

## FULL BENCH

Before S. S. Sandhawalia, C.J., Gurnam Singh and G. C. Mital, JJ.

SANT RAM NEHRA,—Petitioner.

*versus*

THE STATE OF HARYANA and others.—Respondents.

Civil Writ Petition No. 603 of 1979.

March 18, 1980.

*Punjab Government National Emergency (Concession) Rules 1965 (as amended by Punjab Government National Emergency (Concession) Haryana Third Amendment Rules, 1976)—Rule 4 proviso—Constitution of India 1950—Articles 14 & 16—Benefits of military service to ex-military personnel—Such benefits withdrawn in the case of those released on compassionate grounds—Proviso to rule 4 so withdrawing the benefits—Whether discriminatory and violative of Articles 14 & 16—Proviso given retrospective effect—Retrospectivity—Whether makes the proviso bad in law.*

*Held*, that persons released from military service on compassionate grounds would be a distinct class as compared to those who are released from military service on account of exigencies of service or due to an officer or personnel becoming disabled. There is a reasonable *nexus* in the Government's decision to give benefit for purposes of increments, seniority and pension to only those persons who were released from military service on grounds other than compassionate grounds. There is, therefore, no infirmity in the proviso added to rule 4 of the Punjab Government National Emergency (Concession) Rules, 1965 on account of articles 14 and 16 of the Constitution. (Para 5).

*Held*, that the Government has the power to make rules with retrospective effect and it is also open to the Government to give the benefit of Rule 4 of the Rules from any particular date it chooses and similarly it can take away the operation of the rules by adding the proviso from any particular date. That by itself will not show that the amendment is bad due to retrospectivity. Once power is conceded to the State Government to frame rules prospectively or with retrospective effect, the amendment made with retrospective effect by itself would not be bad in law. (Para 6).

*Amended Petition under Articles 226/227 of the Constitution of India praying that the records of the case be called for and after perusal of the same :—*

- (i) *a writ in the nature of certiorari, mandamus, prohibition or any other appropriate writ, order or direction be issued*

to the respondents quashing the impugned order (Annexure P/2) and the impugned amendment (Annexure P/3);

- (ii) the respondents be directed to grant petitioner increments, seniority and consequential benefits of Military Service in terms of the 1965 Rules;
- (iii) filing of the certified copies of the annexures be dispensed with;
- (iv) any other appropriate relief which this Hon'ble High Court deems fit in the circumstances of the case, be also granted to the petitioner; and
- (v) costs be allowed to the petitioner.

**Prem Singh**, Advocate, for the Petitioner.

**U. D. Gaur**, A. G. Haryana, for the Respondent.

#### JUDGMENT

**Gokal Chand Mital, J.**

(1) The point involved in this set of 10 writ petitions is whether the proviso to rule 4, added by the Punjab Government National Emergency (Concession) Haryana Third Amendment Rules, 1976 hereinafter referred to as the Third Amendment Rules), in the Punjab Government National Emergency (Concession) Rules, 1965, hereinafter called the Punjab Rules, is *ultra vires* being violative of Articles 14 and 16 of the Constitution. By the proviso, the benefit of military service for purposes of increments, seniority, pension etc., as contained in rule 4, is not admissible to those ex-military personnel who were released on compassionate grounds.

2. For appreciating the point, the facts of C.W. No. 603 of 1979 are being noticed. The petitioner had joined the Indian Army on 3rd of August, 1963, during the National Emergency and served there till 6th June, 1970, when he was released from military service on compassionate grounds. After release from military service, he was appointed as a Taxation Inspector against a permanent post reserved for ex-servicemen and he joined the duty as Taxation Inspector on 11th December, 1974. After joining in the Taxation Department, he made a representation for the grant of benefits of

Sant Ram Nehra *v.* The State of Haryana and others  
(G. C. Mital, J.)

---

increments, seniority, pension etc., in pursuance of rule 4 of the Punjab Rules, a copy of which has been attached as annexure P-3 to the writ petition. While the representation was pending, the Haryana Government amended the aforesaid rules in exercise of its powers under Article 309 of the Constitution of India and by notification dated 5th of November, 1976, published on 9th of November, 1976, the Third Amendment Rules came into force with effect from the 1st day of November, 1966, whereby the proviso was added to rule 4 of the Punjab Rules, which is as follows :—

“Provided that a person who has been released from the military service on compassionate grounds shall not be entitled to any concession under this rule.”

A copy of the notification has been attached with the writ petition as annexure P-3.

3. In pursuance of the Haryana Third Amendment Rules, the District Excise and Taxation Officer, Rohtak, *vide* order dated 6th of January, 1979, informed the petitioner that he was not entitled to the benefits of increments, seniority and pension etc., as asked for by representation annexure P-1 on the ground that he was discharged from military service on compassionate grounds. A copy of this letter is annexed with the petition as P-2. Thereafter, the present writ petition was filed under Articles 226/227 of the Constitution of India challenging the Haryana Third Amendment Rules being violative of Article 14 and 16 of the Constitution.

4. The primary challenge to the Haryana Third Amendment Rules is on the same basis as was to the Haryana Second Amendment Rules, which has been decided by us separately today in C.W. No. 231 of 1979 — *Dei Chand v. State of Haryana*.

5. The petitioner would come within the definition of ‘military service’ and would be entitled to the benefits of military service under the Punjab Rules as amended upto-date except rule 4 because of the proviso. To test the validity of the proviso, it will have to be seen whether there is a reasonable classification between persons released from military service on account of compassionate grounds as compared to the grounds other than compassionate grounds. It cannot be disputed that the classification can be made but the same

would be *ultra vires* if it is violative of Articles 14 and 16 of the Constitution. The only ground urged before us is that military service is one class and, therefore, no classification could be made. With this broad submission we are not impressed. On the other hand, we find that persons released from military service on compassionate grounds would be a distinct class as compared to those who are released from military service on account of exigencies of service or due to an officer or personnel becoming disabled. We also find that there is a reasonable *nexus* in Government's decision to give benefit for purposes of increments, seniority and pension to only those persons who were released from military service on grounds other than compassionate grounds. Therefore, we are of the opinion that there is no infirmity in the proviso on account of Articles 14 and 16 of the Constitution.

6. The next argument pressed was that the proviso is bad as the Haryana Third Amendment Rules have been made retrospective with effect from 1st of November, 1966. It cannot be disputed and is not being disputed that the Government has the power to make rules under Article 309 of the Constitution with retrospective effect as held by the Supreme Court in *B. S. Vadera v. Union of India and others*, (1). It can also not be disputed that it is open to the State Government to give the benefit of rule 4 from any particular date it chooses and similarly it can take away the operation of the rule by adding the proviso from any particular date. That by itself will not show that the amendment is bad due to retrospectivity. Apart from this, no other reasonable argument has been raised before us to strike down the proviso merely because it has been inserted in the principal rule with effect from 1st of November, 1966. It would be worthwhile to mention that it was not disputed by the counsel for the petitioner that the proviso could be added with prospective effect and in that event it would not have been liable to be struck down. Once power is conceded to the State Government prospectively or with retrospective effect, the amendment made with retrospective effect by itself would not be bad in view of the decision in *B. S. Vadera's case* (supra).

7. Last of all, it was argued that it has already been held by this Court in *Harbhajan Singh v. Sampuran Singh Sandhu and others*, (2), that no one has a right to be discharged from service on

---

(1) AIR 1969 S.C. 118.

(2) LPA 12 of 1975 decided on 20-2-76.

Sant Ram Nehra v. The State of Haryana and others  
(G. C. Mital, J.)

---

his own request and the discharge is always on the satisfaction of the Commanding Officer and, therefore, in view of the aforesaid decision, the petitioner cannot be deprived of the benefits of military service for purposes of increments, seniority, pension etc. The decision in *Harbhajan Singh's case* (supra) would have fully supported the case of the petitioner in the absence of the proviso as the Bench deciding the letters patent appeal was considering the rule as was in force before its amendment. After the amendment, the proviso has specifically taken away the benefits of military service with regard to increments, seniority and pension in the case of those ex-Army persons who were released on compassionate grounds. Therefore, the matter which was for consideration before the letters patent Bench is not for consideration before us and the question of *vires* of the proviso which is before us was not before the letters patent Bench. Therefore, unless the proviso is struck down as *ultra vires*, the letters patent decision will be of no avail to the petitioner.

8. Reliance was also placed on the decision of D. S. Lamba, J., in *Shri Pritam Singh v. The State of Punjab and another* (3). That case also arose before the Haryana Third Amendment Rules were published. Moreover, the only point considered in that case was whether the 1965 Rules or the 1968 Rules would be applicable. It was held in that case that the 1968 Rules had not repealed the 1965 Rules, and therefore, the petitioner in that case was entitled to the benefits of the 1965 Rules. That decision is also clearly distinguishable and does not advance the case of the petitioner.

9. For the reasons recorded above, we are of the opinion that the proviso added to rule 4 by the Haryana Third Amendment Rules is valid and is not violative of Articles 14 and 16 of the Constitution.

10. In the result, C.W. Nos. 2018, 3042, 4567 and 7736 of 1976, 1491 of 1976 and 3397 of 1978 and 181, 603, 1164 and 3235 of 1979 are dismissed but with no order as to costs.

S. S. Sandhawalia, C.J.—I agree.

Gurnam Singh, J.—I also agree.

---

N.K.S.

---

(3) CW 6003 of 1974 decided on 13th August, 1976.