

Bharpur Singh v. State of Punjab and others (G. R. Majithia, J.)

138 of the Act *sine qua non* for taking cognizance of such offence. Thus by no stretch of imagination the act of issuing cheque can be considered as starting point of commission of offence. Thus, the reading of the main body of section 138 along with the proviso as well as the provisions of section 142 referred to above leaves no doubt that the date of issuing the cheque is immaterial for constituting the offence punishable under section 138 of the Act.

(11) The observations of the Single Bench of the Kerala High Court in *Paramjit Singh v. Job* (4), also support this conclusion. The view of the Single Bench was endorsed by the Division Bench of the Kerala High Court in *Prithviraj v. Mathew Koshy* (5).

(12) The observations of the Single Bench of this Court in *Satya Naraiyan Mahawar's case* (supra), relied upon by the learned counsel for the petitioner, are not applicable to the controversy in hand as there in controversy related to the application of the provisions or section 138 of the Act in a case where the cheque is returned unpaid by the bank on the ground of drawer's stopping the payment. Thus it was held by A. P. Chowdhri, J. that the provisions of section 138 of the Act are not applicable as that section relates only to the dishonouring of cheque on account of lack of sufficient funds in the account of the drawer or the amount of the cheque exceeds the arrangement made by the drawer with the bank.

(13) For the reasons recorded above, no interference is called for in the impugned order of the trial Court as well as the revisional Court. These petitions therefore, fails and are hereby dismissed.

R.N.R.

Before G. R. Majithia, J.

BHARPUR SINGH,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 1419 of 1987

15th March, 1991.

Punjab Government National Emergency (Concession) Rules, 1965—Rl. 4(i) (ii) & (iii)—Seniority—Benefit of military service—Petitioner, an ex-serviceman, appointed as clerk on the recommendation of the S.S.S.B., Punjab in the Sub-Office Cadre on purely

(4) Crl. M. 978 of 1989, decided on 18th October, 1989.

(5) 1991 ISJ (Banking) 312.

temporary basis—Benefit of increments given to him in lieu of his services rendered in Armed Forces—Selected subsequently to the post reserved for ex-servicemen in the Head Office Cadre—Benefit of military service could not be confined to first appointment in view of Rl. 4(ii)—Second or subsequent appointment in an altogether different public service—Petitioner is entitled to the benefit of military service towards seniority.

Held, where the benefit of military service is confined to only on first appointment, it is so specifically stated in rule 4(i). Limitation with regard to first appointment was confined to increments in sub-rule (i) alone. No such restriction was placed in sub-rule (ii). If the benefit of added seniority in the public employment is not allowed in the subsequent service, the benefit flowing from sub-rule (ii) of Rule 4 of the Rules will be rendered illusory. The benefit of military service under rule 4(ii) of the Rules is available to the ex-serviceman on his second or subsequent appointment in an altogether different public service. The petitioner, is, therefore, entitled to the benefits of military service towards seniority in his second appointment as clerk in the Head Office Cadre.

(Paras 5 & 6)

Civil Writ Petition under articles 226, 227, 14 and 16 of the Constitution of India praying that,—

- (i) a writ of certiorari be issued quashing Annexure P-7 and P-9.*
- (ii) a writ of mandamus be issued directing commending the respondents No. 1 and 2 to grant the benefits of military service in accordance with rule 4 and fix the seniority accordingly taking into account approved Military Service of 5 Yrs. 1 month and 8 days and grant consequential benefits/accruing benefits thereafter.*
- (iii) Any other suitable relief deem fit in the circumstances of the case.*
- (iv) Requirement as to advance Notices and filing of the certified copies of the annexures be dispensed with/exempted.*
- (v) Record of the case be summoned and the cost of the petition awarded.*

B. S. Sehgal, Advocate, for the Petitioner.

S. P. Soni, Advocate, for Respondents 3 to 8.

S. S. Saron, AAG, Pb., for Respondents 1 & 2.

Bharpur Singh v. State of Punjab and others (G. R. Majithia, J.)

JUDGMENT

G. R. Majithia, J.

(1) In this petition, the petitioner has impugned the orders dated November 17, 1986 and December 30, 1986 passed by respondent No. 2 to decline him the benefit of military service towards seniority.

(2) Facts first:—

(3) The petitioner joined the Armed Forces on November 24, 1962 as Gunner and was discharged from service on April 15, 1969 on compassionate grounds. He was selected for appointment as a clerk by the Subordinate Service Selection Board Punjab in the Sub office Cadre on purely temporary basis. Under the orders of respondent No. 2, he joined the office of Assistant Soil Conservative Officer, Samrala. On a representation submitted by him, he was granted benefit of increments for 5 years 1 month and 8 days in lieu of the military service rendered by him in the Armed Forces. Respondent No. 2,—*vide* letter No. 27585-86, dated July 12, 1976 addressed to Conservative of Soils, North Circle, Jalandhar and Conservative of Soils, South Circle, Ferozepur directed them to forward applications alongwith service record of those employees who fulfilled the prescribed qualification mentioned therein and who were willing to be appointed against two posts of clerks in the head office cadre. The petitioner was selected against the post reserved for Ex-Serviceman and he joined in the Head Office on December 2, 1976. He made a representation for giving him the benefit of seniority in the Head Office Cadre which was declined.

(4) The impugned orders do not contain reasons for declining the benefit of military service to the petitioner. Respondent No. 2 in the written statement took a categorical stand that benefit of military service towards increments and seniority could only be given to the petitioner on his first appointment. Since his first appointment was in the Sub Office Cadre, so the benefit of seniority for the period of military service could only be given to him in the Sub Office Cadre from where he had already taken the benefit of increments. The plea taken by the petitioner that he was only given benefit of increments for 5 years 1 month and 8 days of military service rendered by him in the Armed Forces was not denied. It was also not denied that the benefit of seniority was not given to him in the sub office although his case for grant of such benefit was pending consideration.

(5) The issue turns on the true interpretation of Rule 4 (ii) of the Punjab Government National Emergency (Concession) Rules, 1965 and it is, therefore, necessary to read whole of the 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, where no such minimum age is prescribed, the minimum age shall be as laid down in Rules 3.9 and 1C and 3.11 of the Punjab Civil Services Rules Vol. II. 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, provided that a person who has availed of concessions under Sub Rule (3) of Rule 3, shall not be entitled to the concession under this clause (Letter No. 2259-2FS-II-76/7273, dated 22nd March, 1976).

(iii) Pension : The period of military service mentioned in Clause (i) shall count towards pension only in the case of appointments to permanent services or posts under the Government subject to the following conditions:—

(a) The person concerned should not have earned a pension under military rules in respect of the military service in question;

(b) Any bonus or gratuity paid in respect of military service by the defence authorities shall have to be refunded to the State Government;

(c) The period, if any, between the date of discharge from military service and the date of appointment to any senior post under the Government shall count for pension provided such period does not exceed one year. Any period exceeding one year, but not exceeding three years may also be allowed be counted for

pension in exceptional cases under the orders of the Government.”

Sub-rules (i), (ii) and (iii) of Rule 4 of the Rules are mutually exclusive and are to be read and interpreted independently. Each of the sub rule deals with a separate situation in the career of a public servant, namely, the issues of increment, seniority and after retirement, his pension. Where the benefit of military service is confined to only on first appointment, it is so specifically stated. Limitation with regard to first appointment was confined to increments in sub rule (i) alone. No such restriction was placed in sub rule (11). If the benefit of added seniority in the public employment is not allowed in the subsequent service, the benefit flowing from sub rule (ii) of Rule 4 of the Rules will be rendered illusory. The benefit of military service under Rule 4(ii) of the Rules is available to the Ex-serviceman on his second or subsequent appointment in an altogether different public service. This view finds support from *Raj Kumar Verma v. The State of Haryana and others* (1), where it was held thus:—

“Now the significant argument on behalf of the petitioner is that sub-rules (i), (ii) and (iii), of rule 4 aforesaid are mutually exclusive and are to be read and interpreted independently. It has been rightly contended that each of these sub-rules deals with a separate situation in the career of a public servant, namely, the issues on increment, seniority and after retirement, his pension. It was plausibly submitted that there was no warrant to read the provisions of one sub-rule into that of the other. Therefore, reading rule 4(ii) independently there is not even the remotest inkling either expressly or by necessary intedness that the benefit of military service with regard to seniority is to be circumscribed to the first appointment only.

(6) The petitioner is entitled to the benefits of military service towards seniority in his second appointment as clerk in the Head Office Cadre.

(7) For the reasons aforesaid, the writ petition is allowed and the impugned orders dated November 17, 1986 and December 30, 1986 are quashed. Respondent No. 2 is directed to grant the benefit of military service towards seniority to the petitioner within three months from the date of receipt of the copy of this order. No order as to costs.

R.N.R.

Before S. S. Grewal, J.

ARUN KUMAR SHARMA,—*Petitioner.*

versus

SMT. RAMA SHARMA AND ANOTHER.—*Respondents.*

Criminal Misc. No. 8676-M of 1990.

30th October, 1990.

Code of Criminal Procedure, 1973 (II of 1974)—Ss. 397 & 482—Petitions filed under S. 482 and not under S. 397—Specific bar against second revision as contemplated under S. 397(3) of Cr. P.C.—Not applicable to facts of present case.

Held, that both the present petitions have been filed under S. 482 of the Code of Criminal Procedure and not under S. 397 of the Code and apparently specific bar against second revision as contemplated under sub-section (3) of S. 397 of the Code would not be applicable to the facts and circumstances of the present case.
(Para 6)

(2) *Code of Criminal Procedure, 1973 (II of 1974)—S. 125—Husband had been paying interim maintenance to wife—Revisional court granted maintenance from date of application—Wife not specifically pleaded that husband responsible for delaying proceedings for grant of maintenance—Order granting maintenance from date of application set aside.*

Held, that a careful perusal of the orders of the revisional Court in the instant case clearly indicates that neither it was specifically pleaded on behalf of the wife that the husband was responsible for delaying the proceedings for grant of maintenance under S. 125 of the Code, nor any justifiable reason for directing the order of maintenance to be awarded from the date of the application was given by the revisional Court. The reason advanced in the instant case by the said Court that in case the maintenance allowance is allowed from the date of order, it would be encouraging the husband to prolong the agony of the neglected wife in facts and circumstances of the present case, cannot be considered to be such a justifiable and