SUPREME COURT OF INDIA

State of Punjab

Vs.

Harbhajan Singh

C.A.No.5065 of 2007

(Tarun Chatterjee and P. Sathasivam JJ.)

31.10.2007

JUDGMENT:

P. SATHASIVAM, J.

1) Leave granted.

2) This appeal is filed against the final judgment and order dated 25.03.2004 passed by the High Court of Punjab and Haryana in C.W.P. No. 6126 of 2003 whereby the High Court allowed the writ petition of the 1st respondent herein. 2) The brief facts in nutshell are as under: Respondent No.1 herein, who was a matriculate, joined as Sepoy in the Indian Army on 13.09.1961. Respondent No.1 improved his qualification and after obtaining one year teachers training at AEC Training College & Centre, Panchmari, Madhya Pradesh, appointed as Education Instructor (Hawaldar) on 12.10.1967. He retired on 30.9.1987 as Naib Subedar. His date of birth is 16.01.1944. He was 43= years old at the time of his retirement. On 10.5.1988, respondents name was sponsored by the Employment Exchange for the post of JBT Teachers in the Punjab Education Department. He appeared for the interview but the selection Committee refused to consider his case on the ground that he was not fulfilling the qualification for the post. According to the respondent, the training acquired by him during his service in the army is declared as equivalent to the training required for the post of primary school teachers as per Government instructions. By letter dated 9.8.1988, Director Public Instructions informed the Director Sainik Welfare, Punjab that according to directory of Education of Service Trades with Civil Trades and Guide to Registration of Defence Services Applicants of employment Army Education Corps is equal to a Primary School Teacher in Civil Trade. On 29.8.1988, respondent submitted a representation to the recruitment Committee for considering his case in view of the instructions issued by the Director Public Instructions. On 1.08.1992, when the Education Department, Punjab again invited applications for the post of JBT Teachers by issuing an advertisement, he applied for it and was selected. On 31.3.1994, respondent got an appointment letter and he joined at Government Primary School, Ludhiana on 22.4.1994. At the time of joining, he was drawing his defence pension and he was allowed to draw his defence pension. He was to retire on 31.1.2002. Before superannuation, on 10.10.2001, the respondent submitted his pension case to the Accountant General, Punjab through Block Primary Education Officer, Pakhowal District, Ludhiana. The Accountant General, Punjab rejected the case of the respondent for pension on the ground that the service rendered by him on the civil side is seven years, nine months and nine

days which is less than 10 years and his service rendered in defence cannot be counted in the civil service as there is a gap of more than three years. On 31.8.2002, the respondent served a legal notice of demand for granting him gratuity and pension in civil side by taking into consideration his service in the army. In February, 2003, the respondent filed writ petition before the High Court praying for quashing of the order dated 2.11.2001 of the Accountant General, Punjab and for counting the service rendered by him in the army. The High Court allowed the writ petition in terms its decision in Dev Dutt, ASI vs. State of Punjab & Ors., 1996 (7) SLR 807 and directed the State to re- compute the pension of the respondent herein and to make the payment within six months. Dissatisfied with the said order, the State filed the present appeal before this Court.

3) We heard Mr. Ajay Pal, learned counsel for the appellants and Ms. Shikha Roy Pabbi, learned counsel for 1st respondent.

4) Learned counsel appearing for the appellant State of Punjab vehemently contended that inasmuch as the respondent-herein who had admittedly joined on 13.09.1961 as Sepoy in the Indian Army is not entitled to the benefits of the Punjab Government National Emergency Rules, 1965 when emergency was declared from 26.10.1962 to 09.01.1968. He also contended that the respondent who has rendered services of less than 10 years as civil servant from 22.09.1994 to 31.01.2002 is not entitled to pension since the minimum qualifying service should not be less than 10 years. He also contended that the High Court was not justified in allowing the writ petition based on the judgment rendered by it in Dev Dutt vs. State of Punjab (supra) which is inapplicable in facts and law. On the other hand, learned counsel appearing for the first respondent submitted that considering the military service and Punjab civil service of the respondent, he is eligible to be granted the benefit of pension on the civil side. According to him, the High Court is perfectly right in following the dictum in Dev Dutts case(supra) and quashing the communication of Accountant General, Punjab dated 02.11.2001 rejecting the claim of the respondent to club the service rendered by him in Army and in the Punjab Education Department.

5) We have carefully considered the rival submissions with reference to the pleadings and also perused the annexures and records filed along with this appeal.

6) In order to understand the claim of 1st respondent, it is useful to recapitulate his service particulars both in the army as well as in the Punjab civil service. As stated earlier, on 13.09.1961, he joined as Sepoy in the Indian Army. After obtaining one year teachers training, he was appointed on 12.10.1967 as Education Instructor (EI) Hawaldar. On 30.09.1987, he retired as Naib Subedar at the age of 43= years. His date of birth being 16.01.1944. It is also not in dispute that he was drawing pension of Rs.1,057/- and also received DCRG to the tune of Rs.23,870/-.

7) On 10.05.1988, respondents name was sponsored by employment exchange for the post of JBT teacher in Punjab Education Department. Though he was rejected on the ground that he does not fulfill educational qualification for the post, by proceedings dated 09.08.1988 Director Public Instructions declared him as qualified. Thereafter, on 29.08.1988, he submitted representation to the Recruitment Committee for considering his case based on the instruction dated 09.08.1988. When Education Department, Pubjab again invited applications, through advertisement, for appointment as JBT teachers, the respondent applied for it and on 01.08.1992, he was selected. On 31.03.1994, he was issued an appointment letter and he joined at Government Primary School, Ludhiana on 22.04.1994. It is seen from Annexure-P4 that at the time of joining, he was drawing his army pension and allowed to draw the same. Since the respondent was to retire on 31.01.2002, he

submitted his pension case on 10.10.2001 to the Accountant General. By order dated 02.11.2001, Accountant General rejected his case on two grounds 1) service rendered by him on civil side was seven years nine months and nine days, which was less than 10 years as per Punjab Civil Service Rules; 2) service rendered in defence cannot be counted as there is gap of more than 3 years as per government instructions of 1982. When the said order was challenged before the Punjab and Haryana High Court, following the earlier decision in Dev Dutts case (supra) after quashing the communication of the Accountant General, necessary direction was issued.

8) It is not in dispute that the respondent is governed by Punjab Recruitment of Ex-servicemen Rules, 1982. Rule 8 which deals with Increments and Pension clearly says that the pay of an Ex-serviceman appointed against a reserved vacancy shall be fixed in accordance with the provisions of Chapter VII of the Punjab Civil Services Rules, Volume II. 9) Now let us verify the relevant provisions of Punjab Civil Service Rules, 1970. Chapter VII deals with re-employment of pensioners. Even in this Chapter, we are concerned with Rule 7.13, 7.14 and 7.15 which read thus:

7.13 A Government employee who has obtained a compensation pension, if re-employed, may retain his pension in addition to his pay: provided that if he is re- employed in a post paid from the Government revenue, the pension shall remain wholly or partly in abeyance, if the sum of the pension and the initial pay on re-employment exceeds his substantive pay immediately before retirement, that is, a Government employee can draw so much of pension only as will make his initial pay plus pension equal to his substantive pay at the time of his retirement. Once the amount of the pension has been fixed in conformity with the above conditions the Government employee shall be entitled to receive the benefit of increments in his new scale or promotion to another scale or post without a further corresponding reduction in pension; nor shall the amount of pension so fixed be varied during leave. In the case, however of a pensioner re-employed in either a permanent or a temporary post, for bona fide temporary duty lasting for not more than a year, the Government or, in cases where the pension does not exceed Rs.40 a month, the authority which controls the establishment on which the pensioner is to be employed may allow the pension to be drawn in whole or in part even though the sum total pay and pension exceeds his substantive pay at the time of his retirement.

7.14 If the re-employment is in qualifying service, the Government employee may either retain his pension (subject of the proviso stated in rule 7.13) in which case his former service will not count for future pension, or cease to draw any part of his pension and count his previous service. Pension intermediately drawn need not be refunded.

7.15 If a Government employee does not within three months from the date of his re-employment, exercise the option conceded by rule 7.14, of ceasing to draw pension and counting his former service, he can not, thereafter, do so without the permission of the competent authority.

10) The above provisions make it clear that employee can draw so much pension only if his initial pay plus pension does not exceed his substantive pay at the time of retirement. Further, if previous service is counted, the pension remains in abeyance. It also shows that if option is not exercised in three months, he cannot do so at a later stage without the approval of the competent authority. The period rendered shall count towards the service only if person has not earned pension, any bonus or gratuity paid is refunded to the State Government. Admittedly, the respondent was getting pension of Rs.1,057/- per month. It is also not in dispute that he received DCRG (gratuity) to the tune of Rs.23,870/-.

11) Now coming to entitlement or counting his military service for pension on serving as civil servant, we have to consider Punjab Government National Emergency (Concession) Rules, 1965 (since repealed under Punjab Recruitment of Ex-servicemen Rules, 1982). Section 2 defines military service which reads as follows: Definition:- For the purposes 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 on the 26th October, 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.

Admittedly, respondent was in army from 13.09.1961 to 30.09.1987. It is also not in dispute that emergency was declared from 26.10.1962 to 09.01.1968. In view of the admitted factual position and as per the Emergency Rules, 1965, the service can be counted only if the person joined during the emergency and not before or after it. In view of the same, the respondent who had admittedly joined the army on 13.09.1961 as Sepoy is not entitled to the benefits of the provisions of the Punjab Government National Emergency Rules, 1965 when emergency was imposed on 26.10.1962. In other words, he is not entitled to get his military service counted for pension on serving as civil servant when his case does not fall within the definition of military service which is service rendered by a person during emergency. Further, as rightly pointed out by learned counsel for the State because the respondent who has been enjoying the pension from the Army throughout is not entitled to claim pension from the State in view of ineligible period and he cannot have double benefit. Inasmuch as the 1st respondent has rendered service as civil servant from 22.09.1994 to 31.01.2002 only is not entitled to pension contrary to the statutory rules when the minimum qualifying service should not be less than 10 years entitling a person for pension. The military service rendered by him has to be ignored as he admittedly joined Army prior to the emergency. It is useful to refer to judgment in Ram Janam Singh vs. State of U.P. and Another, (1994) 2 SCC 622. In a similar situation, this Court has held as under:

12. If the benefits extended to such persons who were commissioned during national emergencies are extended even to the members of the Armed Forces who joined during normal times, members of the Civil Services can make legitimate grievance that their seniority is being affected by persons recruited to the service after they had entered in the said service without there being any rational basis for the same.

In para 13, this Court further held that the persons who had joined either before or after the declaration of emergency had voluntarily offered their services for the defence of the country belonged to a separate class and there was no question of discrimination in giving any benefit in matters of seniority by the rules. In para 14, it has held:

14. Can it be said that the persons who had joined Army after the declaration of emergency due to foreign aggression and those who joined after the war came to an end stand on the same footing? Those who joined Army after revocation of emergency joined Army as a career. It is well known that many persons who joined army service during the foreign aggression, could have opted for other career or service. But the nation itself being under peril, impelled by the spirit to serve the nation, they opted for joining Army where then risk was writ large. No one can dispute that such persons formed a class by themselves and by rules aforesaid an attempt has been made to

compensate those who returned from war if they compete in different services. According to us, the plea that even persons who joined army service after cessation of foreign aggression and revocation of emergency have to be treated like persons who have joined army service during emergency due to foreign aggression is a futile plea and should not have been accepted by the High Court. It need not be impressed that whenever any particular period spent in any other service by a person is added to the service to which such person joins later, it is bound to affect the seniority of persons who have already entered in the service. As such any period of earlier service should be taken into account for determination of seniority in the later service only for some very compelling reasons which stand the test of reasonableness and on examination can be held to be free from arbitrariness.

12) Relying on Ram Janam Singhs case (supra), this Court, in a subsequent decision in Chittaranjan Singh Chima and Another vs. State of Punjab and Others, (1997) 11 SCC 447 while considering the very same rules, namely, Punjab Government National Emergency (Concession) Rules, 1965 held as under:

4. 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.

13) In the case on hand, the 1st respondent was not inducted in military service when the emergency was declared on 26.10.1962. We have already held that the service can be counted only if the person has joined during the emergency and not before it. The ratio in the above mentioned cases also supports the same conclusion. All these relevant materials have not been adverted to by the High Court and it merely followed Dev Dutts case (supra) which facts are not applicable to the case on hand.

14) In the light of the above discussion, the impugned order of the High Court is set aside and the appeal is allowed. No costs.