Dhan Singh And Ors. Etc. Etc vs State Of Haryana And Ors on 5 December, 1990

Equivalent citations: 1991 AIR 1047, 1990 SCR SUPL. (3) 423, AIR 1991 SUPREME COURT 1047, 1991 LAB. I. C. 683, 1991 (1) UJ (SC) 267, (1990) 4 JT 735 (SC), 1990 (4) JT 735, 1991 (2) SCC(SUPP) 190, 1991 SCC (SUPP) 2 190, (1991) 62 FACLR 131, (1991) 2 LAB LN 8, (1991) 1 PUN LR 658, (1991) 1 SERVLR 200, (1991) 17 ATC 317, (1991) 1 CURLR 244, 1991 SCC (L&S) 1179

Author: M. Fathima Beevi

Bench: M. Fathima Beevi, L.M. Sharma

PETITIONER:
DHAN SINGH AND ORS. ETC. ETC.

Vs.

RESPONDENT:
STATE OF HARYANA AND ORS.

DATE OF JUDGMENT05/12/1990

BENCH:
FATHIMA BEEVI, M. (J)
BENCH:
FATHIMA BEEVI, M. (J)
SHARMA, L.M. (J)

CITATION:
1991 AIR 1047 1990 SCR Supl. (3) 423
1991 SCC Supl. (2) 190 JT 1990 (4) 735
1990 SCALE (2)1216

ACT:
Constitution of India, 1950: Articles 14, 16 , 309--Amendments to Rules 2 and 4(ii) of Punjab Government National Emergency (Concession) Rules, 1965--Classification--Persons who joined before/during emergency--Reasonableness and validity of--Government's power to amend the Rules and to withdraw concessions--Interference of Court--When.

The Punjab Government National Emergency (Concession) Rules, 1965: Rules 2 and 4(ii)--Constitutional validity of--Benefit of military service--Those who joined before proclamation of emergency --Whether entitled to.

HEADNOTE:

The appellants and petitioners are ex-servicemen re-employed in the service of Respondent State. They served the Indian Army during emergency from 1962 to 1968. Appellants 4, 5, 7 and 8 joined the Army during emergency while the other appellants and writ petitioners joined before the emergency. Certain benefits like increments, seniority, pension etc. were extended to such persons by the Respondent-State by adopting the Punjab Government National Emergency (Concessions) Rules, 1965. However, by notifications dated 22.3.1976, 9.8.1976 and 5.11.1976 certain amendments to Rules 2 and 4 were introduced by the Respondent State with retrospective effect from 1.11.1966 resulting in denial of such benefits to them. Some of the amendments were challenged before this Court and were declared ultra vires the Constitution of India.

On 4.8.1986 the Respondent-State issued instructions to the effect that the ex-servicemen employees who joined the Civil Service after the issue of the notifications would continue to be governed by the same. The appellants and some of the writ petitioners who had joined government service since December 1976 were denied the benefits under the Rules, since under the amended Rules only those who were enrolled or commissioned during emergency were eligible for such benefits, and not those who joined the Army before the emergency.

424

The Writ Petition filed by the appellants before the High Court was dismissed and they have preferred the present appeal. The Writ Petitioners admittedly joined the Army before the emergency, have directly challenged the notifications in this Court.

It has been contended inter alia that the amendment confining the military service to those who joined during emergency and denying the same to those who joined prior to the emergency was unreasonable and arbitrary and violative of Article 14 of the Constitution of India and that the differential treatment meted out to persons who joined earlier and were released later, but served during emergency, amounts to denial of equal opportunity in the matter of employment and thus violative of Article 16 of the Constitution of India.

Allowing the appeal in part, and dismissing the Writ Petitions, this Court,

HELD: 1. The State could amend the Rules and withdraw the concession in exercise of the power conferred under Article 309 of the Constitution. It is open to the State to lay down any rule for determining seniority in service and the Court cannot interfere unless it results in inequality of opportunity among the employees belonging to the same class. When a rule is challenged as denying equal protec-

tion, the question for determination by the Court is not whether it has resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of legislation. Mere differentiation or inequality of protection does not per se amount to discrimination within the inhibition of equal protection clause under Article 14. To attract the attention of the clause, it is necessary to show that the selection or differentiation is unreasonable or arbitrary and that it does not rest on any rational basis having regard to the object which the Legislature has in view. The Court has to examine whether the classification can be deemed to rest upon differentia discriminating the persons or things grouped from those left out and whether such differentia has a reasonable relation to the objects sought to be achieved irrespective of whether the rule is intended to apply to person or thing or to a certain class of persons or things. Therefore, the policy or the object of the legislation are the relevant considerations. [431D-G]

2. The young persons who have joined the military service during the national emergency and those who were already in service and due to exigencies of service had been compelled to serve during the emergency form two distinct classes. The appellants and the petitioners
425
who joined the Army before the proclamation of emergency, had chosen the career voluntarily and their service during emergency was as a matter of course. They had no option or intention of joining the government service during the period of emergency as they were already serving in the Arm. The persons who enrolled or commissioned during the emergency, on the other hand, had no account of the call of the nation joined the Army at that critical juncture of national emergency to save the motherland by taking a greater risk where danger to the life of a member of the armed forces was higher. They include persons who could have pursued their studies, acquired higher qualifications and joined a higher post and those who could have joined the government service before attaining the maximum age prescribed and thereby gained seniority in the service. Forgoing all these benefits and avenues, they joined the Army keeping in view the needs of the country and assurances contained in conditions of service in executive instructions. The latter form a class by themselves and they cannot be equated to those who joined the Army before the proclamation of the emergency. Benefits had been promised to such persons who heeded to the call of the nation at that critical juncture. Older man by joining the military service lost chance of joining other government service and when he joins such service on release from the Army younger man had already occupied the posts. To remove the hardship, the benefit of military service was sought to be given to those young persons who were enrolled/commissioned during the period of emergency forgoing their job

opportunities. The differential is, therefore, intelligible and has a direct nexus to the objects sought to be achieved. The petitioners cannot, therefore, challenge the rule as discriminatory or arbitrary. Such of those appellants and the petitioners who have joined the Army before the proclamation of the emergency are not, therefore, entitled to the benefit of military service as per the Emergency Concession Rules. [432B-G]

K.C. Arora & Ors. v. State of Haryana & Ors., [1984] 3 SCC 281; State of Gujarat v. Raman Lal Keshav Lal Soni, [1983] 2 SCC 33; Raj Pal Sharma & Ors. v. State of Haryana & Ors., [1985] (Supp.) SCC 72, referred to.

Since the proviso to Rule 4(ii) has already been struck down in Raj Pal Sharma's case, such of the appellants who had been released from the military service on compassionate grounds are entitled to the benefits of their military service. [432H]

Raj Pal Sharma & Ors. v. State of Haryana & Ors., [1985] (Supp.) SCC 72, applied.

426

The petitioner in Writ Petition No. 959 of 1989 is not entitled to any further relief as the service of the petitioner after the lifting of the emergency could not, therefore, count for determining his seniority and whatever benefits he is entitled to had been granted earlier. [433A-B]

Ex-capt, Randhir Singh Bhull v. S.D. Bhambri & Ors., [1981] 3 SCC 55; Ex-Capt. A.S. Parmer & Ors. v. State of Haryana & Ors., [1986] (Suppl.) SCC 283, relied on.

JUDGMENT: