
on account of serving in any of the Wings of India Armed Force as have been spelled out in Rule 4 of the Punjab Government National Emergency (concession) Rules 1965 like increments and seniority are limited to the period of first emergency and not the second emergency which was declared by the President of India on account of external aggression,—*vide* notification dated December 3, 1971.”

(5) In view of the above decision, the view taken by the Division Bench does not appear to be correct. This decision was not brought to the notice of the court at the time of the hearing of the two cases referred to above.

(6) The Full Bench has categorically held that the employee is entitled to claim the benefit of service rendered by him during the period of first Emergency. This was apparently in operation from October 26, 1962 to January 10, 1968. Consequently, no benefit is admissible in respect of service rendered after January 10, 1968. In the present case, the petitioner is claiming the benefit of the service rendered by him from March 12, 1969 to August 1, 1984. This benefit is not admissible under the rules. The claim is contrary to the plain language of Rule 2 which defines ‘military service.’ It cannot, thus, be sustained.

(7) No other point arises for consideration.

(8) In view of the above, we find no ground to interfere. The writ petition is, accordingly, dismissed in limine.

J.S.T.

Before N.K. Agrawal, J

Ajit Singh and another,—Petitioners

versus

Nusrat Ali Khan,—Respondent

E.P.No. 19 of 1997

22nd August, 1997

Representation of the People Act, 1951—S.81 Limitation for filing Election petition—Office of High court open—Petition filed on the next working day—Petition barred by time.

Held that March 29, 1997 was specifically mentioned as a working day in the notice dated March, 14, 1997. In these circumstances, the plea put forward by the petitioners that election petition filed on March 31, 1997 is within limitation cannot be accepted. Since March 29, 1997 was a working day for the office of the High Court, it was necessary for the petitioners to file the petition on that day which was the next opening day after holidays from 23rd March, 1997 to 28th March, 1997.

(Para 15)

J.R. Mittal, Senior Advocate with K.S. Chahal,
and K.K. Garg, Advocate, *for the petitioners.*

H.S. Mattewal, Sr. Advocate with Sukhbir Singh,
Advocate, *for the Respondents.*

JUDGMENT

N.K. Agrawal, J.

(1) This order shall decide Issue No. 3 framed as under :—

“Issue No. 3 .

Whether the petition is barred by limitation and is liable to be dismissed.”

(2) General election to elect 117 members of Punjab Legislative Assembly was held in the State of Punjab in February, 1997. Election in 81-Malerkotla assembly constituency was held on February 7th, 1997. Result was declared on February 9, 1997 at mid-night for that constituency and the respondent Nusrat Ali Khan was declared elected.

(3) This election petition was filed on March 31, 1997 jointly by Ajit Singh and Mohammad Ashraf under the Representation of the People Act, 1951 (for short, “the Act”), challenging the election of the respondent. After this election petition was filed in the office of the High Court, the Deputy Registrar (Judicial) pointed out, among certain other defects, that the petition was time barred because it was filed on the 50th day from the date of declaration of the result as against the period of limitation of 45

days under section 81(1) of the Act. The respondent has also raised a plea in his written statement that the election petition is barred by limitation. Result of 81-Malerkotla assembly constituency was declared on February 9, 1997. The period of limitation of 45 days expired on March 26, 1997. The election petition was filed on March 31, 1997.

(4) Shri J.R. Mittal, senior counsel for the petitioners, has argued that the High Court was closed from 23rd March, 1997 to 30th March, 1997 and, therefore, the election petition could not be filed on March 26, 1997 which was the last day of limitation for filing the election petition. It is on account of the holidays that the election petition was filed on March 31, 1997, the opening day. Shri Mittal has referred to the notice dated March 18, 1997 (Annexure P-3) issued by the Registrar (Judicial) of the High Court in connection with the hearing of the Habeas Corpus petitions during the holidays. The said notice reads as under :—

“NOTICE

Hon'ble the Chief Justice has been pleased to nominate Hon'ble Mr. Justice N.K. Kapoor and Hon'ble Mr. Justice K.S. Kumaran for hearing Habeas Corpus Petitions at their residences during the holidays commencing from 23rd March, 1997 to 30th March, 1997.

All such petitions shall be received by the Registry and placed before the Hon'ble Judges up to 1.00 P.M. only.

(Sd) . . . ,

(R.C. KATHURIA),
Registrar (Judicial)
18th March, 1997.”

(5) Shri H.S. Mattewal, senior counsel for the respondent, on the other hand, has argued that the office of the High Court

was closed for only six days from 23rd March, 1997 (Sunday) to 28th March, 1997 (Friday) and it opened on 29th March, 1997 (Saturday). It was, therefore, incumbent upon the petitioner to file his petition on the next opening day i.e. 29th March, 1997. Shri Mattewal has explained that section 5 of the Limitation Act, 1963 was inapplicable. It was section 10 of the General Clauses Act, 1897 which permitted the filing of the petition on the next opening day. The said section 10 provided that where any act or proceeding is allowed to be done or taken in any Court or office on a certain day or within a prescribed period and if the Court or office is closed on that day or the last day of the prescribed period, then the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open. Since the election petition was to be filed in the office of the High Court, it was only the next opening day i.e. 29th March, 1997 (Saturday) which was available to the petitioner for filing his petition.

(6) Shri Mattewal has placed on record copy of the notification No. 362, dated November 29th, 1996 (Annexure R-4) issued (by order of the Hon'ble Chief Justice and Judges) by the Assistant Registrar (General) for the Registrar. That notification was published in the Government Gazette of Punjab, Haryana and Union Territory of Chandigarh. It notified the holidays which were to be observed during the year 1997. The relevant part of the notification reads as under :—

**“THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Notification

The 29th November, 1996

No. 362/XVII.3.—It is hereby notified for general information that the days enumerated in the Schedule below shall be observed as holidays by the High Court of Punjab and Haryana at Chandigarh during the year 1997.

SCHEDULE

<i>Sr. No.</i>	<i>Description of Holidays</i>	<i>Date on which holiday falls</i>	<i>Day of the week</i>	<i>No. of Holiday(s)</i>
1 to 8	xx	xx	xx	xx
	xx	xx	xx	xx
9	Holi	24th March	Monday	1
10	Hola	25th March	Tuesday	1
11	Local Holiday	26th March	Wednesday	1
12	Local Holiday	27th March	Thursday	1
13	Good Friday	28th March	Friday	1
14	Baisakhi	13th April	Sunday	1
15 to 39	xx	xx	xx	xx
	xx	xx	xx	xx

NOTE : Vacation : Summer Vacation will be observed from 2nd June to 30th June, 1997 (both days inclusive)

BY ORDER OF THE HON'BLE CHIEF JUSTICE AND JUDGES.

(Sd.). . . ,

(J.P. KAUSHIK),
Assistant Registrar (General)
for Registrar."

7. Another notice was issued by Registrar (Judicial) on March 14, 1997 (Annexure R-5) which reads as under :—

“NOTICE

During the spell of Court holidays from 23rd March, 1997 to 28th March, 1997 and 30th March, 1997 (29th March, 1997 is Saturday and working day), the following Officers have been put on duty to entertain Habeas Corpus, if any, in the Registry of the High Court.

1. Shri Suresh Mohan, 23-3-1997 to 26-3-1997
Assistant Registrar,
(Civil & Criminal).
2. Shri Malkiat Singh, 27-3-1997, 28-3-1997
Deputy Registrar & 30-3-1997
(General)

(Sd). . . ,

(R.C. KATHURIA),
Registrar (Judicial)
14-3-1997”

(8) There are, thus, one notification and two notices to be considered in connection with the holidays observed by the High Court. The notification dated November 29, 1996 laid down the calendar of Holidays for the whole year 1997. Holidays other than Sundays (52) and Second Saturdays (12) were specified in seriatum in the Schedule and 29th March, 1997 (Saturday) was not shown as a holiday. Holidays were shown for 24th, 25th, 26th, 27th and 28th March, 1997 (Monday to Friday).

(9) In the notice dated March 14, 1997 also, 29th March, 1997 (Saturday) was mentioned as a working day.

(10) Shri H.S. Mattewal has placed strong reliance on the notification dated November 29, 1996 and the notice dated 14th March, 1997 in support of the plea that the office of the High Court was not closed on 29th March, 1997. It was, therefore, incumbent upon the petitioners to file the petition on the next opening day i.e. 29th March, 1997. Since the petitioners failed to file the election petition in the office of the High Court on 29th March, 1997, the petition is said to be barred by limitation.

(11) Shri J.R. Mittal, counsel for the petitioners has argued that the last notice dated 18th March, 1997 (Annexure P-3) was the relevant notice to be seen for determining whether 29th March, 1997 was a close day or not for the High Court. That notice actually gave the unmistakable information that there were holidays in the High Court from 23rd March, 1997 to 30th March, 1997. The

unambiguous mention of the words "the holidays commencing from 23rd March, 1997 to 30th March, 1997" in that notice left no room for any doubt that 29th March, 1997 was also a holiday. Shri Mittal has also placed reliance on a decision of the Supreme Court in *Simhadri Satya Narayana Rao v. M. Budda Prasad and others* (1). In that case, limitation period of 45 days under section 81 of the Act for filing an election petition had expired during vacation when High Court of Andhra Pradesh was closed. The High Court notification declaring that the Court would remain close for Sankranthi Vacation and in subsequent paras stating that the applications of urgent nature could be filed during the vacation and appointed two Judges as Vacation Judges and two Assistant Registrars as Vacation Officers clearly showed that the High Court remained closed. It was, therefore, held that the election petition filed on the re-opening of the High Court after vacations was not liable to be dismissed under section 86 of the Act.

(12) It may be noticed that, in the aforesaid case, the notice dated 29th December, 1989 issued by the Registrar of the High Court of Andhra Pradesh had declared that the High Court "will remain close for Sankranthi Vacation, 1990 from Tuesday the 2nd January to Friday the 12th January, 1990 (both days inclusive)." In the last para of the notice, applications of urgent nature were permitted to be filed. The last paragraph read as under :—

"Notice of any application of an urgent nature shall be given to the Vacation Officers before 1.30 p.m. on Tuesday, 2nd January and the 8th January, 1990."

(13) The facts in the present case, however, are entirely different. Here, notice dated 18th March, 1997 pertained to the nomination of two Judges of this Court for hearing Habeas Corpus petitions at their residences. In the second paragraph of the notice, it was specified that all such petitions shall be received by the Registry and placed before the Hon'ble Judges up to 1.00 p.m. only. Therefore, notice dated 18th March, 1997 did not specify the holidays but notified the arrangement made by Hon'ble the Chief Justice for hearing Habeas Corpus petitions. The words "during

1. 1994 Supp. (1) S.C. Cases 449

the holidays commencing from 23rd March, 1997 to 30th March, 1997" occurring in the notice did not imply a change in the number of holidays as notified earlier. Reference to holidays from 23rd March, 1997 to 30th March, 1997 was in relation to the hearing of the Habeas Corpus petitions. More-over, notice dated March 18, 1997 was not issued in supersession or modification of the earlier notification dated November 29, 1996 or notice dated March 14, 1997 which had been specifically issued earlier in connection with the holidays to be observed by the High Court.

(14) Shri H.S. Mattewal has placed reliance on a decision of Supreme Court in *Hukumdev Narain Yadav v. Lalit Narain Mishra* (2), in support of his plea that section 10 of the General Clauses Act, 1897 could be applicable so as to extend the period of limitation in a case of election petition. Shri Mattewal has argued in the light of the aforesaid decision that if the Court is closed on the day when limitation expired, section 10(1) of the General Clauses Act enabled the filing of the next working day of the Court.

(15) Keeping in view the object and the purpose of the notice dated March 18, 1997, it cannot be inferred that March 29, 1997 was declared a holiday. The said notice, when read as a whole, gives no impression that calendar of holidays was altered. The notice was in the nature of information to all regarding the arrangement made for hearing Habeas Corpus petitions by two Judges of the high Court. It also notified that Habeas Corpus petitions shall be received by the Registry and placed before the Judges upto 1.00 p.m. In this light, notice dated March 18, 1997 cannot be said to have notified March 29, 1997 as a holiday. The Gazetted notification dated the November 29, 1996 and the notice dated March 14, 1997 specifically declared the holidays. March 29, 1997 was not declared as holiday in the notification dated November 29, 1996. On the other hand, March 29, 1997 was specifically mentioned as a working day in the notice dated March 14, 1997. In these circumstances, the plea put-forward by the petitioners that election petition filed on March 31, 1997 is within limitation cannot be accepted. Since March 29, 1997 was a working

day for the office of the High Court, it was necessary for the petitioner to file the petition on that day which was the next opening day after holidays from March 23, 1997 to 28th March, 1997.

(16) The election petition is dismissed being time barred.

S.C.K.