

Hari Narain (deceased) v. Subhash Chander and others
(I. S. Tiwana, J.)

about the fact that the District Judge while dealing with the application in question was acting as a Civil Court—that the provisions of Article 137 of the Act clearly govern the situation and the respondent could file application only within three years from the date when the right to apply for the setting aside of the probate accrued to him. This right obviously accrued to him right from the time the probate was granted in favour of the appellant. Since at the starting point of time of this period of limitation, the respondent was under a legal disability on account of his minority, he, in terms of section 6 of the Act could certainly make the application in question within the same period, i.e. 3 years after the cessation of his disability, i.e., on his attaining majority on 28th March, 1970. In the light of this provision of law, he could file the application upto 27th March, 1973. This was the outer limit of time for him to initiate the present proceedings, but he actually filed the application on 12th March, 1974. The ignorance on the applicant's part if it is accepted for argument's sake, about the accrual of the right in his favour for getting the probate set aside could not postpone the starting point of limitation. He had to make this application within 3 years from the cessation of the legal disability from which he suffered on the date the right to apply had accrued to him. Thus, his application was apparently barred by limitation and had essentially to be dismissed in the face of section 3 of the Act.

(4) In the light of the discussion above, we while setting aside the order under appeal, dismiss the application of the respondent as barred by time, but with no order as to costs.

N.K.S.

Before S. S. Kang, J.

BIRU RAM AND OTHERS,—Petitioners.

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 5141 of 1978.

February 21, 1985.

Demobilized Armed Forces Personnel (Reservation of vacancies in the Punjab State Non-Technical Services) Rules 1968—Rules 3 and 5—Punjab State Cooperative Service Class II Rules, 1950—Rule

6(c)—Appointment made to Class II Service against a post reserved for demobilised armed forces personnel—Benefit of seniority given to such appointee under Rule 5—Seniority reckoned from the assumed date of first opportunity he had for joining Class II Service after joining military service—Appointee not possessing the basic educational qualification for appointment to Class II Service on the assumed date—Benefit of seniority under Rule 5—Whether could be granted.

Held, that the first opportunity envisaged by rule 5 of the Demobilized Armed Forces Personnel (Reservation of vacancies in the Punjab State Non-Technical Services) Rules, 1968 is the first opportunity which a demobilized armed forces personnel may be actually and factually able to avail of. In other words, he may be in a position to join the service under the State Government which he has now joined when the first occasion arose after he had been recruited in the Army. This pre-supposes that when the opportunity for joining service had arisen, the candidate was otherwise eligible to be appointed to the post or the service. This would be possible only if the candidate possesses the requisite educational qualifications prescribed for the post or the service. If the candidate did not possess the prescribed academic qualifications then he would not have been eligible to apply for the post and take the examination held for selecting the candidates and if he was ineligible for appointment to a particular post then no opportunity would have come in his way to be appointed to that particular post or the service. Thus, where a candidate did not possess the minimum educational qualification prescribed for the post in Class II Service on the date when the first appointment was made and, therefore, if he was ineligible to avail of that opportunity, he could not be given benefit of seniority under rule 5 of the 1968 Rules.

(Paras 6 and 7).

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of certiorari or any appropriate writ order or direction be issued quashing the order Annexures P.7 and P. 8.

Kuldip Singh Senior Advocate (G. C. Gupta Advocate with him, for the Petitioner.

H.S. Riar D.A.G. Pb for respondent No. 1.J.L. Gupta senior Advocate (Rakesh Khanna and R. Sharma Advocates with him), for respondent No. 2.

JUDGMENT

S. S. Kang, J.

(1) At issue in these writ petitions (Civil Writ Petition No. 5141 of 1978 and Civil Writ Petition No. 313 of 1979) is the legality and

Biru Ram and others v. The State of Punjab and another
(S. S. Kang, J.)

validity of order dated September 30, 1978 (copy Annexure P. 7) whereby benefit of military service rendered by Darshan Singh Turna, respondent No. 2 has been given to him towards his service in the Punjab State Co-operative Service Class II (hereinafter referred to as Class II Service) and he has been assigned the presumptive date of his appointment in the class II service as October, 1966, as also the order dated December 22, 1978 (copy annexure P.8) granting respondent No. 2 the assumed date of promotion as Deputy Registrar with effect from April, 1973 and as Joint Registrar Co-operative Societies with effect from December 19, 1977.

(2) The petitioners were promoted as Assistant Registrars in the period ranging from 1966 to 1969. They were promoted as Deputy Registrars during the period 1973 to 1978. The post of Assistant Registrar, Co-operative societies, is included in Class II Service. The conditions of this service are governed by the Punjab State Co-operative Service Class II Rules 1958 (hereinafter called the Rules). According to clause (c) of Rule 6, the qualification prescribed for recruitment to the post of Assistant Registrar is as under:—

“6(c) *Qualifications of candidate by direct appointment* : No person shall be appointed directly to the service unless he—

* * * *

(c) holds a degree of M.A., or M.Sc., or LL.B. or B.Sc. (Agri) or B.V.Sc., or B.A. not lower than 2nd Division, of a recognised University or an Honours Degree not below the second class of a foreign University of recognised standing. Persons holding Higher Diploma in Cooperation will be given preference.”

The Punjab Provincial Co-operative Service Class I Rules 1950 (Class I Rules for short) govern the conditions of service of Class I service. The post of Deputy Registrar is included in Class I service. The appointments to the post of Deputy Registrars are made by promotion by selection out of the Assistant Registrars.

(3) In 1972 the Punjab Public Service Commission for short ‘the Commission’ advertised 66 posts of Punjab Civil Service and other Allied Services which included 6 posts of Assistant Registrars, Cooperative Societies, 12 Posts out of the above 66 posts were

reserved for Released Indian Armed Forces personnel. As a result of the examination held by the Commission Darshan Singh Turna, respondent No. 2 was recruited as Assistant Registrar, Co-operative Societies against a post reserved for the Released Indian Armed Forces personnel in August, 1974. He was put on probation for a period of two years. He completed two years of training as required under rule 9 in August, 1976 and was appointed as Assistant Registrar, Co-operative Societies in Class II Service.

(4) The Punjab Government framed the Demobilised Armed Forces Personnel (Reservation of vacancies in the Punjab State Non-Technical Services) Rules, 1968 (hereinafter called 'the 1968 Rules'). Under rule 3, 20 per cent of the non-technical posts to be filled up through direct recruitment were reserved for being filled up by the Released Indian Armed Forces Personnel who joined service or were commissioned on or after the 1st day of November, 1962 and were released at any time thereafter. These vacancies were to be filled in by the Released Indian Armed Forces Personnel on the basis of their record of military service and their performance at a written examination conducted by the Commission. A special concession was given to the Released Indian Armed Forces Personnel by rule 5 in the matter of fixation of their seniority and pay on their appointment against the vacancies reserved under rule 3. Their seniority shall be determined on the assumption that they joined the service or the post, as the case may be, under the State Government at the first opportunity they had after they joined the military service or training prior to the Commission. Shri Darshan Singh Turna, respondent No. 2, had joined the Army on February 17, 1964 as a commissioned officer. He was released from the Army on August 1, 1974. When he joined the military service respondent No. 2 was not a Graduate. While in the military service he passed his B.A. examination in 1969. On a representation by the petitioner the State Government gave him the benefit of the provisions of Rule 5 of 1968 Rules. After 1964 when the petitioner joined the Army the Commission had held an examination for the P.C.S. and Allied Services including the posts of the Assistant Registrars in 1964. It commenced on 17th February, 1964. The appointments of successful candidates was made in 1966. Treating the examination held in February, 1966 by the Commission as the first opportunity, respondent No. 2 had after joining the military service been given the presumptive date of his appointment as Assistant Registrar in Class II Service as October, 1966. On that very basis he was given promotion to the post of Deputy Registrar. Though, admittedly, respondent No. 2 had joined service much

Biru Ram and others v. The State of Punjab and another
(S. S. Kang, J.)

after the petitioner but because of concession bestowed by rule 5, he was made senior to the petitioners and got accelerated promotion over and above them. Aggrieved the petitioners have filed these writ petitions.

(5) It will be beneficial to read the relevant provisions of the 1968 rules at the threshold:—

“Rule 3(1):—Twenty per cent of the non-technical posts to be filled up through direct recruitment shall be reserved for being filled up by the Released Indian Armed Forces Personnel

* * * * *

Rule 5(1) seniority and pay of the candidates who are appointed against the vacancies reserved under rule 3 and who—

- (i) in the case of Emergency Commissioned Officers are released according to a programme ; or
- (ii) in the case of Short Service Commissioned Officers, are released on the expiry of the tenure of their service ; or
- (iii) are invalidated owing to a disability attributable to or aggravated by military service.

shall be determined on the assumption that they joined the service or the post, as the case may be, under the State Government at the first opportunity they had after they joined the military service or training prior to the Commission.

(6) It has been argued by the learned counsel for the petitioners that the first opportunity envisaged by rule 5 is the first opportunity which a Demobilised Armed Forces Personnel may be actually and factually able to avail of. In other words, he may be in a position to join the service under the State Government which he has now joined when the first occasion arose after he had been recruited in

the Army. This pre-supposes that when the opportunity for joining service had arisen the candidate was otherwise eligible to be appointed to the post or the service. This would have been possible only if the candidate possesses the requisite educational qualifications prescribed for the post or the service. If the candidate did not possess the prescribed academic qualifications then he would not have been eligible to apply for the post and take the examination held for selecting the candidate, and if he was ineligible for appointment to a particular post then no opportunity would have come in his way to be appointed to that particular post or the service. Admittedly, in 1966 a competitive examination was held for recruitment to the post of Assistant Registrar. Respondent No. 2 did not possess the minimum educational qualification prescribed for the post of Assistant Registrar as prescribed by clause (c) of Rule 6. So he was ineligible to avail of that opportunity. He could not be given benefit of seniority under Rule 5 of 1958 Rules. It is not necessary to dilate upon the point because it stands squarely concluded by a recent Full Bench decision of this Court in *Khusbhash Singh Sandhu vs. The State of Punjab*, (1). In that case Khusbhash Singh Sandhu had joined the military service on February 14, 1964 as a Commissioned Officer. He was not a Graduate at that time. He passed his B.A. examination in 1971. Thereafter he was selected in 1972 to the P.C.S. (Executive Branch) and was later appointed to that service. He claimed that his seniority should be fixed from October, 1966 when the appointment had been made as a result of the examination for P.C.S. (Executive Branch) and other Allied Services held in February, 1964. At that time he had the first opportunity to join the Punjab Civil Service. Since he was not a Graduate which was the minimum academic qualification for appointment to the P.C.S. (Executive Branch), his claim was rejected by the Government. He filed a writ petition and the same was dismissed. It was observed by the Full Bench:—

“Rule 4(1) of the E.B. Rules entitles a Demobilized Indian Armed Forces Personnel to the benefit of the service put in by him in the Army on the assumption that he joined the service under the State Government at the first opportunity he had after joining the military service or training prior to the Commission. The words ‘first opportunity’ and ‘after’ in this Rule are significant to make the intention of the Rule explicit and clear. Such a person should be eligible to enter the competition on

(1) 1981(2) S.L.R. 576.

Biru Ram and others v. The State of Punjab and another
(S. S. Kang, J.)

the first opportunity he had after joining the military service or training prior to the Commission. Such Opportunity, though assumptive, has to satisfy the conditions prescribed by the Rules. The opportunity has to be viewed in the light of rule 3 prescribing the minimum academic qualification. If a Demobilized Indian Armed Forces Personnel does not fulfil any of the conditions mentioned in rule 3, he cannot get an entry into the competitive examination for the service.

(7) The petitioner could claim to avail of this Opportunity of joining the State Service if he was academically qualified at that stage to apply as a candidate for that examination which was held from 17th of February, 1964 to 26th of February, 1964. Admittedly, he was an under-graduate at that time. He was, for that reason, disqualified to be enrolled as a candidate for the examination. For this reason, the petitioner cannot say that he had an opportunity at that time to enter the State Service. Rule 4(1)(a) does not tend to make the opportunity fictional as the language of rule 4(1)(a) does not relax the rigors of minimum qualifications prescribed in rule 3 and the opportunity cannot be deferred to wait for the Demobilisation of the Personnel and acquire the minimum qualifications." So the ratio in *Khusbash Singh Sandhus case* (supra) fully covers the case of the petitioners. Since the respondent did not possess the requisite academic qualification at the time the examination was held in 1964, he was not entitled to the benefit of rule 5.

(8) Shri J. L. Gupta, Senior Counsel, learned counsel for respondent No. 2 has argued that respondent No. 2 being the Released Indian Armed Forces Personnel was entitled to benefits available to them towards seniority, promotion and increment etc. under rule 5 of the Punjab Government National Emergency (Concession) Rules 1965 (hereinafter referred to as 'the 1965 Rules'). This plea does not arise out of the pleadings of the parties. As such no decision can be given. However, the respondent, if so advised, can seek his redress from the competent authorities in accordance with the law including of 1965 rules.

(9) Consequently, the writ petitions are allowed and the orders dated September 30, 1978 (Annexure P. 7) and December 22, 1978 (Annexure P-8) are quashed. No costs.

N.K.S.