
unsolicited opinion as to the cause of death in the end of the forensic examinations report (Pp. 11-12 in italics).

(12) In the premises discussed herein above, we partly allow this writ petition to the extent as directed above. However, we clarify that the observations made and the conclusions arrived at hereinabove are merely as tentative view for the purpose of adjudication of limited reliefs as sought in this writ petition and shall in no case be taken as an expression of our final opinion about this case lest it may cause prejudice to the interest of the parties to the lis.

(13) A copy of this order be given dasti.

R.N.R.

Before Vijender Jain, C.J. & Rajive Bhalla, J.

STATE OF PUNJAB AND ANOTHER,—Appellants

versus

DR. BALRAJ BHARDWAJ,—Respondent

L.P.A. NO. 168 OF 2004

IN C.W.P. NO. 3261 OF 1988

29th January, 2007

Constitution of India, 1950—Art. 226—Punjab State Technical (Medical and Engineering) Service Rules, 1978—Rl.3(2)— Respondent appointed to the post of Dental Assistant Surgeon under reserved quota for Armed Forces Personnel—Request for grant of benefit of military service—Rejection of—Challenge thereto—Respondent entitled to benefit of military service under 1978 Rules—Repeal of 1978 Rules before appointment as Dental Assistant Surgeon—State failing to place on record any instructions, rules or regulations other than 1978 rules under which respondent was appointed—Respondent admittedly appointed in accordance with 1978 rules—Ld. Single Judge correctly returned a finding that respondent was deemed to have been appointed under 1978 rules—State's appeal dismissed.

Held, that a query addressed to the appellant that if the respondent was not appointed under the 1978 Rules, then under what rules, was he appointed, did not draw any response. Except for a bald

statement in paragraph No. 9 of the written statement, filed by the appellant, to the effect that the respondent was appointed against a reserved post for released Indian Armed Force Personnel, under the provisions of prevailing instructions issued by the State Government, no instructions, rules or regulations, other than the 1978 Rules were brought to the notice of the learned Single Judge or have been placed before this Court. The so called "prevailing instructions" have failed to see the light of day. As the respondent was admittedly appointed against a post reserved for Armed Forces Personnel's in accordance with rule 1978 Rules, the learned Single Judge correctly returned a finding that the respondent was deemed to have been appointed under the 1978 Rules.

(Para 5)

Further held, that the advertisement pursuant, whereto the respondent was appointed, was issued in terms of rule 3(e) of the 1978 Rules. The respondent was selected and appointed in accordance with these rules. The learned Single Judge, thus, rightly granted the benefit of military service.

(Para 8)

Sanjeev Sharma, Addl. Advocate General, Punjab, *for the appellants.*

Sunil Chadha, Advocate, *for the respondent.*

JUDGMENT

VIJENDER JAIN, CHIEF JUSTICE (ORAL)

(1) Aggrieved by the order passed by the learned Single Judge, the State of Punjab has filed the present appeal.

(2) The respondent joined the Indian Army, on 25th April, 1966, as a Lieutenant. He was discharged on 18th November, 1976.

(3) The Punjab Public Service Commission issued an advertisement dated 2nd December, 1978, appended to the writ petition as Annexure P-3, inviting applications for 39 posts of Dental

Assistant Surgeons. 7 posts were reserved for Indian Armed Forces Personnel appointed in the armed forces on or after 1st November, 1962 and released thereafter. As the respondent, was eligible for the post of Dental Assistant Surgeon, under the quota reserved for Armed Forces Personnel, he applied and was selected. He was appointed as an *ad hoc* Dental Assistant Surgeon,—*vide* memo dated 5th May, 1979. He, thereafter, made a representation praying for the grant of benefit of military service. Rejection of his representation led to the filing of a writ petition. The writ petition was allowed by holding that the respondent was deemed to have been appointed under the 1978 Punjab State Technical (Medical and Engineering) Services Rules (for short 1978 Rules) and was therefore, entitled to the benefit of military service.

(4) Mr. Sanjeev Sharma, Addl. Advocate General, for the State of Punjab assails the findings of the learned Single Judge on the ground that the respondent was not entitled to the benefit of military service under the 1978 Rules as these rules stood repealed, on 31st December, 1978 i.e. before the respondents appointment as a Dental Assistant Surgeon on 5th May, 1979. It is, therefore, argued that the learned Single Judge erred in granting benefit of military service under the 1978 Rules.

(5) A query addressed to learned counsel for the appellant that if the respondent was not appointed under the 1978 Rules, then under what rules, was he appointed, did not draw any response. Except for a bald statement in paragraph No. 9 of the written statement, filed by the appellant, to the effect that the respondent was appointed against a reserved post for released Indian Armed Forces Personnel, under the provisions of prevailing instruction issued by the State Government, no instructions, rules or regulations, other than the 1978 Rules, were brought to the notice of the learned Single Judge or have been placed before this Court. The so called "prevailing instructions" have failed to see the light of day. As the respondent was admittedly appointed against a post reserved for Armed Forces Personnel's in accordance with the 1978 Rules, the learned Single Judge correctly returned a finding that the respondent was deemed to have been appointed under the 1978 Rules.

(6) Another aspect that has been highlighted by learned counsel for the respondent is that the vacancy arose on 2nd December, 1978, when the advertisement was issued by the Punjab Public Service Commission, at the behest of the appellant. The advertisement issued is as under :—

**EXTRACT FROM THE TRIBUNE DATED DECEMBER 2, 1978
PUNJAB PUBLIC SERVICE COMMISSION, PATIALA,
140 001 ADVERTISEMENT NO. 25**

Applications are invited by 1st January, 1979 (16th January, 1979) for applications abroad in the case of categories No. III and IV for the following posts :—

“(II) Thirty Nine (39) posts of DENTAL ASSISTANT SURGEON (Class-II), Ten posts reserved for Member of Schedule Castes of Punjab, for Backward Classes of Punjab and seven Indian Armed Forces Personnel, who had joined the Indian Army or were commissioned on or after 1st November, 1962 and were released thereafter Pays Rs. 400-1100 plus usual allowances. Three advance increments admissible to Post Graduate. Age between 20 and 35 years on 1st January, 1978 relaxable for Government employee to the extent of their service i.e. (i) a degree of B.D.S. from a recognised University (ii) must be registered as Dental Surgeon under Dental Act, 1948 (iii) a pass in Punjabi of Matric or its equivalent standard. Candidates not having such qualification will have to acquire the same within a period of six months from the date of their appointment failing which their services will be terminated. Higher Dental qualification preferred.”

(7) A bare perusal of the aforesaid advertisement reveals reservation for a class of Indian Armed Forces Personnel, who had joined the Indian Armed Forces or were commissioned on or after 1st November, 1962, as envisaged by rule 3(e), i.e. a reservation of 20%

for Armed Forces Personnel's. Rule 3(e) of the 1978 Rules is to the following effect :—

3(e) "Released Indian Armed Forces Personnel" means the Indian Armed Forces Personnel who were commissioned to or who joined the Armed Forces of the Union, as the case may be, on or after 1st day of November, 1962, but before the 10th day of January, 1968 and who were released on demobilization thereafter but does not include :—

- (i) Volunteer Reserved Forces Personnel of the Armed Forces of the Union called upon for temporary service; or
- (ii) Indian Armed Forces personnel who, before their appointment against vacancies reserved under these rules :—
 - (a) are granted permanent commission ; or
 - (b) joined or join a civil service of the Union or a Civil Services of a State or a civil post under the Union or a State after their release from the Armed Forces of the Union ;
- (ii) Engineers and Doctors employed under the Central Governments of State Governments or Government-owned industrial undertakings after 1963, who were required to serve in the Armed Forces of the Union for a minimum prescribed period under the Compulsory Liability Scheme and who are granted Short Service Commission under the rules during the period of such service;"

(8) It is, thus, apparent that the advertisement pursuant, whereto the respondent was appointed, was issued in terms of rule 3(e) of the 1978 Rules. The respondent was selected and appointed in accordance with these Rules. The learned Single Judge, thus, rightly granted the benefit of military service.

(9) The impugned judgment does not call for any interference. There being no merit in this appeal, the same is dismissed.

R.N.R.