel for the State informed the Court that the petitioner had been retired compulsorily in 1993 vide order dated 29th September, 1993 and, therefore, his appeal had been rendered infructuous. The appellant, however, submitted that he had filed a writ petition in the High Court challenging the order of compulsory retirement (C.W.P. No. 7214/93) and vide judgment dated 17.10.96 a learned Single Judge of the High Court had allowed

the writ petition and set aside the order of compulsory retirement. It transpires that a Letters Patent Appeal filed against that judgment of the learned Single Judge by the State was dismissed on 23rd of July, 1997. The State, thereafter, decided not to file any special leave petition against the order of the Division Bench dismissing Letters Patent Appeal on 23rd of July, 1997. As a consequence, the order of compulsory retirement made on 29.9.93 did not survive. Mr. Raju Ramchandran, learned senior advocate, submitted that not only was the appellant entitled to be treated in service from the date when the order of his compulsory retirement was made i.e. on 29th September, 1993 till the date he attained the age of superannuation on 29th February, 1996, but he was also entitled to receive G.P. Fund and other retiral benefits. It was fixed and he had not been paid any pension and the state had no justification to withhold the retiral benefits. On 15.10.97 we made the following order:

"During the course of hearing of this special leave petition, it has been submitted by learned counsel for the State that the State Government has decided not to file any special leave petition against the order of the Division Bench dismissing Letters Patent Appeal on 23.7.97. It, therefore, shows that the order of compulsory retirement made on 29.9.93 does not survive, as the writ petition against that order was allowed and the Letters Patent Appeal has been dismissed.

6. Mr. Raju Ramchandran, learned senior counsel appearing for the petitioner submits that though the petition has superannuated on 29.2.1996, the G.P. Fund was not released to him till the High Court had to intervene in the LPA filed by the State. It is stated that on 22.5.97, during the pendency of the LPA, the High Court directed the State to release the G.P. Fund of the petitioner and consequent thereupon, it has been released. It is, however, submitted that the pension of the petitioner has not been fixed and he has not been paid any pension at all from the date he superannuated. Withholding of pension is a serious matter. We view it with a serious matter. We view it with concern. Learned counsel for the State assures us that he will have the matter examined at priority basis. We, therefore, direct;

(1) The State shall, on the basis of the service record available with them, fix the provisional pension of the petitioner and intimate the same to him within ten days by registered post. In case any formality is required to be completed by the petitioner for receiving pension, intimacy is required to be completed by the petitioner for receiving pension, intimation shall be given to him in the same communication within ten days. Within fifteen days from the date of receipt of the communication from the State, the petitioner shall furnish the required information, if any, as also his response insofar as the fixation of the provisional pension is concerned.

(2) The State shall also, on the basis of the provisional pension, work out the arrears of the pension and communicate the same to the petitioner. The amount of arrears so calculated shall be paid to the petitioner on the basis of from today. This shall, however, be without prejudice to the rights of the parties." The provisional pension, we are informed has since been fixed and is being paid to the appellant.

7. We have heard learned counsel for the parties on the main grievance of the appellant i.e. that his name was wrongly excluded from consideration for appointment to the Haryana Civil Service for the years 1980, 1982 and 1983. We have examined the record also. The appellant had only a right to be considered and we agree both with the learned Single Judge and the Division Bench of the High Court that his case was properly considered ignoring the expunged adverse entries made in his Annual Confidential Reports by a High Powered Committee to be recommended to the

Commission. It is, therefore, futile to contend that there was any lack of consideration of his case or that the consideration of his case was based on any irrelevant or inadmissible grounds. The record reveals that his case was considered alongwith the service record of the other eligible candidates who had been brought on the select list and we are not persuaded to hold that the consideration of his case suffered from any infirmity. The plea that the High Powered Committee was influenced by the adverse entries is not correct and deserves a notice only to be rejected. We, therefore, do not find any reason to interfere with the orders of the learned Single Judge and the Division Bench in that regard. However, there is one other aspect of the matter which requires our consideration.

8. Mr. Raju Ramchandran, learned senior advocate submitted that in spite of the orders of this Court dated 15.10.97 (supra) all the retrial benefits have not so far been paid to the appellant. He submitted that while provisional pension has been fixed, but other benefits like G.P. Fund dues, Graduity etc. have not so far been paid to him. He rightly argued that the respondents were not justified to withhold the G.P. Fund and the Gratuity more particularly in view of the directions given by us on 15.10.97. We, therefore, direct that while the case of fixation of proper pension of the appellant shall be decided by the respondent within these three months from the date of this order, the F.P. Fund, Gratuity and other retiral benefits (which remain unpaid) shall also be paid to the appellant within the aforesaid period of three months. The appellant shall also be entitled to interest at the rate of 12% per annum on the withheld G.P. Fund and Gratuity etc. from the date the same became payable to him on his attaining the age of superannuation the payment is made to him.

9. The appeal is thus disposed of in above terms. No costs. We wish to place on record our deep appreciation for the valuable assistance rendered by Mr. Raju Ramachandran, learned senior advocate to the Court.