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the strict four corners of the Judicial process then they can make a recommendation to the executive to exercise the powers vested in it which has invariably been acceded to. Consequently the apprehensions of the learned counsel for the petitioners that the marginal limitation placed on a writ of habeas corpus against the judicial process itself would result in any grave failure of justice appears to me as imaginary and hallucinatory.

21. In the light of the foregoing discussion the answer to the question posed at the very outset is rendered in the negative and it is held that a convict undergoing imprisonment under the judgment of a Criminal Court, which has become final, cannot prefer and maintain a writ of habeas corpus to assail his detention.

22. In view of the above all the four writ petitions are not maintainable and are hereby dismissed.

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H. S. B.

FULL BENCH

Before S. S. Sandhawalia C.J., K. S. Tiwana and S. P. Goyal, JJ.

KHUSBASH SINGH SANDHU,—*Petitioner.*

*versus*

STATE OF PUNJAB,—*Respondent*

*Civil Writ No. 2808 of 1979.*

May 29, 1981.

*Demobilized Indian Armed Forces Personnel (Reservation of Vacancies in the Punjab Civil Service (Executive Branch) Rules 1972—Rules 3, 4 and 5—Assumed date of joining service under rule 4(1) (a)—‘First opportunity’ contemplated therein—Minimum academic qualifications for joining the service—Whether should be possessed by an ex-serviceman on the ‘first opportunity’ he had to join the service.*

Held, that rule 4(1) (a) of the Demobilized Indian Armed Forces Personnel (Reservation of Vacancies in the Punjab Civil Service (Executive Branch) Rules, 1972 entitles a demobilized

Indian Armed Forces Personnel to the benefit of the service put in by him in the army on the assumption that he joined the service under the State Government at the first opportunity he had after joining the military service or training prior to the Commission. The words 'first opportunity' and 'after' in this Rule are significant to make the intention of the Rule explicit and clear. Such a person should be eligible to enter the competition on the first opportunity he had after joining the military service or training prior to the Commission. Such opportunity, though assumptive, has to satisfy the conditions prescribed by the rules. The opportunity has to be viewed in the light of rule 3 prescribing minimum academic qualification. If a Demobilized Indian Armed Forces Personnel does not fulfil any of the conditions mentioned in rule 3, he cannot get an entry into the competitive examination for the service. If an ex-serviceman is not qualified when he had opportunity to join service, he cannot say that he had such an opportunity at that time to enter the State Service. Rule 4(1) (a) does not tend to make the opportunity fictional as the language of the rule does not relax the rigours of minimum qualifications prescribed in rule 3 and the opportunity cannot be deferred to wait for the Demobilized personnel to acquire the minimum qualification. The Government while making this rule wanted that if the Demobilized Indian Armed Forces Personnel is to join the Punjab Civil Service (Executive Branch) under the State, then he should be qualified to enter such a service at the first opportunity after joining the military service or the training prior to the Commission.

(Paras 10 and 12).

*Petition under Art. 226 of the Constitution of India praying that a Writ of Certiorari, Mandamus or any other suitable Writ, Direction or Order be issued, directing the respondent :--*

- (i) to produce the complete records of the case.
- (ii) a Writ of Mandamus be issued directing the respondent to give the petitioner the benefit of his Army Service towards fixation of his pay and seniority in the P.C.S. in accordance with the provisions of Rule 4 quoted above ;
- (iii) This Hon'ble Court may also grant all the consequential reliefs in the nature of arrears of salary, seniority etc. ;
- (iv) This Hon'ble Court may also pass any other order which it may deem just and fit in the circumstances of the case ;
- (v) the costs of this writ petition may also be awarded to the petitioner.

J. L. Gupta, Advocate with G. C. Gupta, Advocate, for the Petitioner.

A. S. Sandhu, Additional A.G., Punjab.

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### JUDGMENT

*K. S. Tiwana, J.*

(1) The petitioner before graduating but while studying in B.A. final, after qualifying B.A. (Part II) examination was selected in the Indian Army as a lieutenant. On 14th of February, 1964 he reported for his pre-Commission training at the Indian Military Academy at Dehra Dun. He was granted Commission after successful completion of the training in August, 1964. He was released on 1st of September, 1968. After that he passed his B. A. Examination in 1971. The Punjab Public Service Commission advertised certain posts of P.C.S. (Executive Branch) and Allied Services and held competitive examination in December, 1972. He appeared in that competition for the posts reserved for the demobilised Indian Armed Forces Personnel and qualified. He was selected and appointed against one of those posts on 13th of March, 1974. In the meantime he also passed M.A. Examination.

(2) The Punjab Public Service Commission had also held a competitive examination for the P.C.S. (Executive Branch) on 17th of February, 1964. The petitioner claimed the fixation of his seniority under rule 4(1) of the Demobilized Indian Armed Forces Personnel (Reservation of Vacancies) in the Punjab Civil Service (Executive Branch) Rules, 1972, (hereinafter referred to as the E. B. Rules), on the ground that his date of appointment in P.C.S. (Executive Branch) has to be taken on the assumption that he had joined the Service under the State Government at the first opportunity that he had after joining the Military Service or training prior to the Commission. He, on that basis, has claimed the counting of his military service for the fixation of pay and seniority and cited an instance of Shri Bir Inder Pal Singh Kahlon (P. C. S.), a demobilized Indian Army personnel, who was given such a benefit.

(3) The representation filed by the petitioner to attain his object did not find favour with the respondent and he filed this present writ petition under Article 226 of the Constitution of India. The respondent in the return admitted the facts stated by the petitioner but contested his right regarding fixation of his seniority. It was stated that the Punjab Public Service Commission invited

application for holding an examination of P.C.S. and the Allied Services on 9th of November, 1963. The examination was held from 17th of February to 26th of February, 1964. The petitioner was not then eligible to take that examination as he could not submit the application and that he did not fulfil the condition about the academic qualifications at the time of holding of that examination. It was further pleaded that even on the date of declaration of the result of that competitive examination he was not a graduate and on this basis his case was rejected. It was averred in the return: "As such, the first opportunity cannot be said to have arisen for the petitioner in 1964 after he joined the training prior to the Commission because he was not eligible to appear in the Examination in February, 1964 even if he had not joined the Military Service". An objection was also taken that in the application submitted by the petitioner to the Punjab Public Service Commission, he had claimed Military Service from 30th of August, 1964 and had not referred to any earlier period. On this ground he could not add the training period to his service. The case of Bir Inder Singh Kahlon was distinguishable as he was a graduate on the date of entry into Military Service.

(4) The case was admitted to D. B. When the case came up before a Division Bench of this Court, of which I was a member, the question mooted was: "Does the first opportunity, and that too an assumption, depend also on the then educational qualifications of an Ex-Serviceman or merely on the attainment of the minimum age alone." *Amarjit Singh Sodhi vs. The State of Punjab and others* (1), was cited by the petitioner. It was felt that the ratio of *Amarjit Singh Sodhi's* case (supra) may have to be reconsidered. On that ground the case was referred to a larger Bench and it has now been placed before us.

(5) *Amarjit Singh Sodhi's* case is a singular authority cited by the learned counsel for the petitioner in this case and he wholly relies on this decision. Before proceeding with the merits of the case in hand, it would be appropriate to notice the facts of *Amarjit Singh Sodhi's* case (supra), *Amarjit Singh Sodhi* at the time of his joining as an Emergency Commission Officer on 29th of April, 1963 was a student in the final year of law. He was released from the

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(1) (1976) S. L. W. R. 311.

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Army on 30th of June, 1968. He then passed his final law examination on 4th of December, 1968. He appeared in the P.C.S. (Judicial Branch) competitive examination held in February, 1970 and was selected against a vacancy reserved for the Demobilised Indian Armed Forces personnel and was appointed to the Service on 2nd of November, 1970. He was given the benefit of approved Military Service from 29th of April, 1963 to 30th of June, 1968 in the matter of fixation of pay etc. He claimed,—*vide* that writ petition that he should be deemed to be in Service from 1st of February, 1968, under the Punjab Civil Service (Judicial Branch) Rules, 1969 (hereinafter referred as the J. B. Rules.).

(6) It is appropriate to consider the relevant E. B. Rules, in accordance with which benefit is claimed by the petitioner, and also the J. B. Rules, which applied to the case of Amarjit Singh Sodhi.

(7) *Vide* rule 2 of the E.B. Rules, twenty per cent of the vacancies in the P.C.S. (Executive Branch) have been reserved for the Demobilised Indian Armed Forces Personnel. The relevant part of rule 3, which prescribed for the qualifications and age is as:—

“3. No released Indian Armed Forces Personnel shall be eligible to appear in the competitive examination prescribed for recruitment to the Punjab Civil Service (Executive Branch) unless—

(a) he possesses the minimum academic qualifications prescribed in the Punjab Civil Service (Executive Branch) Rules, 1930;

(b) his age at the time of joining military service, or training prior to the Commission, as the case may be, does not exceed the upper age-limit prescribed in the Punjab Civil Service (Executive Branch) Rules, 1930:

Provided that no such candidate shall be permitted to compete more than three times at the examination; and

(c) \* \* \* \* \*

Rule 4(1) (a) which concerns the fixation of the seniority and retirement benefits, on which the petitioner has based his case is as under :—

“4(1) The period of military service rendered after attaining the minimum age prescribed for appointment to the Punjab Civil Service (Executive Branch), by the candidates appointed against reserved vacancies under rule 2, shall count towards fixation of pay and seniority in the said Service, subject to the condition that :—

- (a) the date of appointment in the PCS (Executive Branch) in respect of such candidates as are appointed against the reserved vacancies under rule 2 shall be determined on the assumption that they joined the service under the State Government at the first opportunity they had after joining the military service or training prior to the Commission.”

*Vide* rule 5, the provisions of the E.B. Rules have been given the over-riding effect over other rules. In *Amarjit Singh Sodhi's case* too the rules provide for the reservation of twenty per cent vacancies in the Service for the demobilized Indian Armed Forces Personnel. Rule 3 provides for the minimum academic qualification and age and rule 4, which concerns the fixation of pay, seniority and retirement benefits is as under :—

“4(1) The period of approved military service rendered after attaining the minimum age prescribed for appointment to the Punjab Civil Service (Judicial Branch), by the candidates appointed against reserved vacancies under rule 2 above, shall count towards fixation of pay and seniority in that service.

- (2) The period of approved military service rendered after attaining the prescribed minimum age shall also count towards pension, subject to the following conditions :—

- (a) The person concerned should not have earned pension under military rules except disability pension ;

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- (b) Any bonus or gratuity received from the Defence authorities in respect of military service shall have to be refunded to the State Government.

(8) Rule 3 of both the sets of Rules is identical and deals only with the age and the academic qualification of the Demobilised Indian Armed Forces Personnel for taking a competitive examination in the concerned Services. Rule 4 of the J.B. Rules is, however, not similar to rule 4(1) (a) of the E.B. Rules and is differently worded. This provides that the military service of a Demobilised Indian Armed Forces Personnel can be counted towards the fixation of seniority and pay on the assumption that he joined the Service under the State Government at the first opportunity he had after joining the military service or training prior to the Commission. The assumption can only be made if such a person possessed the requisite qualification mentioned in rule 3 entitling him to sit in such a competition. Concededly the minimum academic qualification in the Punjab Rules mentioned in rule 3(a) of the E.B. Rules is B.A. A Demobilised Indian Armed Forces Personnel desiring of getting an entry into the P.C.S. (Executive Branch) has to be a graduate.

(9) The question, which is seriously mooted between the parties, is when is such a personnel required to possess that qualification. Shri J. L. Gupta, learned counsel for the petitioner drawing support from *Amarjit Singh Sodhi's case* (supra) has urged that the Demobilised Indian Armed Forces Personnel has to be a graduate only on the day he makes the application to sit in the competitive examination after his release from the Army. I find an inherent fallacy in this argument. In *Amarjit Singh Sodhi's case* no such provision as in rule 4(1) (a) of E.B. Rules is to be found. The J.B. Rules do not conceive of such an assumption as in the case of rule 4(1) (a) of the E.B. Rules. A similar argument was raised by the State in *Amarjit Singh Sodhi's case* and was repelled by the Bench. It was held in that case :—

“The contention of Shri Tiwana, that Shri Sodhi was not entitled to be treated in service on February 1, 1968, because he was not duly qualified to be taken into Service on that date as he had not passed the LL.B. Examination

when he joined the service of the Army, is really without any merit. Shri Sodhi was studying in the final year of the LL.B. when he joined the Army in 1963. He was released from the Army in June, 1968 and thereafter he took the LL.B. Examination in 1968 and was declared successful. It is not disputed that when he appeared in the competitive examination of P.C.S. (Judicial Branch) conducted by the Punjab Public Service Commission, he was duly qualified and was duly selected against a vacancy reserved for the Demobilized Indian Armed Forces Personnel [Reservation of Vacancies in the Punjab Civil Service (Judicial Branch) Rules, 1969. Rule 4 nowhere provides that the benefit of the approved military service is to be given only if the candidate fulfilled the qualifications of recruitment to the P.C.S. (Judicial Branch) while in Military service. On the other hand, the only limitation provided in Rule 4 is regarding the qualification of age. Had the rule-making body intended any such restriction, the same would have been provided in the Rules, as has been provided regarding the qualification of age. In this view of the matter, this contention is without any merit."

(10) Rule 4(1) (a) of the E.B. Rules entitles a Demobilized Indian Armed Forces Personnel to the benefit of the service put in by him in the Army on the assumption that he joined the service under the State Government at the first opportunity he had after joining the military service or training prior to the Commission. The words 'first opportunity' and 'after' in this Rule are significant to make the intention of the Rule explicit and clear. Such a person should be eligible to enter the competition on the first opportunity he had after joining the military service or training prior to the Commission. Such opportunity, though assumptive, has to satisfy the conditions prescribed by the Rules. The opportunity has to be viewed in the light of rule 3 prescribing the minimum academic qualification. If a Demobilized Indian Armed Forces Personnel does not fulfil any of the conditions mentioned in rule 3, he cannot get an entry into the competitive examination for the Service. The learned counsel for the petitioner argued that the petitioner joined the training prior to the Commission on 14th of February, 1964 and the P.C.S. (Executive Branch) Examination

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was held on 17th of February, 1964 and according to him, that was the first opportunity for him to have joined the State Service after his joining the training prior to the Commission and going into the military service. The petitioner could claim to avail of this opportunity of joining the State Service if he was academically qualified at that stage to apply as a candidate for that examination which was held from 17th of February, 1964 to 26th of February, 1964. Admittedly, he was an under-graduate at that time. He was, for that reason, disqualified to be enrolled as a candidate for the examination. For this reason, the petitioner cannot say that he had an opportunity at that time to enter the State Service. Rule 4(1) (a) does not tend to make the opportunity fictional as the language of rule 4(1) (a) does not relax the rigours of minimum qualifications prescribed in rule 3 and the opportunity cannot be deferred to wait for the Demobilization of the personnel and acquire the minimum qualification.

(11) For another reason also the petitioner cannot raise an argument that he had the opportunity of joining the Service under the State after joining the military service or training prior to the Commission. One cannot simply walk to the examination hall of a competitive examination of the P.C.S. (Executive Branch). The Public Service Commission invites applications sufficiently ahead of the date of such competitive examination from eligible candidates. The applications have to be submitted before a particular date and after the expiry of that date, no application can be entertained. In this case, applications were invited by the Punjab Public Service Commission in November, 1963 for the competition which was held from 17th of February 1964 to 26th of February, 1964. The petitioner was not qualified to apply to get himself enrolled as a candidate for the competition because he lacked the minimum academic qualifications of a graduate. This again stands in the way of the petitioner to put a claim which he is now making for including the military service towards pay fixation and seniority in the new Service in the P.C.S. (Executive Branch). *Shri Birinder Pal Singh Kahlon's* instance quoted is distinguishable from the case of the petitioner as the former was a graduate prior to the joining of the military service or training prior to the Commission.

(12) The language of rule 4(1) (a) of the E.B. Rules is clear and unambiguous. The rule making authority has put this condition

in the E.B. Rules and avoided any such condition in the J.B. Rules. The State Government having the power to frame rules is invested with authority to create such a distinction while creating classification of categories for reservation in different services. In the Rules, which are for the P.C.S. (Judicial Branch), the State Government did not choose to put such a condition as is contained in the E.B. Rules. The E.B. Rules are not the only Rules to contain such a provision. Such a provision also existed in the Released Emergency Commissioned Officers and Short Service Commissioned Officers (Reservation of Vacancies) Rules, 1971 framed by the Government of India. The Government while making this rule wanted that if the Demobilized Indian Armed Forces Personnel is to join the P.C.S. (Executive Branch) under the State, then he should be qualified to enter such a Service at the first opportunity after joining the military service or the training prior to the Commission, that is, the stage when he joined the military service and it provided in the E.B. Rules. The word 'or' in between 'joining the military service' and 'training prior to the Commission' is significant. This shows that the intention of the rule making authority is that after the first opportunity of joining the training prior to the Commission he should be academically qualified to join the State Service on the first opportunity. In *Amarjit Singh Sodhi's case*, no such provision as rule 4(1) (a) in E.B. Rules was involved for consideration. As is apparent from the passage from that judgment extracted above, no such thing as rule 4(1) (a) of E.B. Rules was involved in *Amarjit Singh Sodhi's case*. On a comparative study of these Rules, it is to be noticed that there is no parity in E.B. Rules and J.B. Rules. *Amarjit Singh Sodhi's case* (supra) is correctly decided on its own facts and provisions of law involved in it.

(13) For the foregoing reasons, the petitioner did not possess the necessary academic qualifications, which could have entitled him to take up service under the State at the first opportunity after his joining the military service or training prior to the Commission. The petition, therefore, being without much merit is dismissed. The parties, however, are left to bear their own costs.

S. S. Sandhwalia, C.J.—I agree.

S. P. Goyal, J.—I agree.