FULL BENCH

Before S. S. Sandhawalia C.J., Gurnam Singh and G. C. Mital, JJ.

DEI CHAND PHAUGAT,—*Petitioner.*

versus

STATE OF HARYANA and others,—*Respondents.*

Civil Writ Petition No. 231 of 1979

March 18, 1980.

Punjab Government National Emergency (Concession) Rules, 1965, as amended by Punjab Government National Emergency (Concession) Haryana Second Amendment Rules 1976—Rule 2—Constitution of India, 1950—Articles 14, 16 and 309—Military service—Definition thereof amended retrospectively—Benefits of such service confined to those who joined only during emergency—Such restriction—Whether creates a classification violative of Articles 14 and 16—Rules—Whether could be amended retrospectively—Taking away of the earlier benefits retrospectively—Whether denies equality as guaranteed by Articles 14 and 16.

Held, (per majority S. S. Sandhawalia C.J. and Gurnam Singh J., G. C. Mital, J., contra) that an examination of the scheme and body of the whole of Punjab Government National Emergency (Concession) Rules, 1965, as originally framed in 1965 would indicate that these are obviously in the nature of a concession conferred by the Government on those who in its view had rendered service to the country during operation of the emergency. Prior to these rules, no such benefits with regard to the increment, pension, seniority or promotion, etc., were available to men who may have rendered military service. It is not as if there was already any fundamental or inherent right existing in any service-man to claim these benefits whenever he shifted to civil employment. The State could confer these benefits on any particular class and the exclusion of another class therefrom could neither be labelled as discriminatory nor as having taken away a vested right. Originally the State granted these concessions or benefits in its bounty as a recognition for military service both as an incentive and as a reward and it seems to be amply settled that at the time of originally granting the concessions, it is for the State to choose the beneficiary thereof and where it is sought to be extended to a large body of persons only then perhaps the considerations of their being an identifiable class might well arise. Persons who voluntarily come forward to enrol or seek commission during proclamation of an emergency and the consequent

imminent danger of war would form a class by themselves. It is axiomatic that in face of the mortal danger which war poses many would hesitate to take on its hazards. Whilst in times of peace there may be no dearth of recruits in many a State, during times of war conscription or drafting of the manhood even against the will of the person concerned becomes necessary. Therefore, the class of persons who volunteer for war service with all its mortal hazards are undoubtedly distinct and separate from the service careerists. Pithily, this is a class who patriotically answer the call to arms during the time of war as against those who equally perform an honourable role but undoubtedly different from those, who volunteer to come forward to face the patent and sometimes mortal hazards of emergency. In other words, the persons who joined service before the declaration of amergency would fall clearly within the ken of professional soldiery and regular service careerists as against those who willingly volunteer to enrol or seek commissions during the emergency in face of war. Far from being unreasonable. this classification indeed appears to be as most natural.

(Paras 13 and 14).

Held, (per S. S. Sandhawalia, C.J., and Gurnam Singh, J.) that the State has under the proviso to Article 309 of the Constitution of India 1950, plenary power to frame rules rertospectively till such times as the Legislature makes an enactment with regard to the conditions of service of its employees. In the absence of any enactment the State virtualy steps into the shoes of the legislature and has plenary power to frame the rules retrospectively. Once that is so, the taking away of the concession earlier granted by the Punjab Rules by the Haryana Amendment of the same set of rules does not essentially involve violation of Article 14 or 16 of the Constitution. It seems to be elementary that retrospective operation of any legislation must inevitably affect or alter the earlier existing rights. Merely because they do so, retrospective legislation cannot be declared to be violative of the equality rule. Holding so would in effect imply that there can be never any valid power to legislate retrospectively. Thus, it must be held that the State having plenary power to enact the rules retrospectively under Article 309 of the Constitution can inevitably take away any concession granted earlier by the same set of rules without in any way infracting or violating the equality rule enshrined in Articles 14 and 16 of the Constitution.

(Paras 8, 9 and 10).

Held (per G. C. Mital. J. contra) that the Haryana Second Amendment Rules, 1976, are violative of Articles 14 and 16 of the Constitution as the classification made therein is wholly unreasonable and arbitrary. Whether under the original definition or under the amended definition benefit of the period spent in military service during the proclamation of emergency is to be given. If the benefit

of military service during the proclamation of emergency is to be given, then there is no nexus or basis for granting benefit to only those who were enrolled or commissioned during the operation of emergency and not to those, who were enrolled or commissioned before the proclamation of emergency, but served during the period of emergency. Whether a person joined military service before the proclamation of emergency or during its continuance, all would be liable to serve the country equally during the proclamation of emergency subject to the same risks of military service. Therefore, the definition of 'military service' contained in the Haryana Rules is arbitrary, unreasonable and discriminatory having no nexus and the object sought to be achieved is not being achieved and is clearly violative of Articles 14 and 16 of the Constitution.

(Paras 29, 30 and 34).

Held (per G. C. Mital, J. contra) that the Punjab Rules were framed under Article 309 of the Constitution, the benefit of which would be available to each one who has served in the military during the proclamation of emergency as a matter of right, as once statutory rules are framed they are not to be treated as mere concessions, but a right created under the statutory rules, which can be enforced in a court of law. Therefore, the benefit granted thereunder was not a concession but a statutory right capable of being enforced in a court of law. (Para 32).

Case referred by the Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice G. C. Mital, on 8th August, 1979, to a Full Bench for decision of an important question of law involved in the case. The Full Bench consisting of the Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice Gurnam Singh and Hon'ble Mr. Justice G. C. Mital finally decided the case on 18th March, 1980.

Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to send for the records of the case and after a perusal of the same :—

(i) *Issue a writ of certiorari, quashing the impugned order annexure P/4 dated 15th January, 1979.*

(ii) *Issue a writ of mandamus commanding the respondents to release to the petitioner all the benefits flowing from rule 4 of the Rules and declare the petitioner to be entitled to the same with effect from the date of his joining the service as Assistant Excise and Taxation Officer i.e. 22nd May, 1973, to which the petitioner would have been entitled, had the impugned decision annexure P/4 not been taken against the petitioner by the respondents.*

(*iii*) *Any other relief which this Hon'ble Court may deem fit in the case of the petitioner.*

(*iv*) *Prior notices on respondents be dispensed with.*

(*v*) *filing of certified copies of annexures P/1 to P/7 be dispensed with.*

(*vi*) *Costs of the petition be awarded to the petitioner.*

S. M. Hooda, Advocate, *for the Petitioner.*

U. D. Gaur A.G. (Hy.) with B. L. Gulati, *for the Respondent.*

ORDER

S. S. Sandhawalia, C.J.

1. Whether the valiant volunteers who willingly answer the call to arms in face of war, form a class apart from men who choose the services as a career or employment in times of peace, is the significant question which falls for determination before this Full Bench on a reference. To my mind, the answer is plain — that they do.

2. I have the privilege of perusing the judgment recorded by my learned brother G. C. Mittal, J., and it is with considerable regret and equal diffidence that I feel compelled to record a dissent therefrom. With the greatest respect, if I may say so, the central and the focal question aforesaid which called for an answer seems to have got diffused in the peripheral verbiage of ancillary and collateral issues and, therefore, perhaps the resultant answer which has been arrived at.

3. The facts appear in considerable detail in the judgment of my learned brother G. C. Mittal, J. Nevertheless to maintain the homogeneity of this judgment some reference to them becomes inevitable Dei Chand, petitioner, joined the Indian Air Force on the 9th of December, 1960, as a regular combatant long before the declaration of the Emergency and served for a considerable period thereof till the year 1969 in the later part whereof he was released. Thereafter he competed in an open examination of the Haryana Civil

Service (Executive Branch) and other Allied Services held in 1970-71 by the Haryana Public Service Commission and was selected in the general category of Allied Services against a reserved quota for the Military released personnel. He joined as Assistant Excise and Taxation Officer on the 22nd of May, 1973, but it was not till the 20th of February, 1976, that,—**vide** annexure P. 2, the Governor of Haryana ordered that he had completed his period of Probation satisfactorily with retrospective effect from the 30th of September, 1975. However, it is the case that even earlier petitioner on the 2nd of January, 1974, had put in an application seeking the grant of military service benefits under the statutory rules which were then in existence. It appears that the correct application of those rules posed considerable difficulties for the Government and the representation of the petitioner remained pending for want of certain clarifications which were sought from the respondent-State. As will appear hereinafter, the question was also pending for decision before the High Court and it was only on the 12th of December, 1975, that the judgment was rendered. Thereafter the State of Haryana effected an amendment in the definition of military service on the 4th of August, 1976, giving retrospective effect thereto. As a necessary consequence of this amendment the petitioner was informed,—**vide** annexure P. 4, dated 15th of January, 1977, that because he had not been enrolled in the service during the period of emergency, therefore, he could not be given the benefit of military service in his civil employment. His representation was, therefore, rejected on this consideration. Aggrieved thereby the petitioner has preferred this writ petition challenging the refusal to grant him the benefit of military service and in substance assailing the constitutionality of the amendment effected in the rules.

(4) In order to appreciate the issue in controversy it is both apt and indeed necessary to briefly notice the legislative history of the statutory rules around which the argument revolves. The composite State of Punjab on the 20th of July, 1965, in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, had promulgated the Punjab Government National Emergency (Concession) Rules, 1965, in order to afford certain concessions with regard to increment, seniority, pension and other service conditions to the persons who had rendered 'military service' as defined in rule 2 thereof. It was the stand of the respondents that despite some ambiguity in the language of the aforesaid definition, the intent

of the framers of the rules as also its subsequent application throughout the composite State of Punjab and later in the successor State of Haryana was to the effect that the benefit of military service was to be accorded to only those who had willingly come forward and had been enrolled or commissioned during the period of Proclamation of emergency and not earlier or later. The matter was, however, not free from difficulty and arose for consideration before this Court in *Indraj Singh* v. *The State of Haryana and others,* (1). Therein the firm stand taken on behalf of the respondent-State was that the petitioner was not entitled to the benefit as he had joined the military service earlier to the declaration of emergency. However, this stand of the respondent-State was not accepted and Justice A. S. Bains ruled that under existing rules the benefit was available to persons who had rendered military service during the period of emergency whether they were enrolled earlier to the Proclamation of emergency or during the period of emergency. Apparently because of this judgment the respondent State of Haryana on the 4th of August, 1976, in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India promulgated the Punjab Government National Emergency (Concession) Haryana Second Amendment Rules, 1976. Thereby the definition of rule 2 in the existing rules was entirely substituted in order to give effect to the intent of the respondent-State that the benefit of military service should be confined to persons who had been enrolled or commissioned during the period of operation of the emergency and not to others. This amendment was deemed to have come into force on the 1st day of November, 1966.

5. It is instructive to juxtapose the definition of military service in rule 2 as existing in the earlier Punjab Rules and the one substituted therefor by the Haryana Amendment:—

PUNJAB	HARYANA
2. *Definition.*—For the purposes of these rules, the expression 'Military service' means enrolled or commissioned service in any	For the purpose of these rules, the expression 'military service' means the service *rendered by a person who had*

(1) (1979) 3 S.L.R. 441.

of the three wings of the Indian Armed Forces (including service as a Warrant Officer) rendered by a person during the period of operation of the Proclamation of emergency made by the President under Article 352 of the Constitution on the 26th October, 1962, or such other service as may hereafter be declared as military service for the purposes of these rules. Any period of military training following by Military service shall also be reckoned as military service.

been enrolled or commissioned during the period of operation of the Proclamation of emergency made by the President under Article 352 of the Constitution of India on the 26th October, 1962, in any of the three wings of the Indian Armed Forces (including the service as a Warrant Officer) during the period of the said Emergency or such other service as may hereafter be declared as military service for the purpose of these rules. Any period of military training followed by military service shall also be reckoned as military service."

It is obvious that the core of the question here is whether the respondent State of Haryana has the power to retrospectively amend the definition of military service in the rules (as quoted above) and if so whether the actual exercise of that power herein suffers from the vice of unconstitutionality. Factually it may be noticed that the President of India had proclaimed the Emergency under Article 352 of the Constitution on the 26th of October, 1962, which lasted up to the 10th of January, 1968.

6. The brunt of the attack on behalf of the petitioner was first directed against the retrospectivity given to the substituted rule 2 by the Punjab Government National Emergency (Concession) Haryana Second Amendment Rules, 1976 (hereinafter called the Haryana Amendment Rules. It was sought to be contended that the earlier definition of military service in the Punjab Government National Emergency (Concession) Rules 1965 (hereinafter called the Punjab Rules) gave a vested right to the petitioner and all those who had served in the services during the period of Emergency which cannot now be possibly taken away from them by any means. It was argued that the petitioner and others of the class having once become entitled to a benefit granted by virtue of the Punjab Rules could not be divested thereof by a subsequent amendment of the same rules

with retrospective effect. In sum it was the stand that because the concession once made available to the petitioner under the earlier Punjab Rules was now sought to be taken away by the Haryana Amendment Rules, therefore, on this ground alone the latter were violative of Articles 14 and 16 of the Constitution of India.

7. I am unable to appreciate the aforesaid argument despite the vehemence with which it was sought to be pressed. If the legislature or the rule-making authority has plenary power to make an enactment retrospectively then it would follow inevitably that it has the power to take away a benefit or a right conferred by it earlier. In the present case, it deserves highlighting in particular that the petitioner's claim to increments, seniority, pension, etc., or other benefits accruing necessarily from the military service rendered by him is not derived from any inherent or fundamental right, but is itself mere creature of the earlier Punjab Rules, which had chosen to confer this concession or benefit on a limited class. A plain look at the provision of the Punjab Rules would show that these special advantages for increment, seniority and pension etc., for earlier military service are in the nature of a concession given to them. The petitioner or others like him could obviously have no prior legal right or inherent claim thereto. Not only it is so, the very rules themselves say the same and in fact were styled as such (i.e., concession) in their title itself. Therefore the same authority which conferred the concession would be equally entitled to take away or alter that concession if it had the power to legislate retrospectively. The issue would, therefore, boil down to a twin aspect. Firstly whether the respondent-State of Haryana has the power to give retrospectivity to the rules validly? If so, whether the taking away of the earlier concession by such retrospective operation would necessarily be violative of Article 14 or 16 of the Constitution of India.

8. There does not seem to be any manner of doubt that the respondent-State of Haryana has under the proviso to Article 309 of the Constitution of India plenary power to frame rules retrospectively till such time as the legislature makes an enactment with regard to the conditions of service of its employees. It was conceded that so far there is no enactment of the legislature on this point and consequently the respondent-State virtually steps into the shoes of the legislature and has plenary power to frame the rules retrospectively. The Haryana Rules on the face of it declare that the same are being

framed under the power derived from the proviso to Article 309. That being so, the matter appears to be too well-settled to deserve elaboration on principle and the reference in this connection may first be made to *B. S. Vadera* v. *Union of India and others* (2), wherein it was laid down as follows:—

> "* * * The rules, which have to be subject to the provisions of the Constitution, shall have effect, subject to the provisions of any such Act. That is, if the appropriate Legislature has passed an Act, under Article 309, the rules, framed under the proviso, will have effect, subject to that Act, but, in the absence of any Act, of the appropriate Legislature, on the matter, in our opinion, the rules, made by the President or by such person as he may direct, are to have full effect, both prospectively and retrospectively."

The aforesaid view has never been departed from and indeed a recent reiteration of the same appears in the following words in *Raj Kumar* v. *Union of India, etc.* (3).

> "* * * There is no doubt that this rule is a valid rule because it is now well established that rules made under the proviso to Article 309 of the Constitution are legislative in character and therefore, can be given effect to retrospectively."

Indeed this aspect of the case could obviously not be put under any serious challenge on behalf of the petitioners. Therefore, it has to be categorically held that the respondent-State of Haryana had the authority to frame rules with retrospective effect under Article 309 of the Constitution of India and has expressly done so by the Haryana Amendment Rules.

9. Once that is so, the issue next arises whether the taking away of the concession earlier granted by the Punjab Rules by the Haryana Amendment of the same set of rules would essentially involve violation of Article 14 or 16 of the Constitution of India. This again, to my mind, admits only of a categoric answer in the negative. It seems to be elementary that retrospective operation of any legislation must inevitably affect or alter the earlier existing rights. Merely

(2) A.I.R. 1969 S.C. 118.

(3) A.I.R. 1975 S.C. 1116.

because they do so retrospective legislation cannot be declared to be violative of the equality rule. Holding so would in effect imply that there can be never any valid power to legislate retrospectively. On principle there appears to me little doubt on this question but authorities of the final Court are not lacking on the point. Reference chronologically in this connection may be made first to *Mst. Rafiguenessa, etc.* v. *Lal Bahadur Chetri* (4). Therein the question before the Court was whether even vested proprietary right can be taken away or altered by retrospective legislation. It was observed as follows:—

> "* * * It is not disputed by him that the legislature is competent to take away vested rights by means of retrospective legislation. Similarly, the legislature is undoubtedly competent to make laws which override and materially affect the terms of contracts between the parties; but the argument is that unless a clear and unambiguous intention is indicated by the legislature by adopting suitable express words in that behalf no provision of a statute should be given retrospective operation if by such operation vested rights are likely to be affected. These principles are unexceptionable and as a matter of law, no objection can be taken to them."

The aforesaid view has been reiterated in different words by A. Alagiriswami J. in Raj Kumar's case (supra) as follows:—

> "* * * Once a law is given retrospective effect as from a particular date all actions taken under the Act even before the amendment was made would be deemed to have been taken under the Act as amended and there could be really no question of having to validate any action already taken provided it is subsequent to the date from which the amendment is given retrospective effect."

Lastly on this point are the observations of R. N. Mittal J. in Ram Phal Singh, etc. v. The State of Haryana, etc. (5), wherein by virtue of the retrospective operation of a rule an earlier Presidential order

(4) 1964 S.C. 1511.

(5) C.W. 3281/77, decided on 11th October, 1979.

was revoked and it consequently set at naught the service rights created thereby including the regularisation of the service of the petitioner, etc. Upholding the validity of such retrospective legislation it was observed as follows after a consideration of principle and authorities:—

> "* * * From the above discussion, it emerges that a retrospective law is one which also looks backward. It takes away or impaires vested rights acquired under the existing law. The very purpose of giving retrospective effect to a law is defeated if it cannot take away vested rights. Therefore, it cannot be held that a retrospective law is bad because it deprives a person of certain vested rights."

My learned brother G. C. Mittal, J., seems inclined to the view that the Punjab Rules are not to be treated as the granting of a concession only, but conferring a right which can be enforced in a Court of law. Assuming for arguments sake that this was so, this could obviously make no difference whatsoever to the constitutionality of the retrospective power to take away a legal right. Even if it be held that the Punjab Rules had conferred enforceable rights on the petitioner the same could be taken away by the self-same authority which had earlier conferred them in case it has the power to legislate retrospectively. Here the respondent-State's capability to give retrospective effect to the rules is not in doubt and, therefore, whether the earlier right conferred was in the nature of a statutory concession or an enforceable right in a Court of law the same could be altered or effaced by a valid subsequent legislation.

10. To conclude on this aspect it must be held that the respondent-State of Haryana having plenary power to enact the rules retrospectively under Article 309 of the Constitution of India can inevitably take away any concession granted earlier by the same set of rules without in any way infracting or violating the equality rule enshrined in Articles 14 and 16 of the Constitution of India.

11. Before adverting to the main argument on the point of the validity of the classification, it seems necessary, in fairness to the learned counsel for the petitioner to briefly notice the two contentions raised on his behalf. Counsel went to the length of arguing

that neither by any statutory rules nor by enactment, could a concession be given to only those joining the service after the proclamation of emergency in 1962 and if at all it must be given to all the members of the three fighting services. Indeed he contended that if such a concession was confined even to the whole of the one wing of the services, namely, the Army only, the same also must be held to be discriminatory. According to him, such a concession must bring within its ambit all the three wings of the Army, the Navy and the Air Force. Apart from baldly projecting these contentions, no rationale in support thereof could, however, be presented. Despite being repeatedly pressed by the Bench to elaborate the point, counsel remained content with merely reiterating the aforesaid supposed dictums and since these appear to me as neither supportable on principle, nor any authority could be cited in support thereof, the same have to be rejected out of hand.

12. Inevitably, as a corollary to the aforesaid dogmatic stand that even a concession must be given to all and each member of the three services, it was then urged on behalf of the petitioners that the classification of persons who had been enrolled or commissioned during the operation of the proclamation of the emergency, was not a reasonable one and therefore was violative of Articles 14 and 16 of the Constitution of India. The alternative limb of this main contention was that even if there be a distinct and clear-cut class of volunteers opting for military service in face of war, nevertheless the conferring of the concession on this class would have no nexus with the object sought to be achieved by the Rules. It was the case that the persons who were enrolled before the emergency, as also those who had volunteered during its operation were so well-knit and inseparable a class that to separate one from the other for the grant of a concession would be utterly arbitrary and consequently unconstitutional.

13. Now a closer analysis of the aforesaid argument which appears to me as a rather tall one, would bring out the various facets of its fallacy. As has been said earlier, an examination of the scheme and body of the whole of Punjab Rules as originally framed in 1965 would indicate that these are obviously in the nature of a concession conferred by the government on those who in its view had rendered

service to the country during operation of the emergency. Prior to these Rules, no such benefits with regard to the increment, pension, seniority or promotion etc. were available to men who may have rendered military service. It has to be borne in mind that by that time, emergency had been in operation for well-nigh three years. It is not as if there was already any fundamental or inherent right existing in any serviceman to claim these benefits whenever he shifted to Civil employment. Therefore, the respondent-State could confer these benefits on any particular class and the exclusion of another class therefrom could be neither labelled as discriminatory nor as having taken away a vested right. It is thus evident and has to be clearly assumed that originally the respondent-State granted these concessions or benefits in its bounty as a recognition for military service, both as an incentive and as a reward. It seems to be amply settled that at the time of originally granting the concession, it is for the State to choose the beneficiary thereof, and where it is sought to be extended to a large body of persons, only then perhaps the considerations of their being an identifiable class might well arise. That being so, what has to be considered is the question whether persons enrolling or seeking commission, in face of war or emergency are a class distinct from those who may be called as professional careerists or men who join the service in times of peace as employment.

14. It would appear to me as rather obvious that persons who voluntarily come forward to enrol or seek commission during the proclamation of an emergency and the consequent imminent danger of war would form a class by itself. It is axiomatic that in face of the mortal danger which war poses, many would hesitate to take on its hazards. Indeed it is too well-known and deserves little elaboration that whilst in times of peace there may be no dearth of recruits in many a State, during times of war conscription or drafting of the manhood even against the will of the persons concerned becomes necessary. Therefore, the class of persons who volunteer for war service with all its mortal hazards (and many a times on terms of uncertainty, if employment which are far from attractive) are undoubtedly distinct and separate from the professional service careerists. Pithily, this is a class who patriotically answer the call to arms during the time of war as against those who in peace may professionally seek employment in the services. This is in no way by way of denigration of persons who join the services in times of peace who

equally perform an honourable role, but undoubtedly different from those who volunteer to come forward to face the patent and sometimes mortal hazards of emergency. Equally it may be noticed that those who have joined the services in the times of peace are by the very nature of things obliged to serve during the war whether willingly or unwillingly. However, there is the other class of men who are under no such obligation, but voluntarily come forward even with the danger of war staring them in the face and at a time when the country's need for them, is the greatest. To put it more precisely, the persons who join the services before the declaration of emergency would fall clearly within the ken of professional soldiery and regular service careerists as against those who willingly volunteer to enrol or seek commissions during the emergency in face of war. Viewed from any angle, therefore, there appears, to be no escape from the fact that persons who willingly volunteer for military service during the operation of an emergency can and indeed must be treated as a class by themselves. Far from being assailable, as an unreasonable one, this classification indeed appears to me as most natural.

15. Again the rationality of confining the concession and the benefits conferred by the Rules to a relatively smaller class than the whole gamut of all and every defence personnel who might have served in the emergency, appears to be itself evident. It was rightly argued by the learned Advocate-General that giving these concessions to the whole of the defence services of India which run into many millions, may itself be counter-productive and would frustrate the patent object of the respondent-State to both invite volunteers during times of danger or to equally reward them for having answered the clarion call to duty. Therefore, the desire of the respondent-State to limit these benefits to a smaller number and focus them pointedly on these alone who come forward voluntarily at times of clear danger to the country, and many a times irrespective of any career motivations, appears to be both rational and laudable. The norrowing down of the classification is, therefore, plainly based on considerations of rationality.

16. In this context yet again the fact cannot be excluded from consideration that the conferring of these concessions must inevitably

impinge on the right of those who are the regular and ordinary members of the civil service, which the released service personnel may join. Whilst rewarding military service, it would equally be the duty of the respondent-State to watch the legitimate interests of the regular civil service, who had earlier served in those departments and were entitled to presume the continued existence of their seniority, rights of promotion etc. Released army personnel joining these civil services with the concession on the point of seniority, promotion etc., which bring in an inbuilt weightage for military service in their favour undoubtedly impinge on the rights and prospects of the existing members of the civil services. Therefore, the respondent-State may and rightly would wish to limit the class on which these peculiar benefits and concessions are to be conferred *vi-a-vis* the regular existing incumbents of the civil services. Therefore, reason demands that the concession should be given within the four corners of prudence so as to encourage the volunteers who come forward during the times of war and also not to overly deter or dishearten the ordinary regular members of the civil service, who may not have either the opportunity or the qualification to render such war service during the emergency. From this point of view also, the respondent-State might rationally wish to limit the grants of concessions which are weighted heavily in favour of the ex-serivcemen to the limited class of willing volunteers in times of war as against the whole gamut of the professional soldiery. Therefore, no spokes need be put in the wheel of this laudable desire of the respondent-State to steer-clear of the rival interests of military service on one side and the rights of the existent incumbents of the civil service on the other. It would thus be evident that the attempt to limit the concessions to a smaller class is based on the clearest considerations of rationality and cannot possibly be assailed as arbitrary or unreasonable.

17. Coming now to the object sought to be achieved by the Rules, it appears to be writ large thereon that a twin purpose underlies the same. It is plainly to both provide an incentive to citizens to come forward in times of war when the country's need for service personnel is the highest and equally to reward these willing volunteers and to make it plain that the services rendered by them, during the emergency would neither be forgotton nor lost to them in later life when they return to ordinary civil employments under the State. As was already noticed, the initial hesitation in many to come forward during times of war and the

added hazard that the service rendered in the military, may well be temporary, has to be over-come. The purpose and the object of the Rules was thus directed on these twin lines. There appears to be no manner of doubt that the narrower classification adopted by the State (as against extending it to the whole of the defence services serving during the emergency) has a clear nexus to the object and the purpose of the Rules.

18. With the greatest respect to my learned brother Mital, J. I am unable to agree with his conclusion that the whole gamut of the defence services which served during the emergency is so inseparable a class that no limiting or narrowing down of the same is permissible under the Constitution. Equally, it merits notice that at no stage either the initial appointment of the petitioner Dei Chand, or the validity thereof was raised or put in issue. The sole claim in the writ petition was with regard to the claim to seniority, pension, promotion, etc. on the admitted basis that he now stood confirmed in the service. With respect, any such hypothetical considerations, which were never in issue, can be of little relevance in construing the constitutionality or otherwise of the Haryana amendment. Obviously, the individual facts of the case of any one of the many petitioners could be of little or no relevance at all. These ancillary and fortitious factors, in my view, cannot be meaningful considerations for testing the Haryana amendment on the touch-stone of Articles 14 and 16 for its constitutionality.

19. What further deserves highlighting here is that not the least improper motive or ulterior considerations is even suggested on behalf of the petitioner in assailing the limited class for the conferment of concessions and benefits under the Rules. As has already been noticed, the desire to limit and narrow down the classification, is based on logical and reasonable considerations. It was noticed at the out-set that the stand of the respondent-State is that from the very beginning its intent was to confer the benefit on this limited class, but apparently the draftsman was unable to translate that intent into precise language with the result that the same was wide enough to cover both those enrolled during the emergency as also those prior to it. It deserves recalling that even earlier the stand of the respondent-State before this Court in *Indraj Singh* v. *The State of Haryana and others* (supra), was that the concessions were

confined to only those who had joined the military service during the emergency and not to those who had done so earlier. When the Court's judgment went against the respondent-State, it resorted to the legitimate process of making its intention clear by effecting an amendment in the Punjab Rules. It is not for this Court to say that the respondent-State is now barred for all times to implement its clear intent to confine the concessions to a limited class.

20. Once it is held that the object or the purpose of the Rules is valid and laudable and the classification is rested on an intelligible differentia, then it appears to be well settled that it is not for the courts to pronounce on either the desirability of the object or to enter into a mathematical evaluation of the foundation of the classification. In such a situation the courts are not to interfere because the respondent-State is obviously the best judge to decide on whom to confer the benefits and concessions. It is unnecessary to multiply authorities. In *The State of Jammu & Kashmir* v. *Triloki Nath Khosa and others* (6), Chanderachud, J., speaking for the Constitution Bench observed as follows:—

> "Judicial scrutiny can, therefore, extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an enquiry permissible it would be open to the courts to substitute their own judgment for that of the legislature or the rule-making authority on the need to classify or the desirability of achieving a particular object."

Again a recent enunciation of the rule by a Bench of seven Judges in *Pathumma and others* v. *State of Kerala and others*, (7), is in the following terms:—

> ".....It is also clear that in making the classification, the legislature cannot be expected to provide an abstract symmetry but the classes have to be set apart according to the necessities and exigencies of the society as dictated

(6) A.I.R. 1974 S.C. 1.
(7) A.I.R. 1978 S.C. 771.

by experience and surrounding circumstances. All that is necessary is that the classification should not be arbitrary, artificial or illusory .....".

21. To conclude, I am of the view that the volunteers who willingly come forward to render military service, in times of war, and those of emergency form a distinct class and the respondent-State was fully within its rights to confer the benefits and concessions of the statutory rules on this limited class. The classification rests on a clearly intelligible differentia and has a direct nexus with the object and purpose sought to be achieved by the Rules. The Haryana amendment, therefore, does not suffer from any vice of unconstitutionality and has to be upheld. Inevitably, all the civil writ petitions are without merit and have to be dismissed. The parties will, however, be left to bear their own costs.

Gurnam Singh, J.—I agree.

Gokal Chand Mital, J.

(22) In this set of three writ petitions, the challenge is to the *vires* of the Punjab Government National Emergency (Concession) Haryana Second Amendment Rules, 1976, published on 4th of August, 1976, in the Haryana Government Gazette (Extraordinary), by Notification No. GST-182/Const./Art., 1409/Admn. (II)/76, dated 4th of August, 1976. The main challenge is to the amendment made in the definition of 'military service'.

(23) These writ petitions were earlier heard by a Division Bench and it was considered that the matter was of substantial importance and deserved to be decided by a Full Bench and that is how these writ petitions have been placed before us. For facility of reference, we are noticing the facts of C.W. No. 231 of 1979 and it is not disputed that the facts of the other writ petitions are similar.

(24) Dei Chand petitioner joined the Indian Air Force on 9th of December, 1960, as a regular combatant and served there upto 15th of September, 1969, when he was released. During his tenure of military service, first there was Chinese Aggression in October,

1962, and then Pakistani Aggression of 1965. After his release, he competed in an open examination of the Haryana Civil Services (Executive Branch) and other Allied Services, held in 1970-71 by the Haryana Public Service Commission and was selected in the general category of Allied Services against reserve quota for the military released personnel and joined as Assistant Excise and Taxation Officer on 22nd of May, 1973. He successfully completed the period of his probation,—*vide* order, annexure P-2.

(25) When the petitioner joined the Excise and Taxation Department, the Punjab Government National Emergency (Concession) Rules, 1965, annexure P-3, (hereinafter referred to as the Punjab Rules), framed under Article 309 of the Constitution of India, were in force and he applied,—*vide* his representation No. 6029, dated 2nd of January, 1974, for the grant of military service benefits to him for purposes of increments, seniority, promotion etc., under the aforesaid statutory rules. While the petitioner's representation was pending, the Haryana Government, on 4th of August, 1976, published the Punjab Government National Emergency (Concession) Haryana Second Amendment Rules, 1976, annexure P-5 (hereinafter referred to as the Haryana Rules), in exercise of its powers conferred by the proviso to Article 309 of the Constitution of India. Due to these amended rules, the representation filed by the petitioner was rejected by the Excise and Taxation Commissioner, Haryana,—*vide* order dated 15th of January, 1979, the English translation of which is annexure P-4, which reads as under:—

> "You are hereby informed that because you were not enrolled in the military during the period of Emergency, therefore, you cannot be given the benefit of military service towards civil service. Hence your abovesaid representations have been rejected after consideration."

Thereafter, the present writ petition was filed under Article 226 of the Constitution of India to challenge the *vires* of the Haryana Rules and in particular the definition of 'military, service' being violative of Articles 14 and 16 of the Constitution.

(26) In order to appreciate the point, it will be useful to reproduce the definition of 'military service' as contained in the Punjab Rules and the Haryana Rules. The Punjab Rules define 'military service' as follows:—

> "'Military service' means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including service as a Warrant Officer) rendered by a person during the period of operation of the proclamation of Emergency made by the President under Article 352 of the Constitution on the 26th October, 1962, or such other service as may hereafter be declared as military service for the purposes of these rules. Any period of military training followed by military service shall also be reckoned as military service."

The definition of 'military service' under the Haryana Rules is as follows:—

> "'Military service' means the service rendered by a person, who had been enrolled or commissioned during the period of operation of the proclamation of Emergency made by the President under Article 352 of the Constitution of India on the 26th October, 1962, in any of the three wings of the Indian Armed Forces (including the service as a Warrant Officer), during the period of the said Emergency or such other service as may hereafter be declared as military service for the purposes of these rules. Any period of military training followed by military service shall also be reckoned as military service."

It will also be useful to notice that the President of India proclaimed Emergency under Article 352 of the Constitution on 26th of October, 1962, which lasted up to 10th of January, 1968. It would further be useful to notice that the Haryana Rules, although were published on 4th of August, 1976, were brought into force retrospectively from 1st of November, 1966.

(27) Let us now consider the definition of 'military service' as it originally stood. A reading of the same shows that the service

rendered by all commissioned officers or personnel enrolled in any of the three wings of the Indian Armed Forces during the period of operation of proclamation of Emergency from 26th of October, 1962, was to be recognised as military service besides such other service which may be declared as military service for purposes of the Rules. It was not necessary for any such person to have joined in any of the three wings during the period of proclamation of Emergency. All persons who joined either before or during the proclamation of Emergency came within the definition and the service rendered by them during the period of operation of the proclamation of Emergency was to be considered as military service of which benefit could be given to them for purposes of increments, seniority, pension, promotion etc The period of military training followed by military service was also to be recognised as military service. A look at the definition of 'military service' brought in with retrospective effect by the Haryana Rules shows that 'military service' means the service rendered by a person who had been enrolled or commissioned during the period of operation of the proclamation of Emergency made on 26th of October, 1962, in any of the three wings of the Indian Armed Forces. For taking the benefit of military service it was necessary that the person had been enrolled or commissioned during the operation of the proclamation of Emergency and those who joined before the proclamation of Emergency, although served during the operation of the proclamation of Emergency were not entitled to the benefit of military service rendered during the operation of Emergency for purposes of increments, seniority, promotion, pension etc. However, the period of military training followed by military service was to be recognised as military service. The net result of the amended definition was that a person who was enrolled or commissioned on or after 26th of October, 1962, was to get the benefit of the military service rendered during the proclamation of Emergency whereas all persons who were enrolled or commissioned on 25th of October, 1962, or before that date, were not entitled to the benefit of military service rendered by them during the operation of the proclamation of Emergency.

(28) The counsel for the petitioners has strenuously urged that the amended definition of 'military service' by the Haryana Rules is violative of Articles 14 and 16 of the Constitution as there is no intelligible differentia or *nexus* for giving the benefit of military

service to those who were enrolled or commissioned during the proclamation of Emergency as compared to those who joined before the proclamation of Emergency but served during the operation of the proclamation of Emergency as both sets of persons served during the Emergency and were subject to the same risk of Chinese and Pakistani Aggression. It is further urged that the differentiation or classification is wholly unreasonable and arbitrary as no object is achieved by the classification so made.

(29) As against the aforesaid stand of the counsel for the petitioners, the stand on behalf of the State is that the classification is reasonable as a clear distinction has been made between those who chose military service as a career before the proclamation of Emergency and those who joined during the Emergency to serve the country during foreign aggression, only during the period of Emergency, either in the Emergency Commission or in the Short-term Commission. It was further urged that since these were mere concessions, it was open to the Government to grant the same to one set of persons and refuse to another set and the matter could not be brought before a Court of law.

(29-A) After hearing the counsel for the parties, we are of the view that the Haryana Rules are violative of Articles 14 and 16 of the Constitution as the classification made is wholly unreasonable and arbitrary. Whether under the original definition or under the amended definition, the benefit of the period spent in military service during the proclamation of Emergency is to be given. If the benefit of military service during the proclamation of Emergency is to be given, then we do not find any nexus or basis for granting the benefit to only those who were enrolled or commissioned during the operation of Emergency and not to those who were enrolled or commissioned before the proclamation of Emergency but served during the period of Emergency. Whether a person joined military service before the proclamation of Emergency or during its continuance, all would be liable to serve the country equally during the proclamation of Emergency subject to the same risks of military service It is quite possible that a trained military

officer who joined before the proclamation of Emergency may be sent on the front to face the aggression and another person who was enrolled or commissioned on 26th of October, 1962, or soon thereafter, may not be sent on the front. We can understand the *nexus* that those who served in any of the three wings of the Indian Armed Forces during the proclamation of Emergency would get benefit under the Rules but to deny the benefit of the Rules to those who joined before 26th of October, 1962, no reasonable argument, *nexus* or basis for the differentia has been pointed out apart from that those who joined the military service during the proclamation of Emergency came with open eyes that they will have to serve the Country during foreign aggression with all consequential risk to life and those persons joined either the Emergency Commission or the Short-term Commission. We are not impressed by the differentiation pointed out on the basis of Emergency Commission or Short-term Commission. It was not disputed before us that even during the Emergency, regular commissioned officers were also being enrolled besides the enrolment in the Emergency Commission and the Short-term Commission. If the stand of the State is correct that those who joined military as a career would not be entitled to the benefit of these Rules, then their argument falls on the basis of the amended definition itself. Under the amended definition, no differentiation has been made whether the officer was enrolled during Emergency in the regular Commission, Emergency Commission or Short-Term Commission and under the amended definition the benefit of military service rendered during proclamation of Emergency is admissible to all the categories irrespective of the fact whether the officer joined military as a career or because of Emergency due to foreign aggression. Moreover, the risk to life is well-known to all when they join military service as a career in regular Commission and the risk is no greater for those who join Short-Term or Emergency Commission, as all have to serve equally in peace as well as in war.

(30) As regards the officers who are enrolled, they are combatants among the enrolled officers, there is no such thing like short-term or Emergency enrolment. Enrolment of officers who are known as combatants is always a regular appointment and under

the amended definition all such officers who are enrolled during the proclamation of Emergency are entitled to the benefit of military service. If there is no such differentiation of enrolled officers as regular, Emregency or short-term, then the argument of the learned Advocate-General, Haryana, falls to the ground. Therefore, the amended Rules are wholly arbitrary when they deprive the benefit of military service rendered during Emergency merely because the petitioners were enrolled before the proclamation of Emergency although served during the Emergency in the same manner as the officers enrolled during Emergency did. To our mind, this is a finical or mini classification which is not permissible. The persons who served during Emergency is a class by itself which is not capable of further subdivision as is sought to be done in this case.

31. In para 11 of the return, the State has pleaded that the representation of the petitioner could not be considered before the Haryana Rules were published as certain clarifications were being obtained and it is further submitted that in case the petitioner's representations had been decided before 4th of August, 1976, i.e., before the coming into force of the amended rules, and even if he had been granted the benefit of the military service under rule 4 of the Punjab Rules for purposes of increments, seniority etc., then those benefits could have been withdrawn by the competent authority after the coming into force of the Haryana Rules which were made retrospective with effect from 1st of November, 1966. If this stand of the State is correct, then because of the Haryana Rules, the benefit given to Dei Chand petitioner who was given relaxation of age limit by virtue of rule 3 of the Punjab Rules for the period he rendered military service and was appointed in the Excise and Taxation Department, the relaxation has to be withdrawn with the result that if no benefit of the military service is given to him for the period spent therein, his initial appointment in the Excise and Taxation Department itself would be bad in law and he will have to be thrown out of service. The learned Advocate-General, Haryana, stated that the Government will not terminate his services on this score but at the same time urged that the benefit of increments, seniority etc. will not be given to the petitioner. This matter cannot be left at the sweet-will of the State Government to apply

the amended definition of 'military service' to the petitioner for depriving him the benefit of increments, seniority, promotion etc., but at the same time not to apply that definition for purposes of granting relaxation of age limit, whereunder the age limit is extended for the period spent in military service during proclamation of Emergency. We are dealing with the *vires* of the Haryana Rules, by virtue of which the definition of 'military service' has been amended. If the amended rule is valid, then as a matter of law, the necessary consequence would be that the petitioner's intial appointment in the Excise and Taxation Department would be bad in law.

32. We find no merit in the argument of the learned Advocate-General that the Punjab Rules gave concession to the petitioners and the same can be withdrawn by the State Government at any time. The Punjab Rules were framed under Article 309 of the Constitution of India, the benefit of which would be available to each one who has served in the military during the proclamation of Emergency as a matter of right as once statutory rules are framed they are not to be treated as mere concessions but a rules are framed they are not to be treated as mere concessions but a right created under the statutory rules which can be enforced in a Court of law. However, it is open to the State Government to amend the Rules and if the amended Rules are valid, they will take the place of the original rules but if the same are invalid, then the original rules will stand. Therefore, we hold that the benefit granted under the Punjab Rules was not a concession but a statutory right which was capable of being enforced in a Court of law.

33. The Haryana Rules have been made retrospective with effect from 1st of November, 1966. The other anomaly which arises is that all persons who were enrolled or commissioned before the proclamation of Emergency in any of three wings of the Indian Armed Forces but came out of the service before 1st of November, 1966, would be entitled to the benefit of military service rendered during Emergency. To them only the Punjab Rules would apply. In this manner also, the alleged object of the State Government to give benefit of military service only to

those who joined the Emergency Commission or the Short-Term Commission is not achieved. Therefore, out of two persons similarly situated, who were enrolled or commissioned before 26th of October, 1962, the one who was released from military service before 1st of November, 1966, will get benefit of his service during the proclamation of Emergency whereas the other who was released from military after 1st of November, 1966, would not be able to get benefit the military service rendered by him during the proclamation of Emergency. This further demonstrates discrimination between the persons similarly situated.

34. Therefore, viewing the case from any angle, it is fully established that the definition of 'military service' contained in the Haryana Rules is arbitrary, unreasonable and discriminatory having no **nexus** and the object sought to be achieved is not being achieved and, therefore, is clearly violative of Articles 14 and 16 of the Constitution of India and we declare it to be *null and void.*

35. Another argument was raised before us by the counsel for the petitioners that the Haryana Rules are violative of Articles 14 and 16 of the Constitution on account of being retrospective in nature. Since we have declared the amended definition to be *null and void,* for the reasons already recorded above, it is not necessary to go into this question.

36. For the reasons recorded above, Civil Writ Nos. 5717 and 6631 of 1976 and 231 of 1979, are allowed and the order of the Excise and Taxation Commissioner, Haryana, dated 15th of January, 1979, annexure P-4, in C.W. No. 231 of 1979, and similar orders passed in other connected writ petitions, are quashed and a direction is issued to reconsider the representations and cases of the petitioners afresh for giving them the benefit of military service towards civil service in regard to increments, seniority promotion etc., admissible to them in accordance with law, without taking into consideration the definition of 'military service' contained in the Haryana Rules. Since the matter is pending consideration for a long time, it may be disposed of finally within three months from today. Each petitioner will be entitled to his costs (counsel's fee being Rs. 200 in each case).

ORDER OF THE COURT.

37. In accordance with the majority opinion, the writ petitions are hereby dismissed. The parties are, however, left to bear their own costs.

S. S. Sandhawalia, C.J.
Gurnam Singh, J.
G. C. Mital, J.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia C.J., P. C. Jain and D. S. Tewatia, JJ,

DES RAJ,—*Petitioner.*

versus

SHAM LAL,—*Respondent.*

Civil Revision No. 1693 *of* 1978.

April 3, 1980.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 2(a), (d) & (g) and 13(2)(ii) (b)—Demised premises identified as shop in the lease deed—Deed otherwise silent as to the purpose for which the building is to be used—Identification of the building—Whether per se *indicative of the use to which the building can be put by the lessee—Shop—Whether can be used as a godown without attracting the provisions of Section 13(2)(ii)(b)—What amounts to change of user by a tenant—Stated.*

Held, that where the lease deed describes the demised building merely as a 'building' without any further description thereof, such a lease deed would be considered to be silent as to the use for which the demised building is let out. Not only this, the said lease deed by itself would even be considered silent as to the category of building i.e. it would not show whether the demised building is a godown or a out-house or a non-residential building or residential building or a 'scheduled building', with the result that in such a case it would perhaps be open to a lessee, if no other indication is available from the evidence oral or documentary suggestive of the category of the building so leased to any use, without attracting the provisions of