

Before : G. R. Majithia, J.

CAPT. LOKINDER SINGH CHAUDHARY,—Appellant.

versus

STATE OF HARYANA,—Respondent.

Regular Second Appeal No. 3164 of 1986.

31st August, 1989.

Punjab Government National Emergency (Concession) Rules, 1965—Rl. 4—Punjab Civil Service Rules, Vol. II—Rls. 3.9, 3.10 & 3.11—Appellant joining Army service on 9th January, 1963 and was relieved on 13th May, 1967—Minimum age required for appointment as Secretary was 25 years—Appellant attaining age of 25 years on 13th March, 1966—Minimum age under P.C.S. Rules was 18 years—Benefit of Military service—Whether will relate back to minimum age prescribed under P.C.S. Rules or 1965 rules.

Held, that the plaintiff-appellant attained the age of 25 years on March 13, 1966. The minimum age limit prescribed for appointment was twenty-five years as on February 6, 1968. If he had been less than twenty-five years of age on that date he was not eligible for appointment. He cannot turn round and say that minimum age for recruitment to service or post should be referable to rule 3.9 of Punjab Civil Service Rules Volume II and not to the one mentioned in the advertisement pursuant to which he applied and selected. He cannot approbate and reprobate. The minimum age prescribed in the Punjab Civil Service Rules does not debar the State Government from fixing minimum age for appointment to a particular post.

(Para 7)

Held, that clause (i) of rule 4 provides that the period spent on military service will be counted for increment, seniority and pension only on attaining the minimum age prescribed for appointment to any service or post. Clauses (i), (ii) and (iii) of rule 4 have to be read together. These are not mutually exclusive. In the instant case, the plaintiff attained the age of 25 years on March 13, 1966 and in terms of this rule, he was entitled to the benefit of military service only from that date.

(Para 7)

Regular Second Appeal from the decree of the Court of the Addl. District Judge, Hissar, dated the 24th day of September, 1986 affirming with costs that of the Sub Judge II Class, Hissar, dated the 22nd May, 1986, dismissing the suit of the plaintiff but leaving the parties to bear their own costs.

Capt. Lokinder Singh Chaudhary v. State of Haryana
(G. R. Majithia, J.)

CLAIM : Suit for declaration to the effect that the plaintiff is entitled to the benefits of his Army Service to be counted towards civil service from 9th January, 1963 to 12th March, 1966 and also to all benefits in respect the increments, seniority, pension and pay and allowances of every kind, which are available to the Cadre, to which the plaintiff belongs and also to any other relief, to which he may be entitled in addition or in the alternative to the relief claimed above, on the basis of evidence of every type.

CLAIM IN APPEAL : For reversal of the order of both the courts below.

V. K. Bali, Sr. Advocate with Atul Lakhanpal and Rajeev Vij,
Advocate, for the Appellants.

B. S. Malik, Addl. A.G. Haryana, for the Respondents.

JUDGMENT

G. R. Majithia, J.

(1) The plaintiff has come up in Regular Second Appeal against the judgment and decree of the First Appellate Court which on appeal affirmed that of the trial court dismissing his suit for a declaration that he was entitled to the benefit of his army service to be counted towards civil service with effect from January 9, 1963 to March 12, 1966.

The facts as found proved are :

(2) The plaintiff joined the army service on January 9, 1963 and was relieved from the said service on May 13, 1967. He was appointed as Secretary, District Soldiers, Sailors and Airmen's Board (hereinafter referred to as the Board) on August 18, 1967. He was initially appointed on purely temporary basis for a period of six months. He applied for his regular appointment as Secretary of the Board pursuant to the advertisement issued by the Haryana Public Service Commission. In the advertisement one of the essential conditions to be fulfilled by the applicants was that he should not be less than 25 years and more than 52 years of age 57 years for members of Scheduled Caste/Tribes and Backward Classes) on 6th February, 1988. The plaintiff applied for the post on regular basis. The Haryana Public Service Commission selected him and recommended his name for appointment to the State

Government. The State Government on receipt of the recommendation of the Haryana Public Service Commission appointed him as Secretary of the Board,—*vide* order dated June 3, 1968.

(3) The plaintiff was given the benefit of military service towards his civil service,—*vide* Endorsement No. 1447-ID-73/8769, dated 14th March, 1973. He was not satisfied with the benefit accorded and claimed the benefit of military service towards civil service as under :—

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| (i) From 9th January, 1963 to 13th May, 1967 (both days inclusive) being the period between the dates of discharge from the military service and the date of appointment in civil service. | Full benefit of service towards increments, seniority and pension which is admissible to the plaintiff under the Rules. Benefit admissible to the plaintiff to the extent of counting this period for the purposes of pension. |
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The claim having been rejected by the authorities necessitated the suit.

(4) The pleading of the parties gave rise to the following issues :—

1. Whether the plaintiff is entitled to the service benefits from 9th January, 1963 to 12th March, 1966 rendered in Army? OPP
2. Whether the present suit is not maintainable in the present form? OPD
3. Whether the plaintiff has got no *locus standi* to file the present suit? OPD
4. Whether the suit is time barred? OPD
5. Whether the suit is bad for non joinder of necessary parties? OPD
6. Whether the civil court has no jurisdiction to try the present suit? OPD
7. Relief.

Capt. Lokinder Singh Chaudhary v. State of Haryana
(G. R. Majithia, J.)

(5) The trial judge found issue No. 1 against the plaintiff and he answered issue No. 2 against him for the reason that issue No. 1 had been found against him. Issues No. 3 to 6 were held against the defendants.

(6) The plaintiff was unsuccessful in first appeal.

(7) The answer to the plaintiff's claim rests on the interpretation of rule 4 of the Punjab Government National Emergency (Concession) Rules, 1965 (hereinafter referred to as Rules). Rule 4 of the rules reads as under :—

“4. Increments, Seniority and pension : Period of military service shall count for increments, seniority and pension as under :—

(i) *Increments*.—The period spent by a person on military service, after attaining the minimum age prescribed for appointment to any service or post, to which he is appointed, shall count for increments. Where no such minimum age is prescribed, the minimum age prescribed, the minimum age shall be as laid down in rules 3.9, 3.10 and 3.11 of the Punjab Civil Service Rules, Volume II. This concession shall, however, be admissible only on first appointment.

(ii) *Seniority*.—The period of military service mentioned in clause (i) shall be taken into consideration for the purpose of determining the seniority of a person who has rendered military service.

(iii) *Pension* .—The period of military service mentioned in clause (i) shall count towards pension only in the case of appointments to permanent services or posts under the Government 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) Any bonus or gratuity paid in respect of military service by the defence authorities shall have to be refunded to the State Government;

- (3) 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 three years may also be allowed to count for pension in exceptional cases under the orders of the Government."

The plaintiff attained the age of 25 years on March 13, 1966 and he was given the benefits of military service in terms of rule 4 of the rules with effect from March 13, 1966 to May 13, 1967. The learned counsel for the plaintiff contends that the minimum age prescribed for appointment to any service or post as laid down in rule 3.9, 3.10 and 3.11 of the Punjab Civil Services Rules, Volume II is 18 years and the qualifying period for receiving the benefit to military service should relate back to the minimum age prescribed for appointment in any service and post as mentioned in the Punjab Civil Services Rules Volume II and the authorities were in error to determine it from the date on which he attained the age of 25 years. He further submits that clause (i) of rule 4 and clauses (ii) and (iii) of rule 4 are mutually exclusive and clause (iii) of rule 4 should be interpreted in a manner to mean that the plaintiff is entitled to the benefit of military service from the date he entered in the military service and not with reference to the date on which he attained the age of 25 years. I am afraid the submission is wholly untenable on the grounds, namely, (i) the minimum age prescribed for appointment as Secretary of the Board was 25 years. The plaintiff was appointed on regular basis on June 3, 1968. He attained the age of 25 years on March 13, 1966. The minimum age limit prescribed for appointment was twenty-five years on February 6, 1968. If he had been less than twenty-five years of age on that date, he was not eligible for appointment. He cannot turn round and say that minimum age for recruitment to service or post should be referable to rule 3.9 of Punjab Civil Service Rules Volume II and not to the one mentioned in the advertisement pursuant to which he applied and selected. He cannot approbate and reprobate. The minimum age prescribed in the Punjab Civil Service Rules does not debar the State Government from fixing minimum age for appointment to a particular post. The minimum age prescribed for recruitment to the post of Secretary is legal and valid. (ii) Sub rule (1) of Rule 4 envisages that the appointee into the service will be entitled to the benefit of military service after he attains the minimum age prescribed for appointment

Capt. Lokinder Singh Chaudhary v. State of Haryana
(G. R. Majithia, J.)

to any service or post. Where no such age is prescribed, the minimum age shall be as laid down in rules 3.9, 3.10 and 3.11 of Punjab Civil Services Rules, Volume II. Sub-rule (iii) of rule 4 provides that for determination of pension, the period spent on military service as mentioned in clause (i) shall be counted for pension only in the case of appointments to permanent services or posts under the government subject to the conditions mentioned therein. The only interpretation possible is that conditions mentioned in clause (i) of rule 4 has to be fulfilled for determining pensionary benefits keeping in view the military service. As stated above, clause (i) of rule 4 provides that the period spent on military service will be counted for increment, seniority and pension only on attaining the minimum age prescribed for appointment to any service or post. (iii) Clauses (i), (ii) and (iii) of rule 4 have to be read together. These are not mutually exclusive. In the instant case, the plaintiff attained the age of 25 years on March 13, 1966 and in terms of this rule, he was entitled to the benefit of military service only from that date. Similarly, for the purpose of determining pensionary benefits, reference has to be made to the date on which he attained the minimum age prescribed for recruitment to that post. Thus, for determining the pensionary benefits and the increments, the benefits have to be counted from the date when the appointee attained the minimum age prescribed for appointment to the post. Clause (ii) of rule 4 has to be read in conjunction with clause (i). These are not mutually exclusive but inter connected. Where the language of an Act is larly, for the purpose of determining pensionary benefits, reference v. *Benoari Lal Sharma and others* (1), we must give effect to it whatever may be the consequences for. In that case, the words of the statute speak the intention of the legislature.

(8) Thus, for the reasons aforementioned, I do not find any infirmity in the judgment of the learned Appellate Judge. The benefits of military service were granted to the petitioner on the correct interpretation of the rules. The appeal is without merit and is dismissed. Parties are left to bear their own costs throughout.

P.C.G.

(1) A.I.R. 1945 Privy Council 48.