

CASE NO.:
Appeal (civil) 2403 of 2002

PETITIONER:
SANSAR CHAND ATRI

Vs.

RESPONDENT:
STATE OF PUNJAB & ANR.

DATE OF JUDGMENT: 02/04/2002

BENCH:
D.P. Mohapatra & P. Venkatarama Reddi

JUDGMENT:

With
CIVIL APPEAL NOS.2404-2405 OF 2002
(Arising out of S.L.P.(C) Nos.5338-39 of 2000)

J U D G M E N T

D.P.MOHAPATRA, J.

Leave is granted in all the special leave petitions.

The question that falls for determination in these appeals is whether the appellants are 'ex-servicemen' for the purpose of appointment under the Punjab Recruitment of Ex-servicemen Rules (for short 'the Rules') . These appeals are directed against the common judgment of the High Court of Punjab and Haryana dismissing the writ petitions filed by the appellants. Since all the writ petitions were disposed of by the judgment rendered in CWP No.19084/98 filed by Sansar Chand Atri who is the appellant in the Civil Appeal arising out of S.L.P.Â© No.3683 of 2000, the facts in that case are stated for sake of convenience:

In response to the advertisement dated 16.10.1998 issued by the Punjab Public Service Commission inviting applications for certain posts of the Punjab Civil Service (Judicial) Branch, which appeared in the newspaper 'Tribune' on 16.10.98, the appellant submitted an application for appointment against one of the posts reserved for ex-servicemen. The competitive examination for recruitment to the post was to commence from 21.12.1998. The appellant was informed by the Commission that he could not be considered as an ex-serviceman as he had been discharged from the Indian Army at his own request. Feeling aggrieved by the action of the Commission in declining consideration of his candidature as ex-serviceman the appellant filed the aforementioned writ petition.

The appellant joined the Indian Army on 8.10.1972 while he was holding the post of Hawaldar. He was discharged from the Army on 1.11.1990 after rendering 18 years and 24 days' of total service. The 'cause of discharge'

described in the discharge certificate was "under Army Rule 13(3) II (iv) at his own request". He is drawing pension as an ex-serviceman.

The question whether the appellant is an ex-servicemen or not is to be determined on the basis of the provisions of the Punjab Recruitment of Ex-servicemen Rules 1982 as amended by the Notification dated 22.9.1992. The said Rules were framed by the Government of Punjab in exercise of the power conferred by the proviso to Article 309 read with Articles 234 and 318 of the Constitution. In Rule 2(e) thereof, 'ex-servicemen' is defined as follows:

"Rule 2(e) 'Ex-Servicemen' means a person who joined any rank, whether as a combatant or as a non-combatant on or after the first day of November, 1962, in the Armed Forces of the Union, excluding the Assam Rifles, Loh Sahetia Sena, Jammu and Kashmir Militia, Territorial Army, Defence Security Corps and the General Reserve Engineering Force, and has been released otherwise than on ground of misconduct or inefficiency."

Rule 3 which makes provision regarding extent of application provides that the rule shall apply to all the State Civil Services and posts connected with the affairs of State of Punjab excepting the Punjab Vidhan Sabha and the Secretariat Services and the Punjab Higher Judicial Service. In Rule 4 provision is made for reservation of 15% of the vacancies to be filled in by direct appointment in all the State Civil Services and posts connected with the affairs of the State of Punjab to be filled in by recruitment of ex-servicemen. In the proviso to the said Rule a limit of 50% is prescribed for the total number of reserved vacancies.

In Rules 5 to 7 certain relaxations are made regarding the number of attempts which an ex-serviceman may make in the competitive examination, age limit for appointment and educational qualification and experience. From the provisions of the Rule it is clear that its purpose is to benefit the ex-servicemen in getting appointment to Civil posts under the State.

By the notification dated 22.9.1992 issued by the State Government certain provisions of the 1982 Rules were amended. The definition of ex-servicemen in Rule 2(ii) was substituted by the provision quoted hereunder:

"Ex-servicemen" means a person who has served in any rank, whether as a combatant or a non-combatant in the Naval, Military and Air Force of the Union of India (hereinafter referred to as the Armed Forces of the Union of India), and who has :-

(i) retired from such service after earning his pension; or

(ii) been released from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension; or

(iii) been released, otherwise than on his own request from such service as a result of reduction in establishment, or

(iv) been released from such service after completing the specific period of engagement otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency and has been given a gratuity.

but does not include a person who has served in the defence security corps, the General Reserve Engineering Force the Lok Sahayak sena and the para military forces, but includes personnel of the Lok Sahayak sena of the following categories, namely ;

(i) pension holders for continuous embodied services;

(ii) persons with disability attributable to military service and

(iii) gallantry award winners.

Explanation : The persons serving in the armed Forces of the Union, who on retirement from service would come under the category of 'ex-serviceman' may be permitted to apply for re-employment and avail themselves of all concessions available to ex-servicemen but shall not be permitted to leave the uniform until they complete the specific terms of engagement in the Armed Forces of the Union."

(emphasis supplied)

The answer to the question formulated earlier depends on a fair interpretation of the Rules particularly the Rule laying down the definition of the term 'ex-servicemen'. The Public Service Commission was not inclined to consider the appellant's candidature in the posts reserved for ex-servicemen because the appellant had been discharged from service at his own request and had not retired from the service. The High Court accepted the interpretation made by the Commission mainly on the ground that in the provisions of the Army Rules a distinction is maintained between 'discharge', 'retire' and 'release' of army personnel from the service. The High Court took the view that under the 1982 services rules as amended in 1992 a person who has been released from the service on his own request as provided in Rule 2(c)(iii) is specifically excluded from the purview of the term 'ex-servicemen'. Relying on the said provision the High Court took the view that the appellant has neither retired from the service nor has been released from service as contemplated under the aforementioned provision but has been 'discharged' from service on his own request. Because of the exclusory definition of the term 'ex-servicemen' the High Court was not persuaded to accept the claim of the appellant that he should be considered as an

ex-serviceman.

It is relevant to note here that in the Certificate issued by the Ministry of Defence the appellant has been described as an ex-serviceman. The provision for reservation in the service rules is meant for the benefit of ex-servicemen. The purpose is to provide them with suitable jobs in civil services so that they may not face difficulty in adjusting themselves in civil society after leaving the defence service. In the context of the scheme of the provision the provisions in the rule should be interpreted in a purposive and reasonable manner so that the intent and purpose of the provision is served. From the provisions in the rules it appears that a distinction has been made by persons who are released from the army on ground of medical disqualification or on ground of inefficiency or misconduct. Such distinction is reasonable keeping in view the purpose of reservation of posts made under the rules. All the ex-defence service personnel are to be treated as a class separate from other candidates for the purpose of offer of jobs and no differentiation or discrimination can be made amongst them unless such differences are real and substantial. Testing the provisions in this context we are of the view that a person in the army who has earned pension after putting in the requisite period of service before leaving the army whether at his own request or on being released by the employer on any ground should be treated as an ex-serviceman who has retired from the army. Such treatment is to be meted out to all such persons irrespective of whether the nomenclature used is 'relieved' or 'discharged' or 'retired'. If the contention raised on behalf of the Service Commission and the State Government that since the appellant has been discharged from the Army at his own request, he cannot be treated as an ex-serviceman, is accepted then it will create a class within a class without rational basis and, therefore, becomes arbitrary and discriminatory. It will also defeat the purpose for which the provision for reservation has been made.

The High Court, in our view, is not justified in placing reliance on sub-clause (iv) of the definition clause and excluding the writ petitioners from the eligible category on that basis. Sub-clause (iv) has no application in the instant case for the reason that it applies to such of those persons who are relieved from service after specific period of engagement and become entitled to get gratuity. If a person, who served in the armed forces, is released after being granted the benefit of pension, the case is taken out of purview of sub-clause (iv). The exclusionary words "otherwise than at his own request" occurring in sub-clause (iv) cannot, therefore, be relied upon to deny the benefit to the appellants. Then the question arises whether such person would fall under sub-clause (i)? True, according to the terminology used in the Service Rules governing the armed forces there is a distinction between retirement and release/discharge, as pointed out by the High Court. But, in the context of definition of ex-serviceman in Rule 2(c)(ii), broader meaning has to be given to the word 'retired' occurring in sub-clause (i). In principle and in the light of the considerations set out above, there is no rational basis for excluding those discharged or released from service after earning pension. It is only after considerable period of satisfactory service a member of armed forces becomes entitled to pension. The mere fact that after such long period of service he voluntarily quit the service with the

consent of the employer should not place him in a disadvantageous position for claiming the benefit of reservation for ex-serviceman. Therefore, the expression 'retirement' should be given wider meaning in order to effectuate the objective behind the Rule.

On the discussions in the foregoing paragraphs the appeals are allowed. The judgment of the High Court dated 20.9.1999 in CWP No.19084/98 is set aside. It is stated at the bar that the appellants in these appeals have appeared in the competitive examination but their results have not been declared. The respondents will take steps to declare their results forthwith and consider their case for appointment in terms of the service rules and in accordance with the law. There will be no order for costs.

..J.
(D.P. MOHAPATRA)

..J.
(P.VENKATARAMA REDDI)

April 02, 2002