DHAN SINGH AND ORS. ETC. ETC. A

v.

STATE OF HARYANA AND ORS.

DECEMBER 5, 1990

[LALIT MOHAN SHARMA AND M. FATHIMA BEEVI, JJ.] B

Constitution of India, 1950: Articles 14, 16, 309—Amendments to Rules 2 and 4(ii) of Punjab Government National Emergency (Concession) Rules, 1965—Classification—Persons who joined before/during emergency—Reasonableness and validity of—Government's power to amend the Rules and to withdraw concessions—Interference of Court—When. C

The Punjab Government National Emergency (Concession) Rules, 1965: Rules 2 and 4(ii)—Constitutional validity of—Benefit of military service—Those who joined before proclamation of emergency —Whether entitled to. D

The appellants and petitioners are ex-servicemen re-employed in the service of Respondent State. They served the Indian Army during emergency from 1962 to 1968. Appellants 4, 5, 7 and 8 joined the Army during emergency while the other appellants and writ petitioners joined before the emergency. Certain benefits like increments, seniority, pension etc. were extended to such persons by the Respondent-State by adopting the Punjab Government National Emergency (Concessions) Rules, 1965. However, by notifications dated 22.3.1976, 9.8.1976 and 5.11.1976 certain amendments to Rules 2 and 4 were introduced by the Respondent State with retrospective effect from 1.11.1966 resulting in denial of such benefits to them. Some of the amendments were challenged before this Court and were declared *ultra vires* the Constitution of India. E F

On 4.8.1986 the Respondent-State issued instructions to the effect that the ex-servicemen employees who joined the Civil Service after the issue of the notifications would continue to be governed by the same. The appellants and some of the writ petitioners who had joined government service since December 1976 were denied the benefits under the Rules, since under the amended Rules only those who were enrolled or commissioned during emergency were eligible for such benefits, and not those who joined the Army before the emergency. G H

A The Writ Petition filed by the appellants before the High Court was dismissed and they have preferred the present appeal. The Writ Petitioners admittedly joined the Army before the emergency, have directly challenged the notifications in this Court.

It has been contended *inter alia* that the amendment confining the B military service to those who joined during emergency and denying the same to those who joined prior to the emergency was unreasonable and arbitrary and violative of Article 14 of the Constitution of India and that the differential treatment meted out to persons who joined earlier and were released later, but served during emergency, amounts to denial of equal opportunity in the matter of employment and thus violative of Article 16 of the Constitution of India.

C

Allowing the appeal in part, and dismissing the Writ Petitions, this Court,

HELD: 1. The State could amend the Rules and withdraw the D concession in exercise of the power conferred under Article 309 of the Constitution. It is open to the State to lay down any rule for determining seniority in service and the Court cannot interfere unless it results in inequality of opportunity among the employees belonging to the same class. When a rule is challenged as denying equal protection, the question for determination by the Court is not whether it has resulted in E inequality but whether there is some difference which bears a just and reasonable relation to the object of legislation. Mere differentiation or inequality of protection does not *per se* amount to discrimination within the inhibition of equal protection clause under Article 14. To attract the attention of the clause, it is necessary to show that the selection or differentiation is unreasonable or arbitrary and that it does not rest on F any rational basis having regard to the object which the Legislature has in view. The Court has to examine whether the classification can be deemed to rest upon differentia discriminating the persons or things grouped from those left out and whether such differentia has a reaonable relation to the objects sought to be achieved irrespective of whether the rule is intended to apply to person or thing or to a certain class of G persons or things. Therefore, the policy or the object of the legislation are the relevant considerations. [431D-G]

2. The young persons who have joined the military service during the national emergency and those who were already in service and due to exigencies of service had been compelled to serve during the H emergency form two distinct classes. The appellants and the petitioners

who joined the Army before the proclamation of emergency, had chosen the career voluntarily and their service during emergency was as a matter of course. They had no option or intention of joining the government service during the period of emergency as they were already serving in the Arm. The persons who enrolled or commissioned during the emergency, on the other hand, had no account of the call of the nation joined the Army at that critical juncture of national emergency to save the motherland by taking a greater risk where danger to the life of a member of the armed forces was higher. They include persons who could have pursued their studies, acquired higher qualifications and joined a higher post and those who could have joined the government service before attaining the maximum age prescribed and thereby gained seniority in the service. Forgoing all these benefits and avenues, they joine the Army keeping in view the needs of the country and assurances contained in conditions of service in executive instructions. The latter form a class by themselves and they cannot be equated to those who joined the Army before the proclamation of the emergency. Benefits had been promised to such persons who heeded to the call of the nation at that critical juncture. Older man by joining the military service lost chance of joining other government service and when he joins such service on release from the Army younger man had already occupied the posts. To remove the hardship, the benefit of military service was sought to be given to those young persons who were enrolled/commissioned during the period of emergency forgoing their job opportunities. The differential is, therefore, intelligible and has a direct nexus to the objects sought to be achieved. The petitioners cannot, therefore, challenge the rule as discriminatory or arbitrary. Such of those appellants and the petitioners who have joined the Army before the proclamation of the emergency are not, therefore, entitled to the benefit of military service as per the Emergency Concession Rules. [432B-G]

K.C. Arora & Ors. v. *State of Haryana & Ors.*, [1984] 3 SCC 281; *State of Gujarat* v. *Raman Lal Keshav Lal Soni*, [1983] 2 SCC 33; *Raj Pal Sharma & Ors.* v. *State of Haryana & Ors.*, [1985] (Supp.) SCC 72, referred to.

Since the proviso to Rule 4(ii) has already been struck down in *Raj Pal Sharma's* case, such of the appellants who had been released from the military service on compassionate grounds are entitled to the benefits of their military service. [432H]

Raj Pal Sharma & Ors. v. *State of Haryana & Ors.*, [1985] (Supp.) SCC 72, applied.

The petitioner in Writ Petition No. 959 of 1989 is not entitled to any further relief as the service of the petitioner after the lifting of the emergency could not, therefore, count for determining his seniority and whatever benefits he is entitled to had been granted earlier. [433A-B]

Ex-capt, Randhir Singh Bhull **v.** *S.D. Bhambri & Ors.*, **[1981] 3 SCC 55;** *Ex-Capt. A.S. Parmer & Ors.* **v.** *State of Haryana & Ors.*, **[1986] (Suppl.) SCC 283, relied on.**

CIVIL APPELLATE/ORIGINAL JURISDICTION: Civil Appeal No. 1060 of 1990.

From the Judgment and Order dated 11.7.1988 of the Punjab & Haryana High Court in C.W.P. No. 4725 of 1988.

WITH

W.P. (Civil) No. 1159 and 959 of 1989.

Awadh Behari, Prem Malhotra, Avrind Kumar and Mrs. Laxmi Arvind for the Appellants.

S.P. Goel and Mahabir Singh for the Respondents.

The Judgment of the Court was delivered by

FATHIMA BEEVI, J. Civil Appeal No. 1060 of 1990 is directed against the judgment and order dated 11.7.1988 of the High Court of Punjab and Haryana dismissing the Civil Writ Petition No. 4725 of 1986 filed by the appellants.

The appellants are ex-servicemen re-employed in Government service in the State of Haryana. They served in the Indian Army during the period of operation of the proclamation of emergency made by the President of India under Article 352 of the Constitution of India on October 26, 1962 and lifted on January 10, 1968. The Punjab Government National Emergency (Concessions) Rules, 1965, (Hereinafter referred to as the Emergeny Concession Rules) in force w.e.f. November 1, 1966 provided certain benefits to ex-army personnel who are re-employed in the matter of increment, seniority, pension etc. The Rules were adopted by the State of Haryana. The Government of Haryana vide Notifications dated 22.3.1976, 9.8.1976 and 5.11.1976 introduced amendments to these Rules. The appellants are denied the benefits under the Rules in view of such amendments. The writ peti-

tion filed by the appellants challenging the amendments was dismissed *in limine* by the impugned judgment dated 11.7.1988.

Rule 4 of the Emergency Concessions Rules as it orginally stood, in so far as is relevant for the purpose of these cases reads as follows:

> "Rule 4. Increments, seniority and pension,—Period of military service shall count for increments, seniority and pension as under:—
>
> (i) Increments: 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 .....
> .....
> .....
> .....
>
> This concession shall, however, be admissible only on first appointment.
>
> (ii) Seniority: The period of military service mentioned in clause (i) shall be taken into consideration for the purpose of determining the seniority of a person who has rendered military service.
>
> (iii) ....."

For the purpose of the Rules the expression 'military service' has been defined in Rule 2 which reads as under:

> "2. Definition.—For the purposes of these rules, the expression 'military service' means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including service as a Warrant Officer) rendered by a person during the period of operation of the proclamation of emergency made by the President under Article 352 of the Constitution of India on October 26, 1962 or such other service as may hereafter be declared as military service for the purposes of these rules. Any period of military training followed by military service shall also be reckoned as military service."

By the first amendment vide Notification No. GSR 77/Const./Art. 309/Amend(1)/76 dated 22.3.1976, a proviso was added to Rule 4(ii) which reads as under:

> "Provided that a person who has availed of concession under sub-rule (3) of Rule 3 shall not be entitled to the concession under this clause."

By the second amendment vide Notification No. GSR 182/Const./Art. 309/Amend/(2)/76 dated 9.8.1976, the definition of the expression 'military service' was substituted. It reads:

> "2. Definition.—For the purposes of these rules, the expression 'military service' means the service rendered by a person, who had been enrolled or commissioned during the period of operation of the proclamation of emergency made by the President under Article 352 of the Constitution of India on October 26, 1962 in any of the three wings of the Indian Armed Forces (including the service as a Warrant Officer) during the period of the said emergency or such other service as may hereafter be declared as military service for the purpose of these rules. Any period of military training followed by military service shall also be reckoned as military service."

These amendments were made with retrospectice effect from 1.11.1966 in exercise of the power under Article 309 of the Constitution.

By the Notification dated 5.11.1976, the Rule was further amendment by adding a proviso to Rule 4(ii) which reads as under:

> "Provided that a person who has been released from military service on compassionate grounds shall not be entitled to any concession under thus rule."

This amendment also with retrospective effect from 1.11.1986 was struck down as violative of Articles 14 and 16 of the Constitution in *Raj Pal Sharma & Ors.* v. *State of Haryana & Ors.*, [1985] (Supp.) SCC 72.

Respondent State issued instructions vide letter No. 12/14/84-4 GSII dated 4.8.1986 that the ex-servicemen, employees who joined the civil service after the issue of these notification would continue to be

governed by these notifications. The appellants and the writ petitioners in Writ Petition No. 1159 of 1989 who joined government service since December 1976 are accordingly denied the benefits under the Rules. Under Rule 4 read with Rule 2 as amended, only those who are enrolled or commissioned during the period of emergency are eligible for the benefits under Rule 4. Ex-army personnel who joined the army prior to 26.10.1962 cannot claim that service during the period emergency should count for increment, seniority or pension.

The appellants 4, 5, 7 and 8 had been enrolled or commissioned during the period of the emergency but were released on compassionate grounds. But for the proviso to Rule 4(ii) introduced by the amendment vide Notification No. GSR 238. Const./Art. 309/Amend (3)/76 dated 5.11.1976, they would be entitled to the benefits provided under Rule 4. In *Raj Pal Sharma & Ors.* v. *State of Haryana & Ors.*, [1985] (Supp.) SCC 72 at page 75, this Court observed as under:

> "All those persons released from military service constitute one class and it is not possible to single out certain persons of the same class for differential treatment. There appears to be no reasonable classification between the persons who were released on compassionate grounds and those who were released on other grounds and in this respect the petitioners have been deprived of the equal opportunity. The amendment, therefore, is violative of Articles 14 and 16 of the Constitution and, therefore, bad."

In view of the legal position thus stated, these appellants 4, 5, 7 and 8 are entitled to benefits under the Rule. The remaining appellants have joined the army before 26.10.1962 but had served during the period of emergency and were released or discharged only after the emergency was lifted. They had also joined the State service after the first and second amendments were introduced. They have challenged the second amendment vide Notification No. GSR 182/Const./Art. 309/Amend (2)/76 dated 9.8.1976 as violative of Articles 14 and 16 of the Constitution. In *K.C. Arora & Ors.* v. *State of Haryana & Ors.*, [1984] 3 SCC 281 the notifications dated 22.3.1976 and 9.8.1976 amending Rule 2 thus were challenged by ex-army personnel who had joined the State service prior to the notifications. This Court said that immediately on appointment of the petitioners as Assistant Engineers they became entitled to get their seniority fixed giving them the benefit of their military service. Following the decision in *State of Gujarat* v. *Raman Lal Keshav Lal Soni*, [1983] 2 SCC 33 this Court held that the

A Government of Haryana cannot take away the accrued rights of the petitioners and the appellants before it by making amendment to the Rules with retrospective effect. The operative portion of the judgment reads as under:

> "For the foregoing discussion the writ petitions as well as
> B the appeals are allowed and the orders of the High Court dated October 10, 1980 are quashed and the impugned Rule 4(ii) of the Punjab Government National Emergency (Concessions) Rules, 1965, as amended by the Haryana Government Gazette Notification No. GSR 77/Const/Art/309/Amend(1)/76 dated March 22, 1976 and the Notification No. GSR 182/Const/Art/309/Amend(2)/76 dated
> C August 9, 1976 amending the definition of the expression 'military service' in Rule 2, are declared to be *ultra vires* the Constitution, insofar as they affect prejudicially persons who had acquired rights as stated above. A writ in the nature of mandamus is issued directing respondents 1 and 2
> D to prepare the seniority list afresh in the light of the decision of this Court taking into consideration the military service rendered by the petitioners as well as the appellants."

The question whether Rule 2 as amended is discriminatory and violative of Articles 14 and 16 of the Constitution was not specifically considered. The appellants other than 4, 5, 7 and 8 and the writ petitioners who have come before this Court under Article 32 of the Constitution can succeed in their challenge only if it is made out that Rule 2 as amended is discriminatory and that these appellants and similarly situated persons are denied equal protection under law and equal opportunity.

It has been contended that the amendment confining military service for those who joined during the operation of emergency between 26.10.1962 and 10.1.1968 and denying the same benefit of service to those who joined prior to the proclamation of the emergency is unreasonable and arbitrary based on no classification and thus violative of Article 14 of the Constitution of India. It is said that there is no rationale behind the definition of 'military service' by excluding the military personnel who also served during the emergency period. It is said that the differentiation is on the date of recruitment and the classification on the basis of date of recruitment is unreasonable and unconstitutional and violative of Article 14 of the Constitution. The

appellants stated that the ex-servicemen who joined the army during the emergency and persons like the appellants who have joined the common stream of service to perform the same duties form one class and it is not permissible to make any classification on the basis of their origin. Such classification will be unreasonable and entirely irrelevant to the object sought to be achieved and the classification is not founded on any intelligible differentia according to the appellants. It is submitted that those who served during the proclamation of the emergency constitute one class in itself as far as duties, powers, privileges and period of service during the emergency are concerned and the differential treatment meted out to the personnel who joined earlier and were released later amounts to the denial of equal opportunity in the matter of employment, and, thus violates Article 16. The differentia on the basis of amending rules has no nexus to the objective sought to be achieved, it is argued.

We do not agree. The State could amend the 1965 Rules and withdraw the concession in exercise of the power conferred under Article 309 of the Constitution. It is open to the State to lay down any rule for determining seniority in service and the Court cannot interfere unless it results in inequality of opportunity among the employees belonging to the same class. When a rule is challenged as denying equal protection, the question for determination by the Court is not whether it has resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of legislation. Mere differentiation or inequality of protection does not *per se* amount to discrimination within the inhibition of equal protection clause under Article 14. To attract the attention of the clause, it is necssary to show that the selection or differentiation is unreasonable or arbitrary and that it does not rest on any rational basis having regard to the object which the Legislature has in view. The Court has to examine whether the classification can be deemed to rest upon differentia discriminating the persons or things grouped from those left out and whether such differentia has a reasonable relation to the objects sought to be achieved irrespective of whether the rule is intended to apply to person or thing or to a certain class of persons or things. Therefore, the policy or the object of the legislation are relevant consideration.

On account of the external aggression by the Chinese forces in the Indian territory, the emergency was imposed by the President of India in 1962. In order to attract young men to join military service at that critical juncture, the Central Government and the State Governments issued different circulars and advertisements on the radio and in

A the press promising certain benefits to be given to those young men who join the military service.

The young persons who have joined the military service during the national emergency and those who were already in service and due to exigencies of service had been compelled to serve during the B emergency form two distinct classes. The appellants and the petitioners who joined the army before the proclamation of emergency, had chosen the career voluntarily and their service during emergency was as a matter of course. They had no option or intention of joining the government service during the period of emergency as they were already serving in the army. The persons who enrolled or commissioned during the emergency, on the other hand, had no account of the C call of the nation joined the army at that critical juncture of national emergency to save the motherland by taking a greater risk where danger to the life of a member of the armed forces was higher. They include persons who could have pursued their studies, acquired higher qualifications and joined a higher post and those who could have D joined the government service before attaining the maximum age prescribed and thereby gained seniority in the service. Forgoing all these benefits and avenues, they joined the army keeping in view the needs of the country and assurances contained in conditions of service in executive instructions. The later form a class by themselves and they cannot be equated to those who joined the army before the proclama- E tion of the emergency. Benefits had been promised to such persons who heeded to the call of the nation at that critical juncture. Older man by joining the military service lost chance of joining other government service and when he joins such service on release from the army younger man had already occupied the post. To remove the hardship, the benefit of military service was sought to be given to those young F persons who were enrolled/commissioned during the period of emergency forgoing their job opportunities. The differentia is, therefore, intelligible and has a direct nexus to the objects sought to be achieved. The petitioners, cannot, therefore, challenge the rule as discriminatory or arbitrar. Such of those appellants and the petitioners who have joined the army before the proclamation of the emergency G are not, therefore, entitled to the benefit of military service as per the Emergency Concessions Rules.

Since the proviso to Rule 4(ii) has already been struck down in *Raj Pal Sharma's* case (supra), such of the appellants who had been released from the military service on compassionate grounds are H entitled to the benefits of their military service.

The Petitioner in Writ Petition No. 959 of 1989 is not entitled to any further relief as is concluded by the earlier decision of this Court in *Ex-Capt. Randhir Singh Dhull* v. *S.D. Bhambri & Ors.*, [1981] 3 SCC 55 and the clarification in *Ex-Capt. A.S. Parmar & Ors.* v. *State of Haryana & Ors.*, [1986] (Supp.) SCC 283 that it is only the service rendered during the period of emergency that could be taken into account and not any other period. In disposing of the review petition, Chinnappa Reddy, J. observed as under:

> "Though the judgment in *K.C. Arora's* case appears to proceed as if the change was brought about in 1976 even in regard to the length of military service to be taken into account, that question was not actually decided. On the other hand, in *R.S. Dhull* v. *S.D. Bhambri,* [1981] 3 SCC 55, referring to Rule 2, it was expressly stated by this Court that the concession in regard to seniority was admissible in respect of the military service rendered during the operation of the emergency only and not for any military service after the termination of the emergency.
>
> .....
>
> It is, therefore, clear that military service rendered subsequent to the lifting of emergency cannot be taken into account for the purpose of reckoning the seniority in the civil post."

The service of the petitioner after the lifting of the emergency could not, therefore, count for determining his seniority and whatever benefits he is entitled to had been granted earlier.

Writ Petition Nos. 1159/89 and 959/89 are accordingly dismissed. Civil Appeal No. 1060 of 1990 is partly allowed and a writ in the nature of mandamus is issued directing the respondents 1 and 2 to give the appellants 4, 5, 7 and 8 who joined the service during the period of operation of the emergency the benefit of their military service. The appeal is dismissed in other respects. In the facts and circumstances of the case, we make no order as to costs.

G.N. Appeal partly allowed and Petitions dismissed.