Raj Pal Sharma And Ors. vs State Of Haryana And Ors. on 10 May, 1985

Equivalent citations: AIR1985SC1263, 1985LABLC1500, 1985(1)SCALE1088, 1985SUPP(1)SCC72, 1985(17)UJ615(SC), AIR 1985 SUPREME COURT 1263, 1985 LAB. I. C. 1500, 1985 UJ (SC) 615, 1985 SCC (SUPP) 72, (1985) 2 LAB LN 845, 1985 SCC (L&S) 819

Author: R.B. Misra

Bench: O. Chinnappa Reddy, R.B. Misra

JUDGMENT

R.B. Misra, J.

1. On account of the external aggression by Chinese forces on the Indian territory an emergency was imposed by the Government of India in 1962. In order to attract youngmen to join military service at that critical juncture the Central Government and the governments of the States issued different circulars and advertisements on radio and in the press promising certain benefits to be given to those youngmen who joined the military service. In view of the promises made through circulars the Punjab Government framed rules under Article 309 of the Constitution known as the Punjab Government National Emergency (Concession) Rules, 1965, hereinafter called the Punjab Rules. These rules were adopted by the State of Haryana also. Rule 4 of the said rules, as it stood originally insofar as relevant for the purposes of the present petitions, read as follows :

> 4. Increments, seniority and pension.-Period of military service shall count for increments, seniority and pension as under:
>
> (i) Increments : The period spent by a person on military service, after attaining the minimum age prescribed for appointment to any service or post, to which he is appointed, shall count for increments. Where no such minimum age is prescribed the minimum age shall be as laid down in Rules 3.9, 3.10 and 3.11 of the Punjab Civil Services Rules, Volume II. This concession shall, however, be admissible only on first appointment.
>
> (ii) Seniority : 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.

2. It appears that the Governor of Haryana by a notification dated November 5, 1976 in exercise of the power conferred under Article 309 of the Constitution amended the Punjab Rules by inserting a proviso to Rule 4 whereby persons who had been released from military service on compassionate grounds were singled out for being deprived of the benefits of that rule. The proviso added to Rule 4 is quoted below :

> Provided that a person who has been released from military service on compassionate grounds shall not be entitled to any concession under this rule.

> The petitioners in this bunch of cases served in the army/air force during war with Pakistan and China. After their release from military service they joined various civil services of the State. They were also entitled to the benefits of Rule 4 as it stood originally. They were, however, refused on some ground or the other. The main ground was that they had been released from military service on compassionate grounds and, therefore, they were not entitled to the benefits of Rule 4 in view of the proviso added to Rule 4 by amendment in 1976. They made representations after representations but to no avail.

3. Many ex-servicemen who were similarly situated challenged the earlier amendments to Rule 4 by notification dated March 22, 1976 and to Rule 4 by notification dated August 9, 1976 with retrospective effect, by filing writ petitions under Article 226 of the Constitution before the High Court of Punjab and Haryana. Those writ petitions were, however, dismissed by the High Court. Thereafter a number of appeals were filed by the aggrieved persons and some others also filed writ petitions under Article 32 of the Constitution before this Court. This Court allowed the appeals and the writ petitions, the leading judgment being in Ex-Captain K.C. Arora and Ors. v. State of Haryana and Ors. holding that the said amendments were ultra vires the Constitution and bad.

4. The petitioners in the present bunch of cases sought to take advantage of the aforesaid decision of this Court in K.C. Arora's case. They were, however, refused on the ground that they were not party to the above decision of this Court, but mainly on the ground that the petitioners were released from military service on compassionate grounds and the proviso to Rule 4 brought in by amendment with retrospective effect in 1976 disentitled them to get the benefit of Rule 4 as it originally stood. The petitioners have challenged the proviso to Rule 4 brought in by a notification dated November 5, 1976.

5. On the contention raised on behalf of the petitioners the following two questions arise :

> (a) Whether the Government has the power to amend with retrospective effect the rules to their detriment so as to take away the benefits already conferred on the petitioners ?

> (b) Whether the amendment to these rules violates Articles 14 and 16 of the Constitution ?

Both of these questions were considered by this Court in K.C. Arora's case (supra) and the two earlier amendments brought in 1976 with retrospective effect were held to be bad and ultra vires the Constitution. It is not necessary to repeat those reasons over again. In the present petitions apart from the challenge to the other amendments, the proviso to Rule 4 introduced by notification dated November 5, 1976 with retrospective effect has also been challenged. The basis on which the other amendments were held to be ultra vires and bad in K.C. Arora's case will equally apply to the amendment whereby proviso to Rule 4 was introduced with retrospective effect.

6. It is true that the principle of equality in Article 14 of the Constitution does not take away from the State the power of classifying persons for legitimate purposes. Every classification in some degree is likely to produce some inequality and mere production of inequality is not enough. Differential treatment does not per se constitute violation of Article 14. It denies equal protection only when there is no reasonable basis for differentiation. If a law deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. what Article 14 prohibits is a class legislation and not reasonable classification for the purpose of legislation. If the legislature takes care to reasonably classify persons for legislative purposes and it deals equally with all persons belonging to a well defined class it is not open to the charge of denial of equal protection on the ground that the law does not apply to other persons. In order, however, to pass the test of permissible classification two conditions must be fulfilled: (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from other left out of the group, and (2) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. In the instant cases the petitioners are all ex-military personnel. They have also been released from military service. All those persons released from military service constitute one class and it is not possible to single out certain persons of the same class for differential treatment. There appears to be no reasonable classification between the persons who were released on compassionate grounds and those who were released on other grounds and in this respect the petitioners have been deprived of the equal opportunity. The amendment, therefore, is violative of Articles 14 and 16 of the Constitution and, therefore, bad.

7. In this view of the legal position the petitioners herein are also entitled to the benefits of Rule 4 and the mere fact that they were released from military service on compassionate grounds cannot disentitle them as they satisfy the requirement of Rule 4 of the Punjab Rules as it originally stood. The grounds on which they were released are not material. If once they are held to be ex-military servicemen they are entitled to the benefits of Rule 4.

8. The earlier two amendments, viz. the first and the second amendments brought in in 1976 have already been held to be bad and ultra vires the Constitution in K.C. Arora's case (supra) and the principles laid down in that decision are equally applicable to the amendment whereby proviso to Rule 4 was added with retrospective effect, The proviso to Rule 4 in the view that we have taken cannot disentitle the petitioners to get the benefit of Rule 4.

9. For the reasons given in K.C. Arora's case the writ petitions must succeed. They are accordingly allowed and a writ in the nature of mandamus is issued directing the respondents 1 and 2 to confer

the benefits of ex-military/air force service to the petitioners within a period of six months from the date of this judgment. There is, however, no order as to cost.