

DHAYANAND ETC. ETC.

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v.

UNION OF INDIA AND ORS.

SEPTEMBER 12, 1995

[J.S. VERMA AND K. VENKATASWAMI, JJ.]

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Service Law :

Punjab Re-Organisation Act, 1966 : Ss.2(g) and 88.

Punjab Government National Emergency (Concession Rules, 1965/Punjab Recruitment of Ex-servicemen Rules, 1982 :

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Conditions of Service of Union Territory of Chandigarh Employees Rules, 1966 : Rules 2, 3 and 4.

Ex-servicemen—Re-employed in Services of Union Territory of Chandigarh subsequent to 1.11.1966—Claim for benefit of earlier military service regarding seniority, promotion, pension etc. under 1965 Rules—Held, 1965 Rules continued to apply to eligible ex-service Re-employed in Services of Union Territory of Chandigarh after 1.11.1966.

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The appellants and the writ petitioners, who were ex-servicemen and were re-employed in the services of the Union Territory of Chandigarh subsequent to 1.11.1966, claimed benefit of the Punjab government National Emergency (Concession) Rules, 1965 for purposes of increments, seniority promotion, pension etc. Though G.O. No. 1023.11.1(7)-87/5025 dated 19.3.1987 issued by the Union Territory Administration, had provided that the benefit of military service in accordance with the 1965 Rules would be available to ex-servicemen, but subsequently, this view was altered in G.O. No. 27/1/3/92 - 1H(7)/10935 dated 2.6.1992. The Central Administrative Tribunal and the Punjab & Haryana High Court held that the 1965 Rules did not apply to appointees in services of the Union Territory after 1.11.1966. Aggrieved, the employees filed the appeals by special leave and the writ petition.

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It was contended on behalf of the Union Territory that the benefit of the 1965 Rules was available only to the ex-service men employed prior to 1.11.1966, since they were appointed in the State of Punjab and carried

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A with them the benefit which had already accrued to them.

Allowing the appeals and the writ petition of the employees, this Court

B HELD : 1.1. By virtue of the provisions of Section 88 of the Punjab
 Reorganisation Act, 1966, Notifications Nos. SO3267, SO 3268 and SO
 3269 dated 1.11.1966 issued by the Government of India and Rules 2, 3 and
 4 of the Conditions of Service of Union Territory of Chandigarh Employees
 Rules, 1966, the Punjab Government National Emergency (Concession)
 Rules, 1965 continued to apply in the Union Territory of Chandigarh even
 C after 1.11.1966 till modified, changed or repudiated by the Union Territory
 Administration and they continued to apply to the employees appointed in
 the Union Territory after 1.11.1966, who were eligible for the benefit of
 those rules. [538-G]

D 1.2. The Punjab Government National Emergency (Concession)
 Rules, 1965 fall within the definition of "law" in Section 2(g) of the Punjab
 Reorganisation Act, 1966 and in view of provisions of s.88 of the Punjab
 Reorganisation Act, 1966, continued in force and were effective in the
 Union Territory of Chandigarh until and unless modified, changed or
 repudiated by the Union Territory Administration. [536-G]

E *State of Punjab and Ors. v. Balbir Singh and Ors.*, [1976] 3 SCC 242,
 relied on.

F 1.3. The Government of India issued Notifications No. SO 3267, SO
 3268 and SO 3269 dated 1.11.1966 and the conditions of service of Union
 territory of Chandigarh Employees Rules, 1966 were framed by the Presi-
 dent of India, dealing with conditions of service of the employees of the
 Union Territory of Chandigarh. Though by virtue of Rule 2 of 1966 Rules, the
 Rules applicable to the Central Civil Services were made applicable to the
 employees in the corresponding services under the administrative control of
 the administrator of the Union Territory, Rule 3 thereof made inapplicable
 G the 1966 Rules to probation, confirmation, seniority and promotion in
 respect of employees for whom the Administrator of the Union Territory was
 authorised under Notification No. 3267 to make rules. The effect of the
 notifications, the 1966 Rules and the express provisions made in Rule 3
 therein, is that the employees of the Union Territory to posts in class II,
 H Class III and class IV services under the administrative control of the Ad-

ministrator of the Union Territory in respect of whom the rule making power was delegated by the President of India to the Administrator of the Union Territory, were not to be governed by the Rules contained in Notification No. SO 3268 in respect of matters relating to probation, confirmations, seniority and promotion; and the 1965 Rules continued to apply to eligible employees after 1.11.1966, because these rules relate to matters for which the Central Civil Services Rules were not applied to employees in class II, Class III and class IV posts. [537-C-G; 538-D-G]

1.4. Though the Punjab recruitment of Ex-servicemen Rules, 1982 repealed the Punjab Government National Emergency (Concession) Rules, 1965, but the saving clause therein preserved the rights which had accrued to any person under the repealed rules. All the employees, in the instant matters were appointed after 1.11.1966 but before the application of 1982 Rules.

1.5. The claim of the concerned employees in these matters would now be considered and decided by the Union Territory Administration in accordance with the rules. [539-A]

CIVIL APPELLATE ORIGINAL JURISDICTION : Civil Appeal No. 8218 of 1995 Etc. Etc.

From the Judgment and Order dated 11.11.92 of the Central Administrative Tribunal Chandigarh Bench in O.A. No. 607/CH/90.

K. Madhava Reddy, D.V. Sehgal, Ujjagar, Ms. Kamini Jaiswal, M.K. Dua, K.G. Bhagat, Mahesh Tiwari, Ms. Kusum Choudhary, Naresh Bakshi, Ms. Kanwaljeet Kochar J.D. Jain, P. Parmeshwaran and T.C. Sharma for the Appearing parties.

The Judgment of the Court was delivered by

J.S. VERMA, J. Special leave granted in special leave petitions.

The only question for decision in these matters is : Whether the benefit of earlier qualifying military service as defined in the Punjab Government National Emergency (Concession) Rules, 1965 (hereinafter referred to as "1965 Rules") could be given to the concerned employees appointed after 1.11.1966 in the service of the Union Territory of Chandigarh except Medical and Health services thereof? If it is held that the

A benefit of the said rules is available also to the employees appointed in the services of the Union Territory of Chandigarh after its formation on 1.11.1966 then the claim of each of them has to be examined on merits in accordance with the rules. The Central Administrative Tribunal and the High Court of Punjab and Haryana have taken the view that these rules do not apply to appointees in the services of the Union Territory after 1.11.1966. These matters arise out of these decisions.

The only material fact which requires mention is that these matters relate to employees in the services of the Union Territory of Chandigarh all of whom were appointed subsequent to 1.11.1966. They claim benefit of the Punjab Government National Emergency (Concession) Rules, 1965 for the purpose of increments, seniority promotion and pension etc. in accordance with the rules. The stand of the Union Territory is that the benefit of the 1965 Rules is available only to the appointees prior to 1.11.1966 since they were appointed in the State of Punjab and carry with them the benefit which had already accrued to them. It may be mentioned that the Union Territory Administration itself by G.O. No. 1023-1H (7)-87/5025 dated 19.3.1987 had taken the view that the benefit of military service in accordance with these rules would be available to ex-servicemen who joined service in the various departments in the Union Territory of Chandigarh but subsequently this view was altered in G.O. No. 27/1/3/92-1H (7)10935 dated 2.6.1992 on reconsideration of the matter. This change in the view gave rise to the claim made by the concerned employees in the Tribunal and High Court.

In the context of applicability of an administrative order of the Government of State of Punjab issued prior to 1.11.1966 it was held by this Court in *State of Punjab and Others v. Balbir Singh and Others*, [1976] 3 SCC 242, that by virtue of Section 88 of the Punjab Reorganisation Act, 1966, an administrative order made by the erstwhile State did not automatically lapse and continued to be in force, effective and binding on the successor State unless modified and repudiated. There can be no doubt that The Punjab Government National Emergency (Concession) Rules, 1965 which fall within the definition of "law" in Section 2(g) of the Punjab Reorganisation Act, 1966 continued in force and were effective in the Union Territory of Chandigarh until and unless modified, changed or repudiated by the Union Territory Administration. The question, therefore, is whether there was any modification, change or repudiation of the

said 1965 Rules by the Union Territory Administration after 1.11.1966? It may be mentioned that the Punjab Recruitment of Ex-servicemen Rules, 1982 repealed the Punjab Government National Emergency (Concession) Rules, 1965 but the saving clause therein preserved the rights which had accrued to any person under the repealed rules. All the employees, in these matters were appointed after 1.11.1966 but before the application of 1982 Rules. There is no controversy that if the 1965 Rules continued to be in force in the Union Territory after 1.11.1966 unless repudiated or repealed, the concerned employees in these matters, subject to fulfillment of the conditions of eligibility under the 1965 Rules, would be entitled to its benefit. The question for consideration, therefore is whether the 1965 rules were modified, repudiated or repealed in their applicability to these employees?

The answer depends on the construction of Notification Nos. SO 3267, SO 3268 and SO 3269 all dated 1.11.1966 issued by the Government of India, Ministry of Home Affairs, New Delhi. By Notification No. SO 3267 the powers conferred by the proviso to Article 309 of the Constitution on the President of India were delegated to the Administrator of the Union Territory of Chandigarh to make rules in regard to the matters specified therein which included the method of recruitment to Central Civil Services and posts (Class II, Class III and Class IV) Under his administrative control in connection with the affairs of the Union Territory of Chandigarh and conditions of service of persons appointed to such services and posts for the purposes of probation, confirmation, seniority and promotion. By Notification No. SO 3268 rules were framed by the President called the Conditions of Service of Union Territory of Chandigarh Employees Rules, 1966 (hereinafter referred to as "1966 Rules") Rule 2 therein provided that the conditions of service of persons appointed to the Central Civil Services and posts Class I, Class II, Class III and Class IV under the administrative control of the Administrator of the Union Territory of Chandigarh subject to any other provision made by the President was to be the same as the Conditions of Service of Persons appointed to other corresponding Central Civil Services. The remaining part of Rule 2 is not material for the present purpose. In short, by virtue of Rule 2 the Rules applicable to the Central Civil Services were made applicable to regulate the conditions of service for such employees Rule 3 is significant. It reads as under :

"3. Rules not to apply to matters relating to probation, confirma-

A tion, seniority and promotion.

B Nothing contained in these rules shall apply to probation, confirmation, seniority and promotion in respect of persons in relation to whom the administrator of the said union territory has been authorised under the notification of the Government of India in the Ministry of Home Affairs No. 12/1/66-CHD (I) dated the 1st November, 1966 to make rules under the proviso to article 309 of the Constitution."

C Rule 4 contains the provision for repeal relating to matters for which provision is made in Rule 2. The net result of these rules contained in Notification No. SO 3268 is that employees of the Union Territory to posts in Class II, Class III and Class IV services under the administrative control of the Administrator of the Union Territory, in respect of whom the rule making power was delegated by the President to the Administrator of the Union Territory were not to be governed by the rules contained in D SO 3268 in respect of matters relating to probation, confirmation, seniority and promotion. This is the effect of the combined reading of the two notifications and the express provisions made in Rule 3 of the 1966 Rules framed by the President by Notification No. SO 3268. In other words, by E virtue of the Rule 3 therein the 1966 Rules had no application to the Union territory employees holding posts in Class II, Class III, and Class IV services in respect of the specified matters. None of the concerned employees in these matters belong to Class I service to whom alone the Central Civil Rules were made applicable by Notification No. SO 3268 in respect of matters relating to probation, confirmation, seniority and promotion. The third Notification No. SO 3269 is to the same effect.

F It is, therefore, clear that the Punjab Government National Emergency (Concession) Rules 1965 continued to apply in the Union Territory of Chandigarh even after 1.11.1966 till modified, changed or repudiated by G the Union Territory Administration and they continued to apply to the employees appointed in the Union Territory after 1.11.1966 who were eligible for the benefit of those rules. This is so because these rules, relate to matters for which the Central Civil Services Rules were not applied to employees in Class II, III & IV Posts. The contrary view taken by the Tribunal and the High Court cannot, therefore, be upheld.

H Consequently, the appeals and the writ petition are allowed in this

manner. The impugned orders of the High Court and the Tribunal are set aside. The claim of the concerned employees in these matters would now be considered and decided by the Union Territory administration in accordance with the rules.

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Leave granted.

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We have decided the connected matters i.e. Civil Appeal No. 8218 of 1995 (arising out of SLP (C) No. 16536 of 1992), *Dhayanand v. Union of India & Ors.*, with Civil Appeal Nos. 8221 of 1995 (arising out of SLP (C) Nos. 12116-17 of 1991) and Writ Petition (C) No. 181 of 1995 by a separate judgment pronounced today, September 12, 1995. Because of the view taken in the connected matters, this civil appeal is dismissed.

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R.P.

Appeals Nos. 8218/95 etc. and
Petition No. 8221/95 allowed
and Appeal dismissed.