the grounds on which an election can be challenged then it can be challenged only on those grounds and no other. An Election Tribunal is not a Court of plenary jurisdiction and the exercise of its jurisdiction is controlled and limited by the statute creating it and it can entertain an election petition only on the grounds as specified in the statutes."

(8) Whatever irregularities, if at all, committed during the course of the election do not furnish a ground to the election petitioner to challenge the election of the returned candidate. In this view of the matter, the impugned order cannot be sustained qua the returned candidate.

(9) In the result, Civil Revision 1938 of 1997 filed by Mehla the returned candidate is allowed and the impugned order set aside qua him.

(10) As regards the other revision petition the Tribunal has on a consideration of the evidence led by the parties found that the petitioners therein who were the presiding Officers at booths in villages Khan Mohammad and Daulatpur, transported the ballot boxes without proper seals which was in flagrant violation of the Rules. This court in the exercise of its jurisdiction under Article 227 of the Constitution does not sit in appeal over those findings. Since no jurisdictional error has been pointed out by the petitioners, I find no ground to interfere with the direction given by the Tribunal in regard to these petitioners. Consequently, Civil Revision 3003 of 1997 is dismissed. There is no order as to costs.

R.N.R.

Before R.S. Mongia & V.S. Aggarwal, JJ

JACOB & ANOTHER,—*Petitioners*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

CWP No. 14829 of 1998

7th October, 1998

Constitution of India, 1950—Arts. 226/227—Punjab Government National Emergency (Concession) Rules, 1965—Rl. 2—

Military Service—Benefit of second emergency—Instructions dated 23rd June, 1998 declaring service rendered by persons during second emergency to be military service under rule 2 of 1965 Rules—rules repealed in 1982—Question of declaring any other service to be military service including service during second emergency does not arise—Instructions issued wholly invalid and without jurisdiction—Liable to be quashed.

Held that after the repeal of the 1965 rules, no declaration could be made under the power granted by the 1965 rules to declare any service to be 'Military Service' for the purpose of rule 2 of the 1965 rules. The power of the Government to declare any service to be military service for purpose of 1965 rules ceased to exist after the promulgation of 1982 rules which repealed 1965 rules.

(Para 9)

Further held that there was no right which came to be vested in the respondents to have the benefit of military service rendered during the period of second emergency. Rule 2 of the 1965 rules clearly envisaged that the benefit of military service would be given to the Ex-servicemen only for the period of emergency which was declared by the President on 26th October, 1962. It did not envisage that the service rendered during the emergency which was declared on 3rd December, 1971, would also be treated as Military service. The Government could have declared the service rendered by the persons during the second emergency to be military service under rule 2 of 1965 Rules but this could be done only during the existence of the 1965 Rules. Once 1965 Rules came to an end by repeal in 1982, the question of declaring thereafter any other service to be Military service including the service during the second emergency did not arise.

(Para 9)

P.S. Patwalia, Advocate, for the Petitioner

K.S. Ahluwalia, Addl. A.G., Punjab, for respondents No. 1, 2 and 5.

Rajiv Atma Ram, Advocate, for respondent No. 3 and 4.

C.D. Singh, Advocate.

JUDGMENT

R.S. Mongia, J.

(1) The core question that we are called upon to answer in this case is whether the letter dated the 23rd June, 1998, copy annexure P-2, issued by the Government of Punjab, Department of Defence Services Welfare (Defence Welfare Branch) to all the Heads of the Departments, Commissioners of Divisions, Deputy Commissioners etc., purported to be under the Punjab Government National Emergency (Concession) Rules, 1965 (hereinafter called the 1965 Rules) is legally valid? It would be apposite to reproduce the entire letter :—

> "Copy of letter No. 15/33/97-4DW/1354 dated the 23rd June, 1998 from Government of Punjab, Department of Defence Services Welfare (Defence Welfare Branch) to All Heads of Departments, Registrar, Punjab & Haryana High Court, Commissioners of Divisions, Deputy Commissioners and District and Sessions Judges in Punjab State.

Subject : Grant of benefit of IInd Emergency in Civil Service

Sir,

I am directed to refer to the subject cited above and to say that as per rule 2 of the Punjab Government National Emergency (Concession) Rules, 1965, the expression 'military service' means that service rendered by a person during the period of operation of the proclamation of emergency made by the President under Article 352 of the Constitution on the 26th October, 1962 or such other service as may hereafter be declared as military service for the purposes of these rules, and it shall count for the grant of benefit under these rules.

It is observed by the Hon'ble Punjab and Haryana High Court in 'Narinder Nath Sharma *vs.* State of Punjab and another' [1992(7) SLR 345] that the service rendered by the Armed Forces Personnel during the period of Emergency shall have to be reckoned as military service *ipso facto* for the purposes of these Rules. it is further observed that the definition of the expression "Military Service" is so broad based and comprehensive, that an enabling provision has been made for all times to come under which the State Government can always exercise its powers only by making a simple declaration.

This means that although the period of first Emergency has been specified in the rule 2 of the Punjab Government National Emergency (Concession) Rules, 1965 but the second period of Emergency has not been specified therein.

Keeping in view the above, the aforesaid second period of Emergency (3rd December, 1971 to 27th March, 1977) is declared as Military Service for the purpose of above said Rules. Hence the benefits of Second Emergency may also be given to the concerned Armed Personnels.

This issues with the advice of the Legal Remembrancer conveyed,—*vide* their U.O. No. 120/LO-II/OP/303/97 dated 23rd February; 1998.

Receipt of this communication be acknowledged".

(2) The Punjab Government had promulgated the 1965 Rules to give certain benefits in service to some Ex-Servicemen who after being discharged from any of the three wings of the Armed Forces join the civil service in the State of Punjab. The benefit of Military service rendered was to be given towards increments, seniority and pension. Rule 2 of the 1965 Rules gives the definition of Military service in the following terms :—

"2. Definition—For the purposes of these rules, the expression 'Military Service' means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including service as a Warrant Officer) rendered by a person during the period of operation of the proclamation of Emergency made by the President under articles 352 of the Constitution on the 26th October, 1962 or such other service as may hereafter be declared as Military Service for the purpose of these rules. Any period of Military training followed by military service shall also be reckoned as Military Service". (Emphasis supplied).

(3) Another set of rules was issued in the year 1968 known as The Demobilised Armed Forces Personnel (Reservation of Vacancies in the Punjab State Non-Technical Services) Rules, 1968. On 2nd February, 1982 the State Government promulgated yet another set of Rules known as Punjab Recruitment of Ex-Servicemen Rules, 1982 (hereinafter called the 1982 Rules), which repealed

the 1965 Rules and 1968 Rules (Supra). Some other Rules which were repealed were :—

"The Demobilised Indian Armed Forces Personnel (Reservation of Vacancies in the Punjab Civil Services) (Executive Branch) Rules, 1972; and

The Released Indian Armed Forces Personnel (determination of Eligibility for promotion) Rules, 1977;

Rule 9 of the 1982 Rules be also noticed here as some arguments were addressed on the basis of the said rule :—

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 Services Rules.

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

(3) Nothing in these rules shall be construed 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."

(4) It may be observed here that the first Emergency was declared by the President of India under Article 352 of the Constitution of India on 26th October, 1962, and that Emergency was lifted on 28th January, 1968. The second Emergency was declared by the President of India on 3rd December, 1971, which was lifted on 27th March, 1977.

(5) Before dealing with the arguments of the learned counsel for the parties, brief facts concerning the petitioners as well as respondents No. 3 and 4 may be noticed; Petitioners had joined as Labour Inspector Grade I in the State of Punjab in the Labour and Employment Department by direct recruitment on 1st June, 1989, and 10th October, 1989, respectively. Respondent No. 4 Shri Jagraj Singh had also been appointed as a direct recruit along with the petitioners in the same selection and was placed lower in merit than the petitioners by the Departmental Selection committee. Respondent

No. 4 had been recruited against the Ex-servicemen quota. Prior to joining as Labour Inspector Grade I, respondent No. 4 had joined as vehicle Mechanic in General Reserve Engineering Force (In short GREF) in the year 1969, i.e.... after the lifting of the first Emergency in 1968. He served in GREF till 1st December, 1997.

(6) Respondent No. 3 Shri Ramesh Chander had joined Military service as Corporal SEW-II on 20th August, 1964, and served the Armed Forces till 30th August, 1979. On 30th April, 1981, he had joined civil service in the Labour Department against 20% quota as Labour Inspector Grade II and lateron came to be promoted as Labour Inspector Grade I on 10th September, 1991. He was given the benefit of Military service rendered during the first national emergency; i.e... from 20th August, 1964, to 20th January, 1968, i.e. three years, four months and twenty-two days towards his seniority and other benefits. The petitioners are not disputing the grant of this benefit of Military service to respondent No. 3 Shri Ramesh Chander.

(7) The learned counsel for the petitioners submitted that if the benefit of service rendered by respondent No. 3 in the Armed Forces and to respondent No. 4 in GREF during the period of second Emergency is given to them by virtue of the impugned letter dated 23rd June, 1998, copy annexures P-2, reproduced above, it would adversely affect their seniority and future service career. He argued that the State Government had no power to issue the impugned letter as 1965 Rules stood already repealed by the 1982 Rules. According to the counsel, if the 1965 Rules stood repealed by the 1982 Rules, the power with the State Government under Rule 2 of 1965 Rules (supra) to declare any other service as Military service for purpose of 1965 Rules did not exist as the very Rules under which the power was vested in the State Government under Rule 2 of 1965 Rules (supra) were no more on the Statute Book. Apart from that the power vested under the 1965 Rules for declaring any other service as Military service was only for the purpose of 1965 Rules and if 1965 Rules did not exist any more after being repealed by the 1982 Rules, the question of declaring any other service as Military service for the purpose of 1965 Rules did not arise. It was also argued that the judgment which has been referred to by the respondent-State in the impugned letter, i.e. *Narender Nath Sharma* v. *State of Punjab and another* (1),already stood over ruled by the

(1) 1992 (7) S.L.R. 345

Full Bench of this Court in *Jang Singh & others* v. *State of Punjab and others*, (2) Apart from that giving retrospective benefit of Military service rendered during the second Emergency adversely affects the vested rights of the petitioners so far as their seniority and consideration for promotion are concerned.

(8) On the other hand, learned counsel for the respondents argued that under rule 9(3) of the 1982 Rules, which has already been reproduced above, the repeal of 1965 Rules by the 1982 Rules did not deprive any personal of any right which had accrued under the 1965 Rules, notifications or orders in force immediately before the commencement of 1982 Rules. Therefore, the State Government, according to the learned counsel for the respondents, could issue an order/Notification to declare the service rendered during the second Emergency to be 'Military Service' for the purpose of 1965 Rules as prior to 1982 Rules, a right had accrued to the respondent to get the benefit of the service rendered during the second Emergency.

(9) After hearing learned counsel for the parties, we are of the view that there is merit in the submissions of the learned counsel for the petitioners. After the repeal of the 1965 Rules, no declaration could be made under the power granted by the 1965 Rules to declare any service to be 'Military service' for the purpose of rule 2 of the 1965 Rules. The power of the Government to declare any service to be Military service for purpose of 1965 Rules ceased to exist after the promulgation of 1982 Rules which repealed 1965 Rules so far as the argument of the learned counsel for the respondents is concerned that rule 9(3) of the 1982 Rules (supra) saved the right which had accrued to the respondents under the 1965 Rules and, therefore, the State Government could issue a Notification or order for treating the service rendered during the second Emergency to be Military service under the 1965 Rules is just to be noticed and rejected. There was no right which came to be vested in the respondents to have the benefit of Military service rendered during the period of second Emergency. Rule 2 of the 1965 Rules clearly envisaged that the benefit of Military service would be given to the Ex-Servicemen only for the period of Emergency which was declared by the President on 26th October, 1962. It did not envisage that the service rendered during the Emergency which was declared on 3rd December, 1971, would also be treated as Military service. The Government could have declared the service rendered by the persons

(2) 1997 (3) P.L.R. 271

during the second Emergency to be Military service under rule 2 of 1965 Rules but this could be done only during the existence of the 1965 Rules. Once 1965 Rules came to an end by repeal in 1982, the question of declaring thereafter any other service to be Military service including the service during the second Emergency did not arise. Under somewhat similar circumstances an Ex-serviceman who had served during the first Emergency but came to join a civil service after 1982 after the repeal of the 1965 Rules claimed benefit of the Military service rendered during the first Emergency on the basis of rule 9(3) (supra). The learned Judge in the judgment reported as *Inderjit Kaushik and others* v. *State of Punjab and others* (3), observed as under :—

> "On a perusal of the 1965 Rules, it is apparent that the military service rendered by a person during the period of operation of the proclamation of emergency made on 26th October, 1962 Counts for increments, seniority and pension under Rule 4. However, this right in the very nature of things is contingent upon appointment to a post or service under the State. Till a person who has been released from the Army or Air Force is actually appointed to a post or service under the State, the right under Rule 4 remains inchoate. It is only on appointment to a post or service under the State that the contingency for enforcing the right and claiming under Rule 4 can arise. It is the admitted position that after their release from the Air Force/Army, petitioners Nos. 1 and 2 had been enrolled as Advocates in the year 1979 and they joined a Civil Service only in the years 1983-84. Prior to their joining the Civil Service (Judicial Branch), the 1965 Rules were repealed. As a result, Rule 4 was not on the Statute Book on the date the petitioners had joined the Service. Can they still claim the benefit under the 1965 Rules? Mrs. Randhawa contends that Rule 9(3) protects the rights which had accrued to the petitioners under the 1965 Rules".

Accrued right is the one which is due or which has actually been matured or even acquired. In the present case, no right had come to vest in the private respondents that under the 1965 Rules, they must be given the benefit of the service rendered during the second

(3) 1994(3) S.L.R. 81

emergency. It may also be observed here that the authority cited in the impugned letter, i.e. *Narender Nath Sharma* v. *State of Punjab and another* (4), was overruled by the full Bench in Jang Singh's case (supra). Narender Nath's case was decided on 27th August, 1992. The judgment proceeds on the basis that on the date when the judgment was given, the 1965 Rules had not been repealed. It has specifically been mentioned in the judgment that "since the 1965 Rules have not been repealed till today and are still in force, therefore, the benefit of service rendered during the second Emergency has also to be given". With respect to the learned Judges, apart from the fact that it was not factually correct that on 27th August, 1992, when the judgment was rendered, that 1965 Rules had not been repealed. In fact 1965 Rules stood repealed by 1982 Rules, which came into force on 2nd February, 1982. Otherwise also as per the definition of Military service under the 1965 Rules, the Military service was only for the Emergency period which was declared on 26th October, 1962, and not the one which was declared on 3rd December, 1971. We may further observed here that 1965 Rules were followed mutatis mutandis by the State of Haryana with the exception that in the year 1976, it had amended Rule 2 to the effect that the benefit of Military service would only be given to those who had joined the Armed Forces during the period of first Emergency. (This is not so in Punjab). However, the extent of benefit of the Military service remains the same. The apex Court in *Ex. Capt. A.S. Parmar and others* v. *State of Haryana and others* (5), observed that the benefit of Military service is only to the extent "rendered by a person during the period of operation of the proclamation of Emergency made by the President under Article 352 of the Constitution of India on 26th October, 1962". Apart from that any other service declared by the State Government to be Military service under Rule 2 of 1965 Rules. The said Rule does not envisage the counting of the Military service rendered during the second Emergency. Similar view was expressed by a Full Bench of this Court in *Rajinder Kumar* v. *State of Haryana* (6).

(4) 1992 (7) S.L.R. 345
(5) A.I.R. 1986 S.C. 1183
(6) 1992 (2) P.L.R. 754

(10) For the foregoing reasons, we hold that the order issued by the State Government on 23rd June, 1998, copy annexure P-2 is wholly invalid and without jurisdiction and liable to be quashed. Consequently, we allow this writ petition and quash the order dated 23rd June, 1998, copy annexure p-2. No order as to costs.

J.S.T.

Before Jawahar Lal Gupta & N. C. Khichi, JJ.

BALBIR SINGH NEHRA,—*Petitioner*

versus

STATE OF HARYANA & OTHERS,—*Respondents.*

CWP No. 10899 of 1998

25th August, 1998

Constitution of India, 1950—Art. 226—Public Interest Litigation—Locus Standi—Not shown that petitioner is acting for personal or political gain—Substantial amount of public funds involved—Petitioner has only brought to the notice of the Court that substantial amount of Rs. 2.60 crores was paid to respondent No. 7—Petition not to be dismissed on the ground of locus standi.

Held that in the present case it has not been shown even prima facie that the petitioner has any personal cause for grievance against respondents No. 6 to 8. Equally, it has not been indicated that the petitioner has any personal interest or cause to serve. He has only brought to the notice of the Court the fact that a substantial amount of Rs. 2.60 crores was paid to respondent No. 7 even though he did not have adequate funds in the Bank. In this situation, the petition cannot be dismissed on the ground of locus standi.

(Para 8)

Constitution of India, 1950—Art. 226—Writ of mandamus seeking transfer of investigation to impartial agency—Huge public funds involved—Respondent related to two ministers of State Cabinet—State has no objection to transfer of case—Request for ensuring impartial investigation is fair & just.

Held that apparently the petitioner has no personal interest. However, he has pointed out certain facts which are a cause for