(8) In view of the fact that the petitioner does not belong to an inferior class of service envisaged by the Pepsu Service Regulations, 1952, his age of retirement cannot be taken to be 60 years. The Submission that the age of retirement of the petitioner being a Teacher is 60 years, is bereft of any logic or reasoning particularly when the contrary inference can be drawn from the letter of appointment, Copy Annexure P2, by which the petitioner was appointed against the post of one Arjan Singh in the grade of Rs. 40-2-60 per month on the latter's retirement on attaining the age of 55 years.

(9) In view of the above observations, we find no force in the Writ Petition. The same is dismissed, with no order as to costs.

P.C.G.

Before : J. V. Gupta, C.J. and M. S. Liberhan, J.

AMARJIT SINGH KALEKA,—*Appellant.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 766 of 1985

10th July, 1990.

Demobilized Armed Forces personnel (Reservation of vacancies in the Punjab State Non-Technical Services) Rules, 1968—R. 5—Punjab Reorganisation Act, 1966—S. 82—Seniority—Benefit of military service—Assumed date of seniority—Retrospective effect of 1968 rules with effect from 1st November, 1966—Proper—Petitioner entitled to fixation of seniority from a deemed date.

Held, that on reading of Rule 5 of Demobilized Armed Forces personnel (Reservation of vacancies in the Punjab State Non-Technical Services) Rules, 1968 it is obvious that a concession has been given to the persons who have offered their lives in the service of the Nation and a plain reading of the Rule empowers the State Government to fix the year of allotment retrospectively even prior to the date of coming into force of the Rules. The Rule provides that a "deeming date" of allotment of a year of recruitment has to be given to the persons in terms of Rule 5 which is a

statutory fiction provided by the Rules. The fiction has to be taken to its logical end. What transpired resulting into the enactment of a Rule cannot be taken into consideration when the plain reading is clear. It may result in hardship, that is for the State to remedy. In exercise of Writ jurisdiction the Courts cannot plainly refuse to enforce the statutory obligations of the State.

(Para 20)

Letters Patent Appeal Under Clause X of the Letters Patent Against the Judgement of Hon'ble Mr. Justice I. S. Tiwana Delivered on 8th May, 1985, in C.W.P. No. 933 of 1984.

Rajiv Atma Ram, Advocate.

H. L. Sibal, Sr. Advocate with R. K. Handa, Advocate, *for petitioner in C.W.P. 5007/85.*

M. L. Sarin, Additional A. G. with Jaishree Thakur, Advocate,

J. L. Gupta, Sr. Advocate with Nidhi Gupta, Advocate and Nirmaljit Kaur, Advocate, *for Respondent No. 6.*

JUDGMENT

M. S. Liberhan, J.

The case put up by the petitioner-appellant was that he joined the Indian Army on April 15, 1963 and was commissioned as an Officer on May 3, 1964. He served in the Indo-Pak war. On his release on February 28, 1970, he joined as Lecturer in Government College on July 17, 1971 against the post reserved for the released Armed Force Personnel. His seniority was fixed with effect from November 12, 1964 in terms of the Demobilised Armed Forces personnel (Reservation of vacancies in the Punjab State Non-Technical Services) Rules, 1968 (hereinafter referred to as the 1968 Rules) In 1972, the Punjab Public Service Commission selected the petitioner as an Excise and Taxation Officer against the post reserved for the released Armed Force personnel and resultantly he joined the service on July 11, 1974. On joining the said post, the petitioner claimed the benefit of military service with respect to fixation of his seniority, pay, etc. which was declined as he had already availed of this concession once when he was appointed as Lecturer in the Government College. The ground for declining the relief to the

petitioner could not be sustained in view of the authoritative pronouncement of the High Court in *Shri Raj Kumar Verma H.C.S.* v. *The State of Haryana and others* (1), wherein it was held that the benefit of military service under the rules cannot be confined to the first civil appointment alone. It has to be extended to all subsequent appointments. The petitioner again staked his claim by making a representation for the relief. Under the directions of the High Court in Civil Writ Petition No. 2184 of 1983. The State decided the representation,—*vide* impugned order, dated December 22, 1983, Copy Annexure P 3. It would be expedient to refer to the ground on which his representation was rejected, which runs as under :

> "In accordance with the relevant rules he could claim benefit of his military service only with reference to the first opportunity which became available to him for appointment as Excise and Taxation Officer after 1st November. 1966, the date when these rules were made effective as provided under rule 1(2) of the rules *ibid.* No recruitment of Excise and Taxation Officers was made after 1st November, 1966 other than the one in which he was recruited as Excise and Taxation Officer. Therefore, the question of giving him any deemed date of appointment as Excise and Taxation Officer from an earlier period does not arise....."

(2) Precisely the view taken by the learned Single Judge on the question posed that "does a first opportunity mean an opportunity prior to November 1, 1966 when there was no reservation ?" Does rule 1(2) control the operation of rule 5 with retrospective effect ? It was concluded that the date of joining the military service or training prior to the commission, co-related to the first opportunity which an appointee under the rules could have while entering into service. Since the reservation was brought in for the first time in the rules, therefore, the first opportunity essentially would be after coming into force of these rules. Therefore, the governing factor would be the availability of first opportunity for such an appointee. The learned Judge was further of the opinion that since the petitioner was appointed against the reserved post and no reservation could have been made earlier, therefore, neither

(1) 1979 (3) S.L.R. 719.

the vacancy could be treated as reserved nor he could be deemed to have been appointed earlier to his date of appointment. It was further observed that it was to be the real opportunity, the chance of grabbing which, an appointee under the rules was almost certain. Resultantly, the learned Single Judge found that the petitioner had failed to show that such vacancy was available to him on the date with effect from which he wanted his seniority and there was limitation to the reservation which could not exceed 50 per cent and otherwise also, the seniority being condition of service could not be adversely affected in view of section 82 of the Punjab Reorganisation Act, 1966. The 1968 rules could not adversely affect the interest of the respondents without prior permission of the Central Government which admittedly was not there.

(3) The view of the learned Single Judge was assailed. The learned counsel for the appellant summed up by submitting that the object of 1968 Rules is to give benefit to the Armed Forces Personnel who joined the Armed Forces and rendered Service during the period from 1962 to 1968 when the Nation needed their services. They should not be put to dis-advantage for serving the Nation at the hour of need. The rule should be liberally construed to confer the benefit granted by the Rules upon the personnel who devoted their life for the Nation. They should not be deprived of their civil rights and opportunities which they otherwise could have to compete with the persons in ordinary course at the time when they joined the service in the Armed Forces.

(4) The learned counsel for the appellant referred to various Rules, Regulations and Instructions, finally resulting in 1968 Rules. It was pointed out that since February 25, 1963 onward various instructions were issued by the Punjab Government conferring war service concessions to servicemen and civilian employees who undertook military service during emergency, direct recruitment on substantive basis was banned under the Punjab Government except with the sanction of the Government and for special reasons to be recorded by the Administrative Department concerned, conferment of any entitlement on any employee for being made permanent in preference to those who had joined military service was eclipsed. It was provided that the period spent on approved military service would be counted towards seniority, promotion, increment and leave in civil appointment. Limited benefit with respect to promotion etc. was also given. The methodology for conferring the various benefits was provided from time to time. So far as the

benefit of seniority is concerned, under the instructions it is provided that one who is appointed to civil service will be assigned a place in the cadre of such service which will be fixed with due regard to his age and the period allowed to be deduced in terms of the instructions and will be nearly may be, correspond with the place which he would have been assigned to if the emergency had not intervened and he had qualified in the normal way. By 1964 instructions, for all intents and purpose reservation was provided. Later all previous instructions were consolidated and carry-forward of reservation was limited to four years only. The instructions envisaged that an ex-serviceman who is appointed to a civil service will be assigned a place in the cadre of such service which will be fixed with due regard to age and period allowed to be deducted in accordance with the instructions and as nearly as he would have been assigned if the emergency had not intervened and he had qualified in the normal way. On October 11, 1966, the carry-forward of 20 per cent of posts was restricted for four years only.

(5) The Punjab Government framed Punjab Government National Emergency (Concession) Rules, 1965, which came into force on July 20, 1965. Under the said Rules, the concession was granted for fixing the seniority by adding a total number of years spent in military service from October 26, 1962 to January 10, 1968, i.e. the period of emergency be counted for the purpose of seniority. Rule 4 of the 1965 Rules envisages that the period of military service mentioned in Clause (1) shall be taken into consideration for the purpose of determining the seniority of a person who has rendered military service. Clause (1) read, "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 shall be as laid down in rules 3.9, 3.10 and 3.11 of the Punab Civil Services Rules, Volume II. This concession shall, however, be admissible only on first appointment."

(6) In view of the judgment of the Supreme Court in *Shri Raj Kumar Verma's case* (supra), it was observed that benefit of military service is for all appointments and not limited to first appointment.

(7) Later 1968 Rules were promulgated and they came into force with effect from November 1, 1966. 1965 Rules only conferred benefit of military service for the period spent in the service during

the emergency. However, 1968 Rules enlarged the benefit. It would be appropriate and apposite to refer to Rule 5 of the 1968 Rules, under which the appellant claims the benefit. It runs as under:

"5. (1) Seniority and pay of the candidates who are appointed against the vacancies reserved under rule 3 and who,—

(i) in the case of Emergency Commissioned Officers, are released according to a phased programme; or

(ii) in the case of Short Service Commission Officers, are released on the expiry of the tenure of their service or

(iii) are invalidated owing to a disability attributable to or aggravated by military service;

shall be determined on the assumption that they joined the service or the post, as the case may be, under the State Government at the first opportunity they had after they joined the military service or training prior to the Commission.

(2) Seniority *inter se* of candidates who are appointed against the vacancies reserved under rule 3 and allotted to a particular year shall be determined on the basis of their dates of birth; the candidate older in age to be placed senior to the one younger in age :

Provided that in the case of candidates having the same date of birth, seniority shall be determined according to the merit list prepared by the recruiting authority on the basis of the result of the test or examination.

(3) All candidates appointed against the reserved vacancies under rule 3 shall rank below the candidates appointed by direct recruitment in the year to which the former candidates are allotted."

(8) The learned counsel after reading the history of concessions granted for Military Service and in various stages of the instructions issued from time to time urged that it would be reasonable to infer that there was a reservation for the persons who had served the military before 1968. There was a sustained effort of the State to give concession to the persons who served the Nation at the time of need. The attempt of the respondent-State had clearly

been not to put the persons who had joined the military service to a disadvantageous position when on their release they join civil service. The State tenaciously has been attracting the youth to serve the Nation, either expressly or impliedly offering various concessions in the civil service on their release from the Armed Forces. State acts raised normal expectations amongst the persons joining the Army. A case almost on the *pari materia* on facts and a rule which is *pari materia* with the Rules under consideration in the present case came up for consideration before the Supreme Court in *Union of India and others* v. *Dr. S. Krishna Murthy and others* (2). The rule under consideration ran as under:

"3 (2) The year of allotment of an officer appointed to the Service shall—

(a) .....

(b) .....

(c) .....

(d) when an officer is appointed to the Service in accordance with rule 7A of the Recruitment Rules, deemed to be the year in which he would have been so appointed as his first or second attempt is after the date of joining pre-commission training or the date of his commission where there was only post-commission training according as he qualified for appointment to the Service in his first or second chance, as the case may be, having been eligible under regulation 4 of the Indian Forest Service (Appointment by Competitive Examination) Regulations, 1967.

Explanation.—If an officer, who qualified himself for appointment to the Service in a particular year, could not be so appointed in that year on account of non-availability of a vacancy and is actually appointed in the next year, then his year of allotment would be depressed by one year. He shall be placed above all the officers recruited under Rule 7 of the Recruitment Rules and who have the same year of allotment."

(2) 1990 (1) S.L.J. 67.

While interpreting the said rule, the Supreme Court came to the conclusion that it could not be disputed that Emergency Commissioned Officers or Short Service Commissioned Officers formed a definite class distinct from the other officers of the civilian service and the rules have been framed with a view to give weightage to that class as Emergency Commissioned Officers or Short Service Commissioned Officers. While repelling the contention that the rules giving the concession take away vested rights consequently prejudicially affecting the interest of the persons who joined the civil service prior to the joining of the service of the released Officers, it was observed as under:

> ".....Accordingly, it is submitted that the impugned rules are illegal and cannot operate retrospectively in the face of the provision of sub-section (1-A). This contention does not at all impress us. The respondents have been given a particular seniority in accordance with the relevant rules. The seniority of the respondents is not taken away or interfered with by the impugned rules. The year of allotment of the respondents remains the same and is not altered to their prejudice. The impugned rules only provide for giving weightage to the ECOs and SSCOs for their past services in the army during the emergency period and their year of allotment will be determined in accordance with the impugned rules."

(9) It was further observed,

> ".....The extreme contention is not sustainable on the face of it, for even assuming that the seniority of the respondents or their chances of promotion are affected by the impugned rules, surely it cannot be said that there has been a contravention of the fundamental rights of the respondents. Nobody has any fundamental right to a particular seniority or to any chance of promotion. It is not the case of the respondents that because of the impugned rules their cases for promotion will not be taken into consideration by the authorities."

(10) Almost in the similar circumstances where the rules were framed earlier, executive instructions were issued from time to time conferring various benefits on the released Army Officers as referred above, resulted in the 1968 Rules. The Supreme Court came to the

conclusion that in spite of the fact that the Emergency Commissioned Officers and Short Service Commissioned Officers were recruited after the initial recruitment to the service which came into existence prior to coming into force of the rules and the first examination for the recruitment was held. It was stated that the released officers cannot be given an artificial date of their appointment prior to the date given to the first initial recruitment to the service. The Supreme Court while rejecting the contention, observed that it was true that the respondents were the initial recruits when the service was constituted in 1966 and the Emergency Commissioned Officers and Short Service Commissioned Officers entered the service after the respondents, but this fact has a very little effect on the question having regard to the past service of such recruits. While, taking into account the particular facts of the case in hand, the Supreme Court observed there was no force in the contention that the Emergency Commissioned Officers having been appointed subsequent to their appointment or they having entered into service after the respondents, could not be given a year of allotment prior to that allotted to the respondents. This contention was rejected as misconceived as the year of allotment has been granted to them on the basis of principles enshrined in the Regulations. The Supreme Court observed that "As soon as it is found that the ECOs and SSCOs have been classified into a distinct and separate class, and that such classification is reasonable, no objection can be taken to the year of allotment given to them in accordance with the impugned rules..., we are of the view that no illegality has been committed by the Government in framing the impugned rules with retrospective effect....." It was held that the impugned rules were quite legal and valid and the benefit was, thus, granted.

(11) The Supreme Court in *State of Bombay* v. *Pandurang Vinayak and others* (3), observed that "When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion."

(12) It was not disputed at the bar before us as well as before the learned Single Judge that the 1965 Rules and 1968 Rules are

(3) A.I.R. 1953 S.C. 244.

complimentary as well as *pari materia* with each other on the concessions granted. The learned Single Judge in *Manju Gupta and others* v. *State of Haryana and others* (4), observed as under :.

> "When a person is "deemed to be" something the only meaning possible is that whereas he is not in reality that something, the Act requires him to be treated as if he were. The petitioners were appointed in the year 1972 against the vacancies of the year 1969. yet that by itself does not mean that they have been appointed earlier to the assumed dates of appointment of the private respondents."

We are in full agreement with the observations of the learned Single Judge and have got nothing to add.

(13) The learned counsel has summarily reiterated his submissions that no doubt seniority is a condition of service, but not a fundamental right. The State is not estopped in denying the right of fixation of seniority in view of the facts stated above.

(14) Finally, it was urged that giving of assumed date of seniority does not disturb the seniority of others, though it may disturb the expectations of chances of promotion. The State is well within its rights to grant concession to the persons who have served the Nation. The respondents have no vested rights in the seniority. The effect on the chances of promotion is immaterial. The executive instructions existed from the very beginning, the reservation was there earlier also even prior to the Reorganisation of the States in 1966 and assumed date of seniority can be given by giving year of allotment. In view of the above submissions, the findings of the learned Single Judge that it adversely affected the conditions of service of the respondents, which cannot be done in view of section 82 of the Punjab Reorganisation Act as it would contravene the same, cannot be sustained. The distinguishing feature pointed out by the learned Single Judge that there was no reservation before 1968 Rules in view of the history reproduced above, cannot be sustained. The reservation was there with effect from 1963.

(15) The learned counsel for the respondents refuted the submissions made by the counsel for the appellant and urged that 1965

(4) 1987 (1) S.L.J. 103.

Rules did not provide any reservation and the State chose not to give any other benefit except those given by the Rules to a limited extent of granting the benefit of service during the emergency period, i.e. October 15, 1963 to January 10, 1968. It is the 1968 Rules which made 20 per cent reservation in the posts. The method of fixing of seniority by the 1968 Rules is quite different from that provided by the 1965 Rules. It was sanguinely urged that the Rules having come into force with effect from November 1, 1966 can only operate with effect from the said date. No retrospective benefit can be granted under Rule 5 of the 1968 Rules, which is a specific and special Rule and the effect of this Rule cannot be permitted to go beyond November 1, 1966 with effect from which date they came into force. Rule 5 runs contrary to the date of coming into force of the Rules by giving a deemed date of seniority and does affect the conditions of service of the respondents, as admittedly seniority is a condition of service. In view of section 82 of the Punjab Reorganisation Act, 1966, the conditions of service of an employee cannot be affected adversely to his interest without the prior permission of the Central Government which admittedly had not been obtained. In order to support his submission, that the seniority is a condition of service, the learned counsel for the respondent relied on *B. S. Yadav and others* v. *Staee of Haryana and others* (5).

(16) The learned counsel for the respondents in the course of arguments, urged that vital distinction between the 1965 Rules and the 1968 Rules is that in 1965 Rules, there was no reservation and everybody was to compete in general pool with the general category persons and, therefore, only concession given was for the period spent during the emergency while in case of 1968 Rules posts have been reserved and method for fixation of their seniority has been specifically provided by Rule 5. Rule 6 of the 1968 Rules has an overriding effect and a person appointed against the reserved post cannot take the benefit of the 1965 Rules. The appellant would be governed by the 1968 Rules only and his seniority shall be fixed according to the method provided by the Rules, no retrospectivity can be given to Rule 5. At the most, restrospective effect can be given up to November 1, 1966 only, as the Rules came into force on the said date and operated afterwards. By reading of the File as observed by the learned Single Judge, which fact has not been

(5) 1980 (3) S.L.R. 591.

challenged in this Letters Patent Appeal, he came to the conclusion, that the respondent-State was, while giving the benefits of military service alive to the provisions of section 82 of the Punjab Reorganisation Act. Thus, the benefit was intended to be given only up to November 1, 1966. The date has been advisedly chosen.

(17) The learned counsel for the respondents attempted to distinguish the judgment cited by the counsel for the appellant stating that in the case in hand, the Rules had attempted to give the benefit by limiting the retrospectivity of Rule 5 which cannot go beyond November 1, 1966. Since the seniority and changes of promotion are affected which are conditions of service, the same could not have been changed in view of section 82 of the Punjab Reorganisation Act, 1966.

(18) In order to support his submission, the learned counsel for the respondents further relied upon *State of Haryana and others* v. *Shamsher Jang Bahadur and others* (6), *Smt. Ravinder Sharma and others* v. *State of Punjab and others* (7), and *T. R. Kapur and others* v. *State of Haryana and others* (8), which lay down the law that the conditions of service cannot be changed without the prior approval of the Central Government. There is no quarrel with the proposition.

(19) It was further urged that the interpretation proposed by the learned counsel for the appellant would result in unfair and inequitable result. In order to illustrate the submission, it was stated that the persons who joined Army in 1962 were released in 1966, failed in 1967 and succeeded in 1974, would become entitled to as the seniority as claimed by the appellant prior to 1966 which would be inequitable. It was further urged that the Rules conferring the concession should be construed strictly.

(20) We find no force in the submissions made by the learned counsel for the respondents. On reading of Rule 5 as reproduced above, it is obvious that a concession has been given to the persons who have offered their lives in the service of the Nation and a plain reading of the Rule empowers the State Government to fix the year of allotment retrospectively even prior to the date of coming

(6) 1972 S.L.R. 441.
(7) 1983(2) S.L.R. 591.
(8) 1986(4) S.L.R. 155.

into force of the Rules. The Rule provides that a "deeming date" of allotment of a year of recruitment has to be given to the persons in terms of Rule 5 which is a statutory fiction provided by the Rules. The fiction has to be taken to its logical end. What transpired resulting into the enactment of a Rule cannot be taken into consideration when the plain reading is clear. It may result in hardship, that is for the State to remedy. In exercise of Writ jurisdiction the Courts cannot plainly refuse to enforce the statutory obligations of the State. Further, the facts and circumstances of the present case are squarely covered by the facts and circumstances in *Dr. S. Krishna Murthy's case* (supra) as well as by the law laid down therein. We cannot gainfully add anything to it.

(21) In view of the observations made above, we do not agree with the view taken by the learned Single Judge and in view of the judgment reported in *Union of India and others* v. *Dr. S. Krishna Murthy and others,* 1990(1) S.L.J. 67 referred to above the view of the learned Single Judge is erroneous and cannot be sustained in view of the judgment of the Hon'ble Supreme Court.

(22) The learned counsel for the applicant in Civil Miscellaneous Application No. 742 (LPA of 1990), submitted that in view of the judgment having been reserved and the arguments having already been addressed, the following submissions, *inter alia,* may be taken note of :

(i) In *Dr. S. Krishna Murthy's case* (supra), there was no restriction on the retrospectivity of the Rules and in the present Rules, retrospectivity is restricted to November 1, 1966. The contention is only to be noted and rejected in view of the observations, made earlier.

(ii) Another new submission has been made in the application that when the Rules are open to more than one interpretation, the Court has to choose which represents the true intention of the Legislature and in support of this reliance has been placed on *B. Venkataswami Naidu and another* v. *Narasram Naraindas* (9). The point has been already dealt with, as referred to above.

(9) A.I.R. 1966 S.C. 316.

(23) The judgments reported in *Mohammed Bhakar and others* v. *Y. Krishna Reddy and others* (10), *State of Haryana and others* v. *Shamsher Jang Bahadur and others* (11), *Khusbash Singh Sandhu* v. *The State of Punjab* (12), *Piara Lal, Assistant and others* v. *The State of Punjab and others* (13), and *Ex. Capt. K. C. Arora and another* v. *State of Haryana and others* (14), are noted, as a later attempt has been made to put something on record. However, the learned counsel has not been able to point out how they are *pari materia* with the question in dispute being determined in the present case. Otherwise also, the points raised in the application have been specifically dealt within the judgment. No particular order is required in the application. The same be placed on the record.

(24) It was brought to our notice that 1968 Rules have been repealed by 1982 Rules. The learned counsel for the respondents states that this fact may be noticed, though in substance it does not affect the question raised in the Writ Petition and the Letters Patent Appeal.

(25) The reminiscence (sic) of the above observations of ours is that the Letters Patent Appeal is allowed, the judgment of the learned Single Judge is set aside and the appellant would be given the date of allotment in the cadre in terms of Rule 5 of 1968 Rules. The same may be done within three months from today.

No order as to costs.

R.N.R.

(10) 1970 S.L.R. 768.
(11) 1972 S.L.R. 441.
(12) 1981(2) S.L.R. 576.
(13) 1983(2) S.L.R. 785.
(14) 1984(2) S.L.R. 97.

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