

Before Hon'ble S. P. Kurdukar, C.J. & V. K. Bali, J.

TARA CHAND,—*Petitioner*

versus

THE HARYANA FINANCIAL CORPORATION AND
OTHERS,—*Respondents*

C.W.P. No. 1867 of 1992

19th July, 1995

Constitution of India, 1950—Art. 226—Punjab National Emergency (Concession) Rules, 1965—Military service benefits—Deemed date of appointment—Employee whether entitled to seniority from the date of appointment—Question left unanswered—Interpretation of concession Rules—Doubts expressed.

Held, that as to whether the petitioner should get seniority over and above the persons, who came to be appointed when he was not in service at all, would depend upon a variety of factors. The first thing that would need attention of the Court would be the service Rules. The petitioner came to be appointed as Assistant Manager in the Haryana Financial Corporation after he was discharged from Army and it is not known, without looking to the Rules, as to whether some period is required for confirmation on the post of Assistant Manager and as to whether, according to the Service Rules, the seniority is to be reckoned from the continuous length of service or from the date of confirmation? It is also not known as to under the Rules of service, the petitioner is occupying, there is requirement of some years of service on the post of Assistant Manager before such a person can be considered for next promotional post i.e. Manager and further on. It is not disputed even by learned counsel for the petitioner that if there be some period required for an Assistant Manager to be on the said post before can be considered for the post of Manager, then there can be no promotion till such time atleast the employee concerned actually remains on the post of Assistant Manager irrespective of his deemed date of appointment.

(Para 6)

Further held, that the question that has been referred to by the learned Single Judge to be answered by the Division Bench is, ofcourse, of some significance but this Court deems it rather appropriate not to answer the same in this case and rather wait for a case in which there may be better particulars and in which the Rules governing the service may also be brought to the notice of the Court.

(Para 8)

R. K. Malik, Advocate, for the petitioner.

Sanjeev Walia, Advocate, for the respondent.

JUDGMENT

V. K. Bali, J.

(1) As, in view of the learned Single Judge, the question as to whether the petitioner, who is an ex-serviceman and presently employed as an Assistant Manager, with the Haryana Financial Corporation, is entitled to seniority from his deemed date of appointment or from the date when the provisions of Punjab National Emergency (Concession) Rules, 1965, were extended to the Corporation, was of some importance, this case was referred to a Division Bench for answering the question aforesaid.

(2) The facts of the case reveal that the petitioner was enrolled in the Army on October 17, 1963 from where he was discharged on August 17, 1969. Even though he had served in the Army for a period of little less than six years, since the emergency was proclaimed on October 26, 1962, and remained in force upto January 10, 1968, he was entitled to military service benefits for a period of 4 years, 2 months and 28 days in his new assignment that he came to occupy as an Assistant Manager with the respondent-Financial Corporation on January 21, 1980. The case of the petitioner is that Punjab National Emergency Concession Rules, 1965 were adopted and made applicable to the Financial Corporation on October 16, 1990.—*vide* resolution passed by the Board of Directors on that behalf,—*vide* agenda item No. 185.36 which reads as follows :—

“The Board approved the grant of benefits of seniority and increments to ex-servicemen employees of the Corporation who had rendered military service from 26th October, 1962 to 10th January, 1968 during the operation of proclamation of Emergency Service on the pattern of State Government. Further, the Board approved the following incorporation in Regulation 22 regarding seniority under Staff Regulation No. 22(3) with the approval of State Government and SIDBI.

Regulation No. 22(3) :

An employee who has served as a member of the armed forces during the continuance of emergency from 26th October, 1962 to 10th January, 1968 will be given the benefit of seniority under the Punjab National Emergency (Concession) Rules, 1965 in accordance with the provisions

contained in the various notifications issued by the State Government of Haryana from time to time."

(3) Consequent upon the resolution aforesaid, the Corporation gave show-cause-notice to all its employees, who were to be affected on account of deemed date of appointment, which, in the case of petitioner, was fixed as October 26, 1975 by giving benefit of service rendered by him in the armed force for a period of 4 years, 2 months and 28 days. The Board of Directors, in its meeting held on March 23, 1992 approved the Military Service benefits to the petitioner and to one Ram Vohra. It was also decided that their seniority would be fixed in the grade in which they were working at that time. Petitioner was also granted benefit of increment with effect from June, 1991 and the arrears with effect from January 21, 1980 to May, 1991 were not granted to him. His seniority from the date he was deemed to be in service was also not given to him, thus, resulting into his filing representation. Petitioner thereafter also made some representations asking for seniority but when he was not assigned seniority from the due date of appointment, he filed the present writ in this Court. Obviously, the basic prayer of the petitioner is that the respondent Corporation be directed to give him deemed date of appointment as October 20, 1975 and thereafter he be considered for promotion from the date juniors to him were promoted. As a consequence of the directions asked for, further prayer of the petitioner is to declare him senior to respondents 2 to 9, who were appointed as Assistant Managers after his deemed date of appointment.

(4) The cause of the petitioner has been opposed by the respondent-Corporation by way of reply filed in the matter. It has been pleaded therein that petitioner could not be assigned seniority immediately as objections were invited from other affected persons which were to be heard and decided before passing the final orders. Respondent had approved the grant of military service benefits to the petitioner in their meeting held on March 23, 1992. The Board of Directors had approved the grant of military service benefits to the petitioner, in principle, and the said decision of the Board was being implemented in due course after complying with the requisite formalities. The Sub-committee, after due deliberations, recommended that the matter be placed before the Board again with the observation that the Board might review its earlier decision in view of the observations of the sub-committee. The Board, after considering

the recommendations/observation of the Sub-committee dated November 11, 1991 finally approved the grant of military service benefits to the petitioner on March 23, 1992. The case of the respondent thus is that it is only when the Emergency Concession Rules were extended to the employees of the Corporation that the petitioner became entitled to the grant of such benefits and inasmuch as it took time in drawing up tentative seniority list, inviting objections, hearing and disposing of the same, the matter was decided on March 23, 1992 that the petitioner would be entitled to seniority from the date of decision.

(5) Mr. Ram Kumar, learned counsel for the petitioner, vehemently contends that the petitioner, who has put in more than four years in armed force at a crucial time when the country was passing through a period of emergency, is entitled to all benefits admissible to an employee, who has been discharged from armed forces and if the petitioner is to be denied seniority from his deemed date of appointment, the applicability of the Concession Rules, 1965 to the Corporation would be of no meaning and consequence. Learned counsel therefore, contends that all persons appointed after the deemed date of the petitioner should rank junior to him.

(6) We have given our thoughtful consideration to the matter in issue but on the available material placed on the records of the case, we are of the opinion that no relief can be granted to the petitioner in this case. As to whether the petitioner should get seniority over and above the persons, who came to be appointed when he was not in service at all, would depend upon a variety of factors. "The first thing that would need attention of the Court would be the Service Rules." The petitioner came to be appointed as Assistant Manager in the Haryana Financial Corporation after he was discharged from Army and it is not known, without looking to the Rules, as to whether some period is required for confirmation on the post of Assistant Manager and as to whether, according to the Service Rules, the seniority is to be reckoned from the continuous length of service or from the date of confirmation? It is also not known as to under the Rules of service, the petitioner is occupying, there is requirement of some years of service on the post of Assistant Manager before such a person can be considered for next promotional post i.e. Manager and further on. It is not disputed even by learned counsel for the petitioner that if there be some period required for an Assistant Manager to be on the said post before he can be considered for the post of Manager, then there can be no

promotion till such time atleast the employee concerned actually remains on the post of Assistant Manager irrespective of his deemed date of appointment.

(7) Interpreting the Concession Rules, so as even to do away the actual period of training or appointment for a particular post for considering a person for next higher rank would result into an anomalous situation and also, in number of cases, would totally unsettle the settled matters. To test this, as an example, let us see what would happen when a person said to be junior to an employee, who has served in the army and is entitled to all military service benefits, has been promoted to not the next immediate rank but 2-3 ranks further. Should such a person be reverted in case only one post exists and the person, who has served in the army be posted promoted irrespective of his having no training or experience on the lower position ? In clear view of this Court, such a situation should be avoided.

(8) This matter was part heard on 4th July, 1995 and at the time when the arguments concluded for the said date, learned counsel for the petitioner was apprised of the difficulties in the way of petitioner and was asked to bring on records the Rules governing the service of the petitioner or atleast apprise the Court of the relevant rules which required to be looked into for resolving the controversy in this case. On the adjourned date, however, learned counsel chose not to apprise the Court of the relevant rules even though he admitted that service rules or regulations governing the petitioner's services do exist. The question that has been referred to by the learned Single Judge to be answered by the Division Bench is, of course, of some significance but this Court deems it rather appropriate not to answer the same in this case and rather wait for a case in which there may be better particulars and in which the Rules governing the service may also be brought to the notice of the Court.

(9) Finding no merit in this writ, we dismiss the same leaving, however, the parties to bear their costs.

R.N.R.
