
Before S.S. Nijjar & S.S. Grewal, JJ

Latif Ahmed,—*Petitioner*

versus

State of Punjab & others,—*Respondents*

C.W.P. No. 6063 OF 2003

16th October, 2003

Constitution of India, 1950—Arts. 14 & 226—Punjab Recruitment of Ex-servicemen Rules, 1982 (as amended on 22nd September, 1992)—Release of petitioner at his own request from Air Force in 1991—Cl.(iv) of the unamended 1982 Rules entitles petitioner to benefits admissible to an Ex-serviceman—Recruitment to PCS (E.B. & Allied Services)—Petitioner applying for under Ex-serviceman category—Rejection of—High Court accepting status of petitioner as an Ex-serviceman & permitting petitioner to appear in the examination held in 1998—1998 examination cancelled due to widespread corruption, nepotism & favouritism & the same rescheduled to be held in April, 2003—Present examination merely in substitution of the earlier examination of 1998—All candidates who had appeared in 1998 eligible to be admitted to the examination—Petition allowed.

Held, that the 2003 examination is in substitution of the examination which was held in 1998. The advertisement issued by respondent No. 2 announcing the examination to be held on 27th April, 2003 clearly mentions that the notice is given for re-conduct of the 1998 examination. The said advertisement also states that only those candidates who had appeared earlier in the examination held on 29th March, 1998 shall be eligible to be admitted to the examination. Since the petitioner has already been held eligible to appear in the 1998 examination by this Court, the respondent are bound to permit the petitioner to appear in the examination as an Ex-serviceman.

(Para 13)

Amarjit Singh, Advocate, *for the Petitioner.*

D.S. Dhillon, Addl., A.G., Punjab, *for the respondent.*

JUDGMENT

S.S. Nijjar, J.

(1) In this writ petition under Articles 226/227 of the Constitution of India, the petitioner prays for the issuance of writ in the nature of Mandamus directing the respondents to issue Roll Number to the petitioner so as to enable him to appear in the PCS (Executive Branch and Allied Services) Examination, 1998 in the Ex-servicemen (backward class category) which was scheduled to be held w.e.f. 27th April, 2003.

(2) The petitioner left the Indian Air Force on 2nd August, 1991 after working for five years and fifty four days. During the period of his service, the petitioner was entitled to be considered for being commissioned in the Indian Air Force. He was permitted to avail three chances during the five years period. The petitioner had exhausted the three chances. He, therefore, opted to leave the Indian Air Force as he did not wish to continue as an Airman throughout the remainder of his service. As an ex-serviceman, the petitioner was entitled to apply for recruitment to different posts in the State of Punjab. At the relevant time, the petitioner was governed by the Punjab Recruitment of Ex-Servicemen Rules, 1982 (hereinafter called "the Old Rules"). The definition of "Ex-serviceman", according to these rules, was as under :—

"Ex-serviceman" means any person who had served in any rank (whether as a combatant or as a non-combatant) in the Armed Forces of the Union including the Armed Forces of former Indian states but-excluding the Assam Rifles, Defence Security Corps, General Reserve Engineering Force, Lok-Sahayak Sena and Territorial Army, for a continuous period of not less than six months after attestation ; and

- (i) has been released or discharged otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency ; or
- (ii) has been transferred to the reserve pending his release ; or

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- (iii) has to serve for not more than six months for completing the period of service requisite for becoming entitled to be released or transferred to the reserve as aforesaid ; or
 - (iv) has been released at his own request after completing five years service in the Armed Forces of the Union.”

(3) The respondents advertised 64 vacancies in 1993 which were to be filled in PCS (Executive Branch and Allied Services) Examination respectively. These vacancies arose in 1991, but were sought to be filled in 1993. The petitioner as noticed earlier had left the Air Force on his own request on 2nd August, 1991. The petitioner submitted his application for being considered for appointment. He was not permitted to sit in the examination. The old rules were amended in 1992 (hereinafter called “the Amended Rules”) which came into force on 22nd September, 1992. The definition of “Ex-serviceman” in the Amended Rules was as follows :—

- “(c) “Ex-serviceman” means a person who has served in any rank, whether as a combatant or a non-combatant, in the Naval Military and Air Force of the Union of India (hereinafter referred to as “the Armed Forces” of the Union of India) and who has—
- (i) retired from such service after earning his pension; ; or
 - (ii) been released from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension ; or
 - (iii) been released, otherwise than his own request, from such service as a result of reduction in establishment ; or
 - (iv) been released from such service after completing the specific period of engagement otherwise than

at his own request or by way of dismissal or discharge on account of misconduct or inefficiency and has been given a gratuity ;

but does not include a person who has served in the Defence Security Corps, the General Reserve Engineering Force, the Lok Sahayak Sena and Para Military Forces, but includes personnel of the Lok Sahayak Sena of the following categories, namely :—

- (i) pension-holders for continuous embodied service ;
- (ii) persons with disability attributable to military service ; and
- (iii) gallantry awarded winners.

Explanation.—The persons serving in the Armed Forces of the Union who in retirement from service would come under the category of “Ex-servicemen” may be permitted to apply for re-employment one year before the completion of the specified terms of engagement and avail themselves of all concessions available to Ex-Servicemen but shall not be permitted to leave the uniform until they complete the specified terms of engagement in the Armed Forces of the Union.”

(4) The petitioner was not permitted to sit in the examination, on the basis of the amended rules. Aggrieved against the decision of the respondents, the petitioner filed CWP No. 9199 of 1993. In the aforesaid writ petition, the petitioner had pleaded that the amended rules cannot operate retrospectively. At the time when the petitioner left the Indian Air Force, the old rules were applicable. He had also pleaded that the entire rights and status of the petitioner as an Ex-serviceman could not be taken away by the amended rules. The writ petition was allowed. The respondents were directed to treat the petitioner as an Ex-serviceman and allow him to appear in the examination. The respondents challenged the aforesaid judgment by

way of Special Leave Petition in the Supreme Court, but the same was dismissed. The petitioner was permitted to appear in the examination of PCS (Executive Branch and Allied Services) in 1998. The entire result of this examination was, however, scrapped due to allegations of widespread corruption, favouritism and nepotism in what has come to be known as the PPSC Scam. Thereafter the same examination had been re-scheduled to commence from 27th April, 2003. Again the petitioner has been denied the roll number to sit in the examination. The petitioner submitted a representation to the respondents, but till the filing of the writ petition, the same was not considered. The petitioner claims that the decision of the respondents in not issuing the roll number is arbitrary, unfair, unjust and violates Articles 14 and 16 of the Constitution of India. The respondents have filed the written statements and controverted the claim of the petitioner.

(5) Respondents no. 1 and 3 in their written statement have stated in the preliminary submission that the claim of the petitioner with regard to the definition of an "Ex-serviceman" has to be considered as per the Government of India notification No. 36034/5/85-Estt(SCT) dated 14 April, 1987 which provided as under :—

"Those released on or after 1st July, 1987.—Any person who had served in any rank (whether as a combatant or not) in the Armed Forces of the Indian Union and was released/retired with any kind of pension from the Defence Budget or released on completion of specific terms of engagement with gratuity otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency."

(6) According to the respondents, the aforesaid amendment in the definition of "Ex-serviceman" was not carried out by the Punjab Government till 1992. Taking benefit of this delay in amendment of definition of "Ex-serviceman" which was in vogue prior to his release, the petitioner has claimed the status of "Ex-serviceman". It is not denied that the writ petition filed by the petitioner was allowed by this Court and that the SLP filed by the State of Punjab was dismissed

on 19th October, 1995. On merits, it is submitted that the petitioner left the Indian Air Force at his own request. Technically, he is not covered under the definition as per the Government of India Notification mentioned above.

(7) In the written statement filed by respondent No. 2, it is stated that the Ex-serviceman rules were amended on 22nd September, 1992. The posts were advertised on 7th February, 1998. The relevant rules would, therefore, be the rules which were in force at the time of advertisement of vacancies. The discharge date of the petitioner from the Air Force has no relevance with the advertisement of vacancies. It is also stated that the decision rendered by this Court in CWP No. 9199 of 1993 is of no consequence as the same was allowed on the short ground that the vacancies advertised in 1993 related to the period prior to 22nd September, 1992 when the amended rules were enforced. It is stated that the aforesaid judgment would not be applicable to vacancies which became available after the amended rules were enforced.

(8) Mr. Amarjit Singh, learned counsel appearing for the petitioner submits that in view of the directions given by this Court in CWP No. 9199 of 1993, the respondents cannot deny the roll number to the petitioner to appear in the examination. The rights which have been acquired by the petitioner cannot be taken away by the subsequent amendment in the rules.

(9) Mr. Dhillon, learned counsel for the State of Punjab has submitted that the rule has already been amended by Notification dated 14th April, 1987 by the Central Government. There was delay in incorporating the amendment in the Punjab Rules. Therefore, the petitioner cannot be permitted to take any advantage of the definition of "Ex-serviceman" as it existed under the old rules.

(10) We have considered the submissions made by the learned counsel for the parties.

(11) It becomes apparent that at the time when the petitioner was released from the Army, he was entitled to the benefits admissible to Ex-serviceman by virtue of clause (iv) of the old rules, reproduced in the earlier part of the judgment. The petitioner was released on

2nd August, 1991. The amended rule was not enforced till 22nd September, 1992. Respondent No. 3, Directorate of Sainik Welfare, Punjab has interpreted the term "Ex-serviceman" as follows :—

"The eligibility of the person to the status of ex-servicemen will be governed by the definition in vogue at the time of his discharge and will not be affected by the changes in the definition subsequent to his discharge."

(12) This averment has been made in paragraph 12 of the writ petition. The only explanation given by respondents no. 1 and 3 is to the effect that the petitioner left the Indian Air Force at his own request before complying with the terms and conditions of his engagement. According to the respondents, technically, the petitioner is not covered under the definition of "Ex-serviceman" as per the Government of India Notification in vogue at the time of his release. We are unable to accept the aforesaid submission of the respondent as the status of the petitioner as "Ex-Serviceman" has already been accepted by this Court in CWP No. 9199 of 1993. Furthermore, the vacancies which are sought to be filled, on the basis of the present examination, are the same which were the subject matter of the earlier writ petition. The examination which was to be held in the year 1998 was now scheduled to be held from 27th April, 2003. The present examination was merely in substitution of the earlier examination of 1998. Therefore, the petitioner could not have been excluded from appearing in the examination. This fact is further evident from the Advertisement No. 01 (Annexure P-4) issued by respondent No. 2 announcing the examination to be held on 27th April, 2003. The relevant portions of the aforesaid advertisement are as follows :—

PUNJAB PUBLIC SERVICE COMMISSION

PATIALA

(Notice for re-conduct of PCS(EB) and Allied Services Exam. 1998)

ADVERTISEMENT NO. 01

As per decision of Punjab Government conveyed to Punjab Public Service Commission,—*vide* letter No. 10/104/02-2pp3/2195, dated 4th February, 2003, Commission has decided to reconduct the Punjab

Civil Service (Executive Branch) and Allied Services Examination, previously held in March, 1998, in three successive stages :—

- (i) Preliminary Competitive Examination for selection of candidates for the Main Competitive Examination ;
- (ii) Main Competitive Examination : for selection of candidates for *Viva Voce*/Interview; and
- (iii) *Viva Voce* : It will be in the form of panel interview. The object will be to test the personal qualities of the candidate i.e. mental alertness, intelligence, confidence, grasping power and general out look and such other personality traits required to be judged for suitability of the candidate for a career in State Civil Services and Allied Services.

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ELIGIBILITY CONDITIONS : All and only those candidates who had appeared earlier in PCS (Executive Branch) and Allied Services Preliminary Exam held on 29th March, 1998 and found eligible even after that shall be eligible to be admitted to the exam. No candidate whose candidature was rejected by the Commission on any ground or was found ineligible at any stage or was absent in the preliminary examination, will be eligible to be admitted in this examination.

SYLLABUS : The syllabus for examination supplied with the Information Brochure-cum-Application Form in 1998 will be applicable for the re-examination without any change. However, a copy of the syllabus can be obtained from the Reception Counter at the Commission's Office in Patiala on payment of Rs. 50 (Rupees fifty only) or by post by remitting Rs. 75 (Rupees seventy five only) through a crossed bank demand draft drawn in favour

of the Secretary, Punjab Public Service Commission,
payable at Patiala.....”

(13) A perusal of the above clearly shows that the 2003 examination is in substitution of the examination which was held in 1998. The aforesaid advertisement clearly mentions that the notice is given for re-conduct of the 1998 examination. The aforesaid advertisement also states that only those candidates who had appeared earlier in the examination held on 29th March, 1998 shall be eligible to be admitted to the examination. Any candidate who was found ineligible would not be admitted to the examination. Even the syllabus for the examination supplied with the Information Brochure-cum-Application Form in 1998 has been made applicable for the re-examination without any change. Keeping the aforesaid facts in view, it is not possible to accept the submission of the learned counsel for the respondents that the 2003 Examination is not in substitution of the 1998 Examination. Since the petitioner has already been held eligible to appear in the 1998 Examination by this Court in the judgement rendered in CWP No. 9199 of 1993, the respondents are bound to permit the petitioner to appear in the examination as an Ex-serviceman.

(14) At the motion stage, this Court had directed the respondents to permit the petitioner to appear in the Examination which was scheduled to be held on 27th April, 2003, provisionally. The petitioner has competed in the examination. Only his result now has to be declared.

(15) In view of the above, the Writ Petition is allowed. The respondents are directed to regularise the candidature of the petitioner in the examination in which he appeared on the basis of the order passed by this Court on 24th April, 2003. The result of the petitioner be declared and further action be taken in accordance with the law and the rules. Petition allowed. No costs.

R.N.R.