

Mohan Singh Dhindsa v. State of Punjab and others (D. V. Sehgal, J.)

the Act. But we are of the view that the period during which the appellant worked as a part-time Mali could not be taken as continuous in order to invoke the provisions of section 25-F of the Act.

(4) In the light of the above discussion, we do not see any reason to refer to the various judgments relied upon by the learned counsel for the appellant. In result, the appeal fails and is dismissed.

R.N.R.

Before D. V. Sehgal, J.

MOHAN SINGH DHINDSA,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 2648 of 1986.

August 22, 1988.

Punjab Recruitment of Ex-Servicemen Rules, 1982—Rule 4—Civil employment—Recruitment—Reservation of posts for ex-serviceman—Proviso to Rule 4 creating right of reservation in favour of dependant child or wife of ex-serviceman in cases where ex-serviceman is not available—Appointment of such a dependant in face of availability of ex-serviceman—Whether illegal and ultra vires.

Held, that Rule 4 of the Punjab Recruitment of Ex-Servicemen Rules, 1982 makes it clear that it is only where an ex-serviceman is not available for recruitment against a reserved vacancy that such a vacancy shall be filled in by recruitment of the wife or one dependent child of an ex-serviceman. It is admitted that not only the petitioner but one more person who stood higher in merit were the ex-servicemen available for appointment against the posts reserved for ex-servicemen. Therefore, the dependant child of an ex-serviceman could not get one post reserved for ex-servicemen on the strength of the instructions, for the reason that his father was a disabled and incapacitated ex-serviceman. Such a stand is without force. The children of deceased/disabled ex-serviceman may be considered sympathetically for civil employment if they fulfill the qualifications for the post. Hence, it has to be held that the appointment of a dependant child of an ex-serviceman in the face of availability of ex-servicemen is illegal and *ultra vires* the provisions of Rule 4 of the Rules. (Paras 8 and 10).

Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to summon the relevant record and after perusing the same :

- (a) *issue a writ, order or direction, especially in the nature of Certiorari quashing the selection of respondent No. 3, declare the post illegally held by him as vacant and consequently reinstate that post to the quota of ex-servicemen;*
- (b) *issue a writ in the nature of Mandamus directing the respondents No. 1 and 2 to appoint the petitioner against the post specifically earmarked for the Ex-servicemen as per 'Consolidated Instructions'.*
- (c) *dispense with the requirement of filing the certified copies of the Annexures.*
- (d) *exempt the petitioner from issuing advance notices of motion to the respondents.*
- (e) *pass any other order, writ of direction as may be deemed fit and proper in the circumstances of the case.*

AND

- (f) *award the costs of the petition.*

Gurmukh Singh, Advocate, for the Petitioner.

S. K. Sharma, A.A.G. (Punjab), for the Respondent 1 & 2.

S. S. Nijjar, Advocate, for the Respondent No. 3.

JUDGMENT

D. V. Sehgal, J.

(1) *Vide* advertisement Anneure P.1 published in the Tribune, dated 27th February, 1985 respondent No. 2 invited applications for the posts of Assistant District Attorneys Grade II (for short A.D.As Grade II). Some of the vacancies were reserved for members of scheduled castes/scheduled tribes, backward classes, ex-servicemen, children/grand children of freedom fighters and physically handicapped persons, in accordance with the instructions issued on the subject from time to time. The petitioner being an ex-serviceman and possessing L.L.B. (Professional) Degree—the requisite qualification—applied for the said post,—*vide* his application Annexure P.2.

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He also submitted his application in the prescribed proforma Annexure P.3. He appeared for interview but was ultimately not selected for the post.

(2) It is not in dispute that the Government had accorded approval for filling up 29 posts of A.D.As Grade II on temporary basis,—*vide* letter dated 16th January, 1985. Later the Government conveyed permission to fill up 20 more posts of A.D.As Grade II. There were, however, only 12 vacancies available which were filled up. It was,—*vide* order Annexure P.5 dated 28th May, 1985 that 29 posts were filled up in the first instance by making fresh appointments and then,—*vide* order dated 4th July, 1985, 12 more appointments were made to the posts. The grievance of the petitioner is that he being an ex-serviceman one of the posts reserved for ex-servicemen ought to have been given to him, but instead respondents Nos. 1 and 2 recruited Shri Kanwaljit Singh Toor respondent No. 3, son of an ex-serviceman, against one of the reserved posts and further instead of filling up 6 posts reserved for ex-servicemen only 5 posts were given to them. He, therefore, impugns the orders Annexures P.5 and P.6.

(3) A joint written statement has been filed on behalf of respondents Nos. 1 and 2. Respondent No. 3 has filed a separate written statement. The stand taken by respondents Nos. 1 and 2 is that 29 temporary posts of A.D.As Grade II which were to be filled up were at roster points Nos. 151 to 179 according to the roster-register maintained as per the standing Government instructions. Roster points Nos. 153, 157, 161, 165, 169, 173 and 177 (7 posts) were reserved for scheduled castes/scheduled tribes. Points Nos. 155 and 175 in the roster (2 posts) were meant for backward classes. One post at roster point No. 163 was reserved for son/daughter/grandson/grand-daughter of freedom fighter. Yet another post at roster point No. 171 was reserved for handicapped person. Four posts at roster points Nos. 154, 160, 167 and 174 were reserved for ex-servicemen. Thus, out of 29 posts, 15 were reserved for different categories and only 14 posts were left for the general category candidates. According to the proviso to rule 4 of the Punjab Recruitment of Ex-servicemen Rules, 1982 (for short 'the Rules'), the total number of reserved vacancies, including those reserved for the candidates belonging to scheduled castes/scheduled tribes and backward classes, should not exceed 50 per cent of the posts to be filled up in a particular year. Therefore, the post reserved for ex-servicemen at roster point No. 174 was de-reserved and thrown open for the

general category—thus, reducing the reserved posts to 14 and increasing the general category posts to 15 out of 29 posts. It is, thus maintained that only three ex-servicemen at roster points Nos. 154, 160 and 167 were recruited to the Service out of 29 posts to which appointments were made,—*vide* order Annexure P.5.

(4) It is further explained by respondents Nos. 1 and 2 that when 12 posts of A.D.As grade II were filled up,—*vide* order Annexure P 6 only two posts were given to ex-servicemen, i.e. at roster points Nos. 180 and 187, as these posts fell at points Nos. 180 to 191 according to the roster register maintained by the Government

(5) It is admitted that respondent No. 3 was appointed against the post reserved for ex-serviceman at roster point No. 180, but it is explained that it was so done for the reason that the Army authorities had certified that Shri Sher Singh, father of respondent No. 3, who was an ex-serviceman, was invalid and his disability was to the extent of 100 per cent for life. It is maintained that according to the Government instructions the children of the deceased/disabled ex-servicemen are to be considered sympathetically for civil employment if they fulfil the qualifications of the service/posts applied for by them. The instructions quoted are to the following effect :—

“(ii) Children of deceased/disabled servicemen will be considered sympathetically for civil employment if they fulfil the qualifications of service/post applied for by them.”

(6) It is, thus, asserted that respondent No. 3 was rightly placed at Sr. No. 4 of the merit list of the ex-servicemen category prepared by the Departmental Selection Committee constituted by the Government. It is further pointed out that the petitioner was placed at Sr. No. 7 in the said list. He has no claim for being appointed as A.D.A. Grade II over and above respondent No. 3. It is also highlighted that the candidate at Sr. No. 6 of the aforesaid merit list had also not been appointed to the post. The petitioner did not have better prospects than him. He, therefore, has no cause of action in his favour.

(7) Respondent No. 3 in his written statement has averred that the petitioner has already availed of the concession available to the ex-servicemen by getting employment as an Assistant in the Head Office of the MILKFED since the year 1972. He also got the benefit under the Punjab Government National Emergency Concessions

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(Rules) 1965, and Demobilised Armed Forces Personnel (Reservation of Vacancies in the Punjab State Non-technical Services) Rules, 1968. He, therefore, could not claim a post against the reserved quota for ex-servicemen in respect of appointment to the post of A.D.A. Grade II. The other points taken in defence by respondent No. 3 are similar to those taken in the written statement of respondents Nos. 1 and 2.

(8) I have heard the learned counsel for the parties I am of the considered view that this petition must succeed. Respondents Nos. 1 and 2 have wrongly relied on the second proviso to rule 4 of the Rules and have thus illegally taken away one post at roster point No. 174 meant to be reserved for ex-serviceman. It is no doubt provided therein that total number of reserved vacancies excluding those reserved for the candidates belonging to scheduled castes/scheduled tribes and backward classes shall not exceed 50 per cent of the posts to be filled up in a particular year. As is evident from the written statement of those respondents as many as 41 posts of A.D.As Grade II at roster points Nos. 151 to 191 were filled up in pursuance of the advertisement Annexure P.1 and,—vide orders Annexures P.5 and P.6 within a span of less than two months in the year 1985. Out of these, the posts at roster points Nos. 154, 160, 167, 174, 180 and 187 were reserved for ex-servicemen. By de-reservation of the post at roster point No. 174 and throwing it open for the general category respondents Nos. 1 and 2 have clearly acted against the mandatory provision of rule 4 *ibid*. They were not required to find out at the time of the issuance of the order Annexure P.5 whether the total number of reserved vacancies in any way exceeded 50 per cent of the posts to be filled up in a particular year. In fact, in pursuance of the advertisement Annexure P.1 yet another order Annexure P.6 had been issued in the very following month to fill up 12 more posts and out of those the posts at roster points Nos. 180 and 187 have been given to the ex-servicemen. If we take into account the overall position, it is clear that out of the roster points Nos. 151 to 191, accounting for the posts reserved for scheduled castes/scheduled tribes at points Nos. 152, 157, 161, 165, 169, 173, 177, 181, 185 and 189, six posts could have been reserved for ex-servicemen and they ought to have been appointed against these posts falling at roster points Nos. 154, 167, 174, 180 and 187. The reservation was not exceeding 50 per cent of the vacancies to be filled up in the year 1985. The stand taken in the written statement that respondent No. 3 was to be preferred over the other ex-servicemen for the reason that his father was a disabled and incapacitated

ex-serviceman is also without force. The administrative instructions to which reference has been made in the written statement simply state that the children of the deceased/disabled servicemen are to be considered sympathetically for civil employment if they fulfil the qualifications for the posts. On the other hand, rule 4 of the Rules, *inter-alia*, provides thus :—

“4. Reservation of Vacancies : (1) Subject to the provisions of rule 3, fifteen per cent 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 shall be reserved for being filled in by recruitment of Ex-Servicemen :

Provided that where an Ex-Serviceman is not available for recruitment against a reserved vacancy, such a vacancy shall be reserved to be filled in by recruitment of the wife or one dependent child or an ex-serviceman, who has neither been recruited against a reserved vacancy nor is eligible to be recruited against such vacancy under these rules.”

The above rule makes it clear that it is only where an ex-serviceman is not available for recruitment against a reserved vacancy that such a vacancy shall be filled in by recruitment of the wife or one dependent child of an ex-serviceman. It is admitted that not only the petitioner but one more person who stood higher in merit were the ex-servicemen available for appointment against the posts reserved for ex-servicemen. Therefore, respondent No. 3 could not get one of the posts reserved for the ex-servicemen. The appointment of respondent No. 3 is, therefore, clearly against the above provisions of the Rules.

(9) Learned counsel for respondent No. 3, however, pointed out that the petitioner was a simple Graduate when he was serving the Indian Air Force. It was only after he was released from the military service that he passed the L.L.B. (Professional) Examination and became eligible for appointment to the post of A.D.A. Grade II. He placed reliance on a Full Bench judgment of this Court in *Khusbash Singh Sandhu v. The State of Punjab* (1) to contend that the petitioner could not stake his claim to the post reserved for an ex-serviceman. I have given my anxious thought to this submission. On going through *Khusbash Singh Sandhu's case* (supra), I find that it in no way supports the contention raised by the learned counsel.

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(10) Consequently, I allow this writ petition and declare that the petitioner was illegally denied appointment to the 6th post out of 41 posts of A.D.As Grade II, which ought to have been reserved for ex-servicemen. I further declare that the appointment of respondent No. 3 against the 4th post reserved for ex-serviceman is illegal and *ultra vires* the provisions of rule 4 of the Rules. Respondents Nos. 1 and 2 are directed to appoint the petitioner to the Service as A.D.A. Grade II within two months from today. He shall, however, be not entitled to any emoluments from the date the other selected candidates were appointed till the date of his appointment in pursuance of this order, but it is made clear that the year of appointment of the petitioner shall be treated to be the year 1985.

(11) Before parting with this judgment, I further make it clear that in case the candidate who stood at No. 6 in the merit list, when offered appointment does not respond to the same, respondent No. 3 being son of an ex-serviceman may be retained in service. This would avoid hardship to him which results from this judgment.

(12) The petitioner shall be entitled to recover costs from respondents Nos. 1 and 2 which are assessed at Rs. 500.

R.N.R.

Before M. M. Punchhi and Amarjeet Chaudhary, JJ.

ARCHANA SAXENA,—Petitioner.

versus

MAHARSHI DAYANAND UNIVERSITY AND OTHERS,
—Respondents.

Civil Writ Petition No. 6663 of 1988

August 22, 1988.

Constitution of India, 1950—Art. 226—Writ jurisdiction—Admission in M.Phil course—Institutional preference—University providing 5 per cent weightage on total marks allotted—Weightage of 5 per cent on obtained percentage in another course of the University—Whether the court can interfere in writ jurisdiction.