

CASE NO.:
Appeal (civil) 691 of 2005

PETITIONER:
State of Haryana and Anr.

RESPONDENT:
Shri Om Prakash

DATE OF JUDGMENT: 10/07/2006

BENCH:
ARIJIT PASAYAT & ALTAMAS KABIR

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

The State of Haryana calls in question correctness of the judgment rendered by a Division Bench of the Punjab and Haryana High Court holding that the respondent was entitled to pension in terms of Rule 4(iii) of the Punjab Government National Emergency (Concession) Rules, 1965 (in short the 'Rules'). A writ petition was filed by the respondent before the High Court claiming that he is entitled to pension taking into consideration the services rendered by him in the Armed Forces during the period when emergency was proclaimed. Placing reliance on Rule 4 (iii), the aforesaid claim of the respondent was declined by the appellant. It was stated that there was a gap of more than three years between the date of discharge from the Armed Forces and his date of appointment as Veterinary Live Stock Development Assistant.

In the writ petition filed the respondent re-iterated his claim for pension. According to him he fulfilled the conditions and therefore he was entitled to pension. The State reiterated its stand that since there was a gap of more than three years, he was not entitled to any pension. The High Court held that the respondent was entitled to pensionary benefits because the services rendered by him during the period of his military service when emergency remained proclaimed shall be counted in addition to the qualifying service rendered by him in civil employment for the purpose of determining pensionary benefits. A direction was given to work out the details and grant the benefits.

In support of the appeal, learned counsel for the State submitted that the High Court did not correctly interpret Rule 4(iii) of the Rules though the rule was noticed. A bare reading of the stipulated condition in the said rule makes the position clear that only if there was a gap of less than three years the benefit is available. Learned counsel for the respondent on the other hand supported the judgment.

In order to appreciate the rival stands Rule 4(iii) needs to be quoted. The same reads as follows:

"4(iii) Increments Seniority and Pension:-
Period of Military service shall count for

increments, seniority and pension as under:-

Pension: The period of military service mentioned in Clause-I shall count towards pension only in the case of appointments of permanent service or post under the Govt. subject to the following conditions:

(1) The person concerned should not have earned a pension under military rules in respect of the military service in question.

(2) The period, if any, between the date of discharge from military service and the date of appointment to any service or post under the Government shall count for pension provided such period does not exceed one year. Any period exceeding one year, but not exceeding 3 years may also be allowed to count for pension in exceptional cases under the orders of the Government."

A bare reading of the provision makes the position clear that for the purpose of computing the period of permanent service, two conditions are to be kept in view. First is that the person concerned should not have earned a pension under Military Rules in respect of the military service in question. The second condition in fact has two parts. For the purpose of working out the entitlement, the period if any between the date of discharge from military service and the date of appointment to any service or post under the Government shall count for pension automatically if such period does not exceed one year. But if the period exceeds one year but does not exceed three years, the period may be allowed to be counted in exceptional cases. In other words, the Government must pass an order holding that the case was an exceptional one and, therefore, instead of period of one year, period upto three years could be reckoned for the purpose of computation. If the period is more than three years, there is no scope for including the same for the purpose of working out the pensionary entitlements.

Learned counsel for the respondent submitted that there is no dispute that the date of discharge is 13.6.1967 and the appointment was made in the year 1972. But the process for selection had started in 1970. It is urged that his services were regularized from 1972 after he had undergone military service. The aforesaid plea is clearly untenable in view of the clear language of Rule 4(iii) as quoted above. There being no dispute that the appointment was made in 1972. It is irrelevant as to when the process of selection had started or when the respondent had undergone training as claimed. The language of Rule 4(iii) is very clear to the effect that the period has to be reckoned between the date of discharge upto the date of appointment. When the period is undisputedly more than three years respondent is not entitled to pensionary benefits in terms of Rule 4(iii) and the High Court erred in holding otherwise. The impugned order of the High Court is set aside. The appeal is allowed. But there shall be no order as to costs.