

*Before Tejinder Singh Dhindsa, J.*

**SUKHWINDER SINGH & OTHERS—Petitioners**

*versus*

**STATE OF PUNJAB AND OTHERS—Respondents**

**CWP No. 671 of 2011**

November 19, 2012

*Constitution of India - Art. 226/227 - Punjab Recruitment of Ex-Servicemen Rules, 1982 - Rls. 2 (c), 3, 4, 6 & 9 - Punjab Police Rules, 1934 - Rl. 12.24 sub-clause (c) - Petitioners served IN Indian Army - State advertised 5578 posts of constables in the Punjab Police - 13% of posts provided for ex-servicemen - An embargo was imposed in later part of clause-4 sub clause (b) of the advertisement that the gap between re-employment and discharge service should not be more than 24 months (2 Years) - Petitioners held ineligible and challenged said embargo - Held that Rule 12.24 clause 1 sub clause (c) of the Punjab Police Rules, 1934 is for re-enrollment to post of Constable and would not apply as regards fresh recruitment to post of Constable for vacancies reserved for ex-servicemen - Petitioners will not be considered ineligible only on account that gap between discharge from army service and seeking employment in Punjab District Police cadre was to be in excess of 24 months - Writ Petition allowed.*

*Held*, that the later part of clause 4 sub clause (b) cannot operate to the detriment and prejudice of the rights of the petitioners for recruitment to the post in question so as to take away the benefit of age relaxation as provided in terms of clause 4 sub clause (b) as also Rule 6 of the 1982 Rules. In law the offending later part of clause 4 sub clause (b) cannot be permitted to hold the field so as to render earlier portion of relaxation under the relevant clause to be redundant. It would require notice that Rule 12.24 of the Punjab Police Rules, 1934 was already in the statute book while promulgating the 1982 Rules, which were in the nature of a beneficial legislation in favour of the ex-servicemen. Even though, it has been held that Rule 12.24 clause 1 sub clause (c) of the Punjab Police Rules, 1934

hold the field only as regards re-enrollment to the post of Constable and would have no applicability as regards fresh recruitment to the post of Constable for vacancies reserved for ex-servicemen are concerned, still both the provisions would have to be achieved in terms of the age relaxation provided under Rule 6 of the 1982 Rules is in fact achieved. The 1982 Rules would have to be construed in the nature of a particular provision governing the category of ex-servicemen whereas Rule 12.24 of the Punjab Police Rules are in the nature of general provisions. In the light of the facts of the present case the particular provisions would be held to be over riding the general provisions. Rule 9 of the 1982 Rules crystallize the matter further as it is mandated that for all such matters not specifically provided for in the 1982 Rules, an ex-serviceman appointed against a reserved vacancy would be governed by the concerned service rules. The subject of age and relaxation in terms thereof has been specifically provided for under the 1982 Rules and as such in terms of Rule 9 sub clause (2) the concerned service rules i.e. the Punjab Police Rules, 1934 would have to be read subject to the provisions of the 1982 Rules and are required to be construed accordingly.

(Para 15)

Parminder Singh, Advocate, *for the petitioners.*

Suvir Sehgal, Addl. A.G, Punjab.

### **TEJINDER SINGH DHINDSA, J**

(1) Learned counsel for the parties have been heard at length.

(2) The petitioners, who are all ex-service men have filed the instant writ petition impugning the action of the respondent-authorities in holding them as ineligible for purposes of recruitment to the post of Male Constable in the Punjab District Police Cadre.

(3) A brief factual backdrop would be necessary.

(4) Petitioner no.1, whose date of birth is 3.5.1968 was enrolled as a Sepoy in the Indian Army on 23.9.1986. He was discharged from the Army on 31.3.2007 having served for a period of 20 years 6 months and 8 days. Petitioner no.2, whose date of birth is 12.6.1970 joined the Indian Army as a Sepoy on 29.3.1990 and was discharged on 31.5.2007 having

served for a period of 17 years 2 months and 2 days. Likewise, petitioner no.3 whose date of birth is 5.1.1964 was enrolled as a Sepoy-Clerk in the Army on 27.5.1986 and was discharged on 30.6.2008 having served for a period of 22 years 3 months and 4 days. All the three petitioners are drawing pension from the Army.

(5) The Director General of Police, Punjab issued an advertisement dated 12.9.2010 for filling up 5578 posts of constables in the Punjab Police in the rank of District Police Cadre. Such posts were advertised district wise. A reservation to the extent of 13% of the posts advertised was provided in favour of ex-service men. The requisite eligibility conditions in terms of essential qualifications as also the prescribed age limits were also stipulated in such advertisement.

(6) Clause 4 sub clause (b) relating to the age limit prescribed read in the following terms:-

#### **“REQUISITE QUALIFICATIONS**

(a) xxx xxx xxx

*(b) Minimum age limit for appointment is 18 years and maximum age limit is 25 years. Cut of date is 1/9/2010. Relaxation of upper age limit qua scheduled caste/scheduled tribes and backward classes will be as prescribed by the State.*

*Relaxation of years spent during service plus 3 years will be granted to Ex-servicemen while considering their upper age limit. “In spite of this the gap between reemployment and discharge service should not be more than 24 months (2 years).”*

(7) In terms of the afore-reproduced stipulation as regards age limit, it would become apparent that in so far as ex-service men were concerned a relaxation had been provided as regards the number of years spent in service plus three years in addition thereto while considering their upper age limit. However, the later part of clause 4 sub clause (b) imposed an embargo that the gap between re-employment and discharge from army service should not be more than 24 months (2 years).

(8) The petitioners, who had applied for the post of Male Constable assert that they were eligible in terms of the qualifications etc. prescribed in the advertisement dated 12.9.2010 and were also eligible in terms of the age limit prescribed as per the relaxation contained in clause 4 sub clause (b) but are aggrieved of the later part of clause 4 sub clause (b) inasmuch as there is a gap of more than 2 years between the date of discharge from army service and the date of the submission of the application seeking recruitment to the post of Male Constable. As such the specific challenge raised in the present writ petition is to such later clause in clause 4 sub clause (b) of the advertisement, whereby the relaxation in terms of the age limit prescribed has been made subject to the condition that the gap between re-employment and discharge of service should not be more than 24 months (2 years). The precise case set up on behalf of the petitioners is that such offending part of clause 4 sub clause (b) is in violation of Rule 6 of the Punjab Recruitment of Ex-service Men Rules, 1982 (hereinafter referred to as the 1982 Rules) which regulates the issue of age in so far as recruitment of ex-service men to the State Civil Services as also posts connected with the affairs of the State of Punjab.

(9) In the written statement filed on behalf of the respondents the facts pertaining to the army service rendered by the petitioners has not been disputed. A stand has been taken that since the petitioners were discharged more than 2 years prior to the cut off date i.e. 1.9.2010 and thereafter revised to 1.1.2010, accordingly, in terms of clause 4 sub clause (b) the petitioners are not eligible so as to be considered to the post of Male Constables. Still further the incorporation of the later part in clause 4 sub clause (b) in the advertisement is sought to be justified in terms of Rule 12.24 sub clause (c) of the Punjab Police Rules, 1934. Still further, it has been contended on behalf of the State that the controversy as raised in the present petition is not relating to the age limit as covered in terms of Rule 6 of the 1982 Rules but only pertaining to the eligibility conditions stipulated in the advertisement in terms of which the petitioners are being held to be ineligible.

(10) The validity of the stipulation contained in the later part of clause 4 sub clause (b) contained in the advertisement dated 12.9.2010 (Annexure P-7) would require examination in the light of the relevant statutory provisions.

(11) Rule 2 (c), Rule 3, Rule 4, Rule 6 and Rule 9 of the 1982 Rules read in the following terms:-

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

*(i) retired or released from such service at his or her own request after earning his or her pension or*

*(ii) has 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 service*

*(ii) persons with disability attributable to military service and*

*(iii) gallantry award winners.*

*3. Extent of application:- These rules shall apply to all the State Civil Services and posts connected with the affairs of the State of Punjab, except the Punjab Vidhan Sabha Secretariat Service and the Punjab Superior Judicial Service.*

4. *Reservation of vacancies:-*

*(1) Subject to the provision of Rule 3, 13% of 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;*

*(Note:- As per Pb. Govt. Letter No. 15/25/2001-4DW/1591 dated 21.05.2002 an Ex-serviceman is allowed the benefit of Reservation for the second time and even thereafter in subsequent recruitments in accordance with the provisions of these Rules).*

*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 of an Exserviceman who has neither been recruited against a reserved vacancy under these rules:*

*Provided further that the wife or the dependent child of the exserviceman shall be recruited against the reserved vacancy subject to the conditions that:-*

*(i) he or she possesses the prescribed qualifications and is within the prescribed age limits;*

*(ii) he or she is not already in service;*

*(iii) he or she will be eligible to avail the benefit only once in life.*

*Provided further that one grand child of the Gallantry Award Winner shall be recruited against the reserved vacancy in case the benefit or reservation has not been availed or by any of the children or dependents such winner or by the winner himself subject to the conditions specified in the second proviso.*

6. *Age:- For recruitment to any vacancy in the State Civil Services whether reserved or not under these rules an ex-serviceman shall be allowed to deduct the period of his service in the Armed Forces of the Union from his actual age and if the*

*resultant age does not exceed the maximum age limit prescribed for direct appointment to such a vacancy in the concerned Service Rules by more than 3 years, he shall be deemed to satisfy the conditions regarding age limit.*

*9. General:- (1) In matters not specifically provided for in these rules, a person appointed against a reserved vacancy shall be governed by the concerned Service Rules.*

*(2) All concerned Service Rules shall be subject to the provisions of these rules and the said rules shall be constructed accordingly.*

*(3) Nothing in these rules shall be constructed as depriving any person to whom these rules apply of any right which had accrued to him under the rules, notifications or orders in force immediately before the commencement of these rules."*

Rule 12.24 sub clause (1) of the Punjab Police Rules, 1934 is couched in the following terms:-

***"12.24 Enlistment of ex-soldiers, reservists and ex-police officers.***

*(1) Re-enrolment in the rank of constable is permitted and past service will count for pension under the following conditions, and subject to the further conditions as to pensions contained in rules 9.2 and 9.29:-*

*(a) Ex-soldiers of the Indian Army and ex-members of police forces (including Military Police), paid for from the general revenues of India, may be enlisted as constables on production of a discharge certificate showing their previous service to have fulfill the physical and other standards required by these rules for first appointments. They must also be passed medically fit by the same standards as are applied to recruits.*

*(b) Age of the date of enrolment in the police must be below 30, but ex-Punjab police officers, and, with the special sanction of the Inspector-General in each case, ex-soldiers and ex-members of other police forces may be re-enlisted*

*up to the age of 55, if they present themselves for re-enrolment and are found medically fit within two years of their discharge.*

*(c) The break of service between the date of enrolment in the police and the date of discharge from previous army employ shall not exceed two years, and there must not have been more than two breaks of service in all.*

*(d) No claim to count previous service for pension shall be allowed unless the previous service claimed was declared and verified at the time of enrolment in the police.*

*(e) Service in a body of additional police shall be counted for increments in the case of a constable transferred to the regular force immediately on such transfer."*

(12) A perusal of the statutory provisions reproduced herein above would make it clear that ex-service man under the 1982 Rules stands defined. It is not disputed that the present petitioners fell under such definition of ex-service man. The extent of application of the 1982 Rules is to all State Civil Services of posts connected with the affairs of State of Punjab except the Punjab Vidhan Sabha Secretarial Services and the Punjab Superior Judicial Service. Under Rule 4 of the 1982 Rules 13% of the vacancies are to be reserved for ex-service men to be filled by direct appointment in all the State Civil Services. It is in terms of Rule 4 of the 1982 Rules that the necessary reservation of 13% had been provided in the advertisement dated 12.9.2010 (Annexure P-7) for recruitment to the post of Male Constable in the Punjab District Police Cadre. Rule 6 governs the question of age and clearly stipulates that for purposes of recruitment to any vacancy in the State Civil Services, an ex-service man shall be allowed to deduct the period of his service in the Armed Forces of the Union from his actual age and if the resultant age does not exceed the maximum age limit provided for such direct appointment in the concerned service rules by more than 3 years he shall be deemed to satisfy the condition regarding the age limit. Rule 9 mandates that with regard to matters not specifically provided for in the 1982 Rules in such eventuality an ex-service man appointed against a reserved vacancy would be governed by the concerned service rules. However, all concerned service rules would be subject to the provisions of the 1982 Rules and would be construed accordingly.



(13) Rule 12.24 sub clause (1) of the Punjab Police Rules, 1934 is on the subject of enrollment of ex-soldiers, reservists and ex police officers and lays down conditions as regards re-enrollment in the rank of Constable. Rule 12.24 sub clause (1) sub clause (c) on the strength of which the offending clause in clause 4 (b) of the advertisement is sought to be justified stipulates that a break of service between the date of enrollment in the police and date of discharge from previous army employment shall not exceed two years and there must not have been more than two breaks in service in all.

(14) At the very outset, it requires notice that Rule 12.24 and the conditions contained therein regulate re-enrollment in the rank of Constable in respect of ex soldier, reservists and ex police officers. The provisions contained in Rule 12.24 would not hold the field in so far as the fresh recruitment to the post of Male Constable in the Punjab District Police Cadre is concerned. To such extent the reliance placed upon Rule 12.24 clause (1) sub clause (c) of the Punjab Police Rules, 1934 to justify the stipulation contained in the later part of clause 4 sub clause (b) of the advertisement dated 12.9.2010 as regards the gap between re-employment and discharge from service to be not more than 24 months is clearly misconceived.

(15) Even otherwise, the very purpose and objective of promulgation of the 1982 Rules was as regards rehabilitation of ex-servicemen in terms of consideration of their claim for recruitment to the State Civil Services and posts connected with the affairs of the State of Punjab and towards such objective providing for reservation as also relaxation of age. Even if, it was to be accepted that the offending part of clause 4 sub clause (b) is on the strength of Rule 12.24 clause (1) sub clause (c) of the Punjab Police Rules, 1934, still the same cannot be permitted to operate as the same would defeat the very objective for which the relaxation in age had been provided to the ex-service men and would in fact frustrate the 1982 Rules itself. The petitioners in the light of the relaxation provided under Rule 6 of the 1982 Rules and in terms thereof by deducting the period of their service in the Armed Forces and the resultant age not exceeding the maximum age limit prescribed in the advertisement i.e. 25 years by more than 3 years are clearly vested with a right for consideration for recruitment to the post of Male Constable subject to the other eligibility conditions as

regards qualifications etc. as also strictly in order of merit determined in the recruitment/selection process. The later part of clause 4 sub clause (b) cannot operate to the detriment and prejudice of the rights of the petitioners for recruitment to the post in question so as to take away the benefit of age relaxation as provided in terms of clause 4 sub clause (b) as also Rule 6 of the 1982 Rules. In law the offending later part of clause 4 sub clause (b) cannot be permitted to hold the field so as to render earlier portion of relaxation under the relevant clause to be redundant. It would require notice that Rule 12.24 of the Punjab Police Rules, 1934 was already in the statute book while promulgating the 1982 Rules which were in the nature of a beneficial legislation in favour of the ex-service men. Even though, it has been held that Rule 12.24 clause 1 sub clause (c) of the Punjab Police Rules, 1934 hold the field only as regards re-enrollment to the post of Constable and would have no applicability as regards fresh recruitment to the post of Constable for vacancies reserved for ex-service men are concerned, still both the provisions would have to be read harmoniously so as to ensure that the object sought to be achieved in terms of the age relaxation provided under Rule 6 of the 1982 Rules is infact achieved. The 1982 Rules would have to be construed in the nature of a particular provision governing the category of ex-service men, whereas Rule 12.24 of the Punjab Police Rules are in the nature of general provisions. In the light of the facts of the present case the particular provisions would be held to be overriding the general provisions. Rule 9 of the 1982 Rules crystalize the matter further as it is mandated that for all such matters not specifically provided for in the 1982 Rules, an ex-service man appointed against a reserved vacancy would be governed by the concerned service rules. The subject of age and relaxation in terms thereof has been specifically provided for under the 1982 Rules and as such in terms of Rule 9 sub clause (2) the concerned service rules i.e the Punjab Police Rules, 1934 would have to be read subject to the provisions of the 1982 Rules and are required to be construed accordingly.

(16) For the reasons recorded above, the later part of clause 4 sub clause (b) in the advertisement dated 12.9.2010 (Annexure p-7) which read in the following terms;

*“Inspite of this, the gap between re-employment and discharge service should not be more than 24 months (2 years).”* is held to be bad in law and consequently would cease to operate in so far as

the claim of the ex-service men for consideration of the claim for recruitment to the post in question is concerned. Resultantly, the process of selection/recruitment shall be finalized and the claim of the petitioners, who had been permitted to participate in the selection process in terms of passing of interim order, would be considered strictly in terms of the other stipulations contained in the advertisement and as per their merit determined. The petitioners, however, will not be considered ineligible only on account of the gap between discharge from army service and seeking employment in the Punjab District Police Cadre to be in excess of 24 months.

(17) Writ petition is allowed in the aforesaid terms.

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*A. Jain*