

question of waiver arise. The objections, which can be taken at the time of the execution, need not necessarily be agitated in the grounds of appeal when the decree of pre-emption on merits is sought to be set aside. The Executing Court is duty bound to see that the pre-emption amount for which the decree for possession of the land has been passed, is paid to the judgment-debtor and that the amount is deposited in time in accordance with the terms of the decree. If that is not done, it cannot be held as a matter of law that since no such grievance was made in the grounds of appeal, therefore, the objection cannot be taken at the stage of the execution. The ratio of the decision in *Des Raj's case* (supra), therefore, cannot be sustained. We, therefore, overrule this authority.

(5) No other point has been pressed.

(6) For the reasons recorded above, there is no merit in this appeal and the same is hereby dismissed with costs.

O. Chinnappa Reddy, J.

S. S. Sandhawalia, J.—I agree.

N. K. S.

FULL BENCH

MISCELLANEOUS CIVIL

Before O. Chinnappa Reddy, Bhopinder Singh Dhillon, Ajit Singh Bains, Harbans Lal and Surinder Singh, JJ.

HARBHAJAN SINGH,—Petitioner.

versus

THE STATE OF PUNJAB and another,—Respondents.

Civil Writ Petition No. 3813 of 1976

April 26, 1977

Demobilised Indian Armed Forces Personnel (Reservation of Vacancies in the Punjab Civil Service (Judicial Branch) Rules 1969

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repealed by the Demobilised Indian Armed Forces Personnel (Reservation of Vacancies in the Punjab Civil Service (Judicial Branch) Rules 1975 as amended by the (First Amendment) Rules 1976—Rule 3 (iii) (cc) (ii) (b)—Released armed forces personnel eligible under the 1969 rules declared successful in a competitive examination—Such personnel joining a civil service of the State after the release but ceasing to hold the post on the date of the coming into force of the 1975 rules—Such personnel—Whether excluded from appointment under the 1975 rules.

Held, that the only reasonable interpretation of rule 3 (iii) (cc) (ii) (b) of the Demobilised Indian Armed Forces Personnel (Reservation of Vacancies in the Punjab Civil Service (Judicial Branch) Rules 1975 as amended in 1976 is that only those persons who having joined service of the Union or the State or a post under the Union or the State previously continued to hold the post on the date of the coming into force of the 1975 rules or who joined a post after the coming into force of the said rules, are excluded from appointment to the Punjab Civil Service (Judicial Branch). The expression “joined or joins” must be given a reasonable interpretation in the context which does not strain the language or attributes unreasonableness to the rule making authority. (Para 5).

Case referred by Hon'ble Mr. Justice O. Channappa Reddy, vide order dated 5th April, 1977 to a Constitution Bench of 5 judges as the Constitutional validity of clause 3 of Notification dated 19th May, 1976 is questioned in this C.W.P. The 5 judges bench consisting of Hon'ble Mr. Justice O. Chinnappa Reddy, Hon'ble Mr. Justice B. S. Dhillon, Hon'ble Mr. Justice A. S. Bains, Hon'ble Mr. Justice Harbans Lal and Hon'ble Mr. Justice Surinder Singh finally decided the case on 26th April, 1977.

Petition under Articles 226/227 of the Constitution of India praying that :—

- (i) *The Notification dated 19th May, 1976 Annexure 'P2', be declared ultra vires the Constitution and without jurisdiction, hence null and void inasmuch as this has repealed 1969 Rules retrospectively and has enforced 1975 Rules with effect from 15th September, 1969, on which date the original 1969 Rules had come into force ;*
- (ii) *A writ in the nature of Mandamus or any other order or suitable writ directing the respondents to immediately appoint the petitioner against one of the vacancies in the P.C.S. (Judicial) reserved for the released Army personnel under the 1969 Rules to be filled as a result of the 1973 Examination and give him all the benefits earned by him under these Statutory Rules ;*

- (iii) *The proposed appointments of the other candidates from the extended list be stayed pending the decision of the writ petition ;*
- (iv) *the record of the case be ordered to be called for ;*
- (v) *dispense with the filing of original/certified copies of the Annexures ;*
- (vi) *the costs of the petition be awarded to the petitioner.*

M. R. Agnihotri, Advocate, for the Petitioner.

I. S. Tiwana, D. A. G. Pb.

Kuldip Singh, Bar-at-law, for respondent No. 2.

JUDGMENT

O. Chinnappa Reddy, J.—

(1) The petitioner passed the LL.B. examination of the Punjab University in the First Division in the year 1962 and started practising as an Advocate at Sangrur. He responded to the call of the nation and joined the Army as a Commissioned Officer in July 1963. He was released from the Army on 1st August, 1968. He resumed practice as an Advocate at Dassuya. He was selected as an Assistant District Attorney and worked in that capacity from September 1970 to May 1975. In December 1973, he appeared at a competitive examination held by the Punjab Public Service Commission for recruitment to the Punjab Civil Services (Judicial Branch). Ten posts had been advertised, of which two were reserved for released personnel of the Armed Forces. The results of the examination were published in May 1974. The petitioner was placed at No. 82 in the general order of merit. He was No 2 in the order of merit in so far as it related to released Armed Forces Personnel. One Sampuran Singh who was placed at No. 34 in the list successfully claimed that he also belonged to the category of released Armed Forces personnel, in a writ petition filed by him. The result was that the petitioner was relegated to the third place in the category of released Armed Forces personnel. Though the number of posts advertised originally was only ten, it is now not disputed that in addition to the ten originally advertised, fifteen more posts have

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been filled up from the non-Armed Forces Personnel category. The petitioner claims that the number of posts reserved for released Armed Forces Personnel should correspondingly be increased by another three and that he should be appointed to one such post. The answer of the respondent is that the Demobilised Indian Armed Forces Personnel (Reservation of Vacancies in the Punjab Civil Services (Judicial Branch) Rules, 1969, have been repealed and the Demobilised Indian Armed Forces Personnel (Reservation of Vacancies in the Punjab Civil Services (Judicial Branch) Rules, 1975, as amended, which are now in force, excluded from the category of released Armed Forces Personnel, persons who have joined a civil service of the Union or a State or a civil post under the Union or a State after their release from the Armed Forces of the Union.

(2) At the competitive examination held in December 1973 three candidates Shri R. N. Moudgil, Shri Sampuran Singh and Shri Harbhajan Singh (petitioner) belonging to the category of released Armed Forces Personnel came out successful. Under the rules, which were in force at that time, all the three were eligible to be appointed — in fact it was only on that basis that they were allowed to appear at the examination — depending upon the vacancy — position. The rules, which were then in force ceased on 14th September, 1974 and new rules came into force with effect from 15th September, 1974. Rule 5 of the 1975 Rules provided that no released Indian Armed Forces Personnel shall be eligible to compete for the reserved vacancies unless he possessed the educational and other qualifications prescribed in the Punjab Civil Services (Judicial Branch) Rules, at the time of joining the pre-commission training or at the time of getting the commission where there is only post-commission training. Had the rule been in force in 1973, Shri Moudgil would not have been eligible to appear at the competitive examination which was held in December 1973 but since the 1975 Rules did not apply to the examination held in 1973, Shri Moudgil was in no way affected by the making of the 1975 Rules. Nonetheless Shri Moudgil was not appointed to the Service and he, therefore, filed C.W.P. No. 1464 of 1976. After notice of motion had been issued and after the State Government had taken repeated adjournments on one pretext or the other, Rule 1(2) of the 1975 Rules was amended so as to say that the Rules should be deemed to have come into force on 15th September, 1969. Another rule which was amended

along with Rule 1(2), was Rule 3(iii) (cc) by which, among other things, it was provided that released Indian Armed Forces Personnel did not include Indian Armed Forces Personnel who, 'before the appointment against vacancies reserved under the rules, joined or join a civil service of the Union or a civil service of a State or a civil post under the Union or a State after their release from the Armed Forces of the Union'. In the writ petition filed by Shri Moudgil, this Court struck down clauses (2) and (5) of the Demobilised Indian Armed Forces Personnel (Reservation of Vacancies) in the Punjab Civil Services (Judicial Branch) (First Amendment) Rules, 1976. Rule 3(iii) (cc) was not in question in that writ petition.

(3) It was the contention of the State Government that the new definition of released Armed Forces Personnel introduced by the 1976 amendment disentitled the petitioner from being appointed to the Punjab Civil Services (Judicial Branch) as he had accepted employment as Assistant District Attorney from September, 1970 to May, 1975. The argument of the learned counsel for the petitioner was that clause (2) of the notification introducing the amended rules and making them effective from 15th September, 1969 having been struck down, the amended rules cannot apply to the petitioner who passed the competitive examination long before the coming into force of the amended rules. In any case it was contended that the amended definition did not, in terms, apply to persons who were not holding any civil post on the date of the coming into force of the amended rules or join any such post thereafter. It was contended that Rule 3(iii) (cc) was, like amended Rule 1(2), aimed at excluding the three candidates belonging to the category of released Armed Forces Personnel who had passed the competitive examination, and should be struck down.

(4) Amended Rule 3(iii) (c) (ii) (b), with which we are concerned, is as follows :—

“Released Indian Armed Forces Personnel means ... but does not include, Indian Armed Forces Personnel who before their appointment against vacancies reserved under these rules ... joined or join a Civil Service of the Union or a Civil Service of a State or a Civil post under the Union or a State after their release from the Armed Forces of the Union.”

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(5) Now, the Rule-making authority must have been aware that a competitive examination for appointment to the Service had been held under the old rules and appointments were yet in the offing. Surely, the rule-making authority did not intend to exclude from appointment candidates who were eligible under the old rules but became ineligible by reason of an amendment of the rules made after the process of selection had almost reached a final stage. The amendment did not in any manner touch the qualifications of the candidates. Had the amended rule been in force from the beginning, persons in the position of the petitioner might not have accepted any employment and preferred to wait for selection and appointment to the Punjab Civil Services (Judicial Branch). Are they to be penalised by barring their entry into the Punjab Civil Services (Judicial Branch) because they accepted employment at a time when acceptance of such employment was not a bar to appointment to the Service. We don't think that we will be justified in attributing such an unreasonable intention to the Rule-making authority. In our view, the only reasonable interpretation of the amended rule, consistent with the prevailing situation, is to hold that only those persons who having joined the service of the Union or the State or a post under the Union or the State previously continued to hold the post on the date of the coming into force of the rules or who joined a post after the coming into force of the rules, are excluded from appointment to the Punjab Civil Services (Judicial Branch). The expression "joined or joins" must be given a reasonable interpretation in the context of the situation and we think that our interpretation does not strain the language or attributes unreasonableness to the Rule-making authority. In that view the petitioner cannot be said to be ineligible for appointment.

(6) In the view that we have taken, it is unnecessary for us to go into the question of the vires of Rule 3(iii) (cc) (ii) (b). We would, however, like to add that the rule does appear to our mind to be unreasonable. These rules prescribing a quota of reservation for released Armed Forces Personnel are in force for a limited period only. If during that period a person is otherwise eligible for appointment, we see no justice in excluding him from appointment on the ground that he accepted some other employment in the meanwhile. It looks as if a person belonging to the category of released Armed Forces Personnel accepts an inferior post he does so on pain of losing eligibility to a superior post. If no superior post is

readily available immediately on his release from the Armed Forces he must wait till such post becomes available and it may never become available. In the meanwhile, he is precluded from accepting an inferior post even to keep his body and soul together. Surely, that is not how we repay our debt to those that readily shed their blood for us.

(7) We questioned the learned Deputy Advocate General whether there was any other obstacle such as want of vacancy in the way of the petitioner, apart from Rule 3(iii) (cc) (ii) (b). We were assured there was none. We therefore, direct the respondents to consider expeditiously the fitness of the petitioner for appointment under Rules 4 and 5 of Part A of the Punjab Civil Services (Judicial Branch) Rules and if found fit, thereafter to do expeditiously all things necessary to appoint the petitioner to the Punjab Civil Services (Judicial Branch). The direction is in identical terms as the direction issued in the case of R. N. Moudgil. We understand that the decision of this Court in Moudgil's case has become final as the Supreme Court has dismissed an application for special leave to appeal against that decision.

N.K.S.

FULL BENCH

Miscellaneous Civil

Before O. Chinnappa Reddy, S. C. Mital, Ajit Singh Bains, Harbans Lal and Surinder Singh, JJ.

MOOL CHAND CHUNI LAL,—*Petitioner.*

versus

MANMOHAN SINGH and another,—*Respondents.*

Civil Writ Petition No. 4154 of 1976

May 6, 1977.

Punjab General Sales Tax Act (XLVI of 1948)—as amended by Act (IX of 1974)—Section 14-B, sub-sections (7) and (8)—Constitution of India 1950—Schedule VII, List II Entry 54—Sub-sections (7) and (8) of Section 14-B—Whether ultra-vires.