

2026:PHHC:088998



205

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA-2005-2009 (O&M)
Decided on:-01.07.2026**

Registrar, CCS Haryana Agriculture University,
Hisar and another

....Appellants..

VS.

Geeta Devi and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Shreenath A. Khemka, Advocate
for the appellants-defendants (University).

Mr. Pankaj Maini, Advocate,
for the respondent(s)-plaintiff.

HARKESH MANUJA J. (Oral)

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 22.12.2001 and 28.03.2008 passed by the Courts below whereby a suit for declaration to the effect that the respondent-plaintiff being an ex-army person, who was later re-employed as Driver with the appellants-University was entitled to the benefit of increment and pension according to the Punjab Government National Emergency (Concession) Rules 1965 (for short, **“1965 Rules”**) which provides that the period of military service be counted for increments, seniority and pension and the appellants were directed to release the benefits after re-fixation of pay in favour of respondent-plaintiff with arrears being confined to 38 months prior to the date of filing of the suit.

2. Briefly stating, the case set-up by the respondent-plaintiff was that he joined military service on 30.04.1963 i.e. during the first Emergency period from 26.12.1962 to 10.01.1968 and stood discharged there from on 16.04.1973. Thereafter, respondent-plaintiff was re-appointed as Driver with the appellants-University on 18.03.1981. The case set-up in the suit for declaration preferred at the instance of respondent-plaintiff was that he was entitled for benefits in terms of 1965 Rules. Upon notice, the appellants-University appeared and opposed the claim set-up in the suit while submitting that since the respondent-plaintiff was appointed as Driver after relaxation of academic qualifications being an ex-servicemen, he was not entitled for any further benefit as claimed in the suit. The factual aspect were not disputed.

The learned Civil Judge Junior Division, Hisar (*hereinafter referred to as "trial Court"*) vide judgment and decree dated 22.12.2001 decreed the suit filed at the instance of the respondent(s)-plaintiff by granting him the benefit of counting period from 30.04.1963 to 10.01.1968 (the respondent-plaintiff worked during the first Emergency) and from 03.12.1971 to 15.04.1973 (the period of second Emergency during which the respondent-plaintiff worked). The appellants were further directed to re-fix the pay of the respondent-plaintiff, however, the arrears were restricted up to 38 months prior to the date of filing of the suit.

3. Being aggrieved, the appellants preferred the first appeal, however, the same came to be dismissed vide judgment and decree dated 28.03.2008 passed by the learned Additional District Judge, Hisar (*hereinafter referred to as "First Appellate Court"*). Hence, the present regular second appeal.

CONTENTION(S):

ON BEHALF OF THE APPELLANT(S)-DEFENDANT(S):

4. Learned counsel for the appellants while relying upon decision rendered by the Hon'ble Supreme Court in case of "***Punjab State Electricity Board, Patiala and another vs. Surjit Singh Brar***", 1996 Supp. (8)SCR-723, submits that although the respondent-plaintiff being an ex-servicemen having joined the military service during the first Emergency was entitled to draw the benefits of military service during the first Emergency period i.e. 30.04.1963 to 10.01.1968 , in terms of 1965 Rules, however, he was not entitled for benefit of the period of service rendered during the second Emergency i.e. 03.12.1971 to 15.04.1973 as his claim was not supported by rules, regulations or instructions.

ON BEHALF OF THE RESPONDENT(S)-PLAINTIFF(S):

5. Per contra, learned counsel appearing on behalf of respondent-plaintiff submits that the judgments and decrees passed by the Courts below being based on proper appreciation of material facts thus, call for no interference and as such, present appeal was liable to be dismissed.

DISCUSSION AND REASONING:

6. I have heard learned counsel for the parties and gone through the paper book.

7. In the present case, admittedly, the respondent-plaintiff joined the military services on 30.04.1963 and was discharged on 16.04.1973, thereafter, he joined the appellants-University as Driver on 18.03.1981. While relying upon the 1965 Rules, the claim of the respondent(s)-plaintiff was for award of counting of his military service rendered during the following two emergencies for the purposes of increments and pension:-

“1st Emergency (China War) declared by the Govt. of India between 26.12.1962 to 10.01.1968.

2nd Emergency (Bangladesh War) declared by the Govt. of India between 03.12.1971 to 15.04.1973.”

8. Both the Courts below while relying upon the 1965 Rules went on to decree the suit preferred at the instance of respondent-plaintiff while awarding him the benefit of military service rendered during first Emergency period i.e. from 30.04.1963 to 10.01.1968 and thereafter, during second Emergency period i.e. from 03.12.1971 to 15.04.1973, however, failed to take into consideration the law laid down by the Hon’ble Supreme Court in ***Surjit Singh Brar’s case (supra)*** whereby it was held that only military service rendered during the first Emergency (Indo-China war, 1962) counts as "military service" for benefits under the 1965 Rules, and service rendered during a subsequent Emergency (Indo-Pak/Bangladesh war) cannot be tacked on unless separately declared as such by the Government. Accordingly, the two increments granted to him for the second Emergency period were held to be wrongly given and rightly withdrawn, and his suit was dismissed. Relevant portion thereof is reproduced hereunder:-

“5. The contention raised by the learned counsel for the appellant is that under the Rules, the personnel who rendered the military service during Emergency of Indo-China war alone is entitled to the benefit. Though the respondent continued after the lifting of the first Emergency and during the period of second Emergency, namely, Indo-Bangala War, the period of said service would not be counted under the Rules. We find force in the contention. This question, in the first instance, was considered by this Court in Ex. Capt. Randhir Singh Dhull v. S.D. Bhambri and Ors., [1981] 2 SCC 338 and this Court had granted the benefit. The same was reviewed by this Court in Ex. Captain A.S. Parmar

and Ors. v. State of Haryana and Ors., (1968) LAB. IC 894 wherein this Court extracted the definition of the military service which reads as under:

"Definition: For the purposes of these rules, expression military service, means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including services 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 purpose of these rules. Any period of military training followed by military service shall also be reckoned as military service."

"4. Increments, seniority and pension, Period of military E service shall count for increments, seniority and pension as under:-

(i) Increment- The period spent by a person on military service, after attaining the minimum age prescribed for appointment to any service or post to which he is appointed, shall count for increments. Where no such minimum age is prescribed the minimum age shall be as laid down in rules 3.9., 3.10 and 3.11 of the Punjab Civil Services Rules Volume II. This concession shall, however, be admissible only on first appointment."

6. This Court had held that the words emphasised clearly showed that it is only the service rendered during the period of Emergency that would be taken into account and not any other period. No doubt, there is also provision for other service being declared as military service, but no order of the Government making such declaration has been brought to our notice. Thus, it could be seen that this Court has settled that the military service would be the service rendered during the first Emergency unless there is any further declaration under the Rules given by the State covering the second Emergency. The personnel who joined the service during the period of first Emergency is not entitled to claim the benefit of the period of service rendered during the second Emergency. The learned counsel for Bthe respondent placed reliance on the Circular Letter No. 325 SII (3)-72 of 5866

dated February 24, 1972 and contended that the Government of India in paragraph 2 thereof, has issued the benefit of military service to those who continued under the first Emergency. The State Government in paragraph 3, have also extended the same benefit and, therefore, the respondent is entitled to the benefit thereof. We find that there is no force in the contention. Para 2 thereof relates to the Central Government Servants who have joined the military service during second Emergency and continued thereafter became entitled to the benefit. Admittedly, the respondent is not a Central Government Servant and, therefore, para 2 thereof has no application. Para 3 also does not apply to the respondent because he was not in Government Service before he joined the military service which reads as under:

"The Punjab Government have decided that the civil Government employees who are/have been called for military service during the present Emergency shall be eligible to the concessions enjoined in the Punjab Government National Emergency (Concessions) Rules, 1965 read with the Demobilised Armed Forces Personnel (Reservation of Vacancies in the Punjab Non-Technical Service) Rules, 1968."

7. *A reading thereof clearly indicates that the candidate must be a Government servant having been called for the military service during the second Emergency; such Government servant shall be eligible to the concessions enjoined in the Punjab Government National Emergency (Concessions) Rules, 1965 read with the Demobilised Armed Forces Personnel (Reservation of vacancies in the Punjab Non-Technical Service) Rules, 1968. Under these circumstances, the respondent is not entitled to two increments which were wrongly given and rightly withdrawn.*

8. *The appeal is accordingly allowed. The orders of the High Court and the District Judges stand set aside and the suit of the respondent stands dismissed. No costs."*

9. This position of law has been consistently endorsed by this Court in a catena of decisions. In ***Capt. K.S. Shergill (Retd.) versus State of***

Punjab, 2001(4) SCT 267, a Single Bench of this Court held that a perusal of Rule 2 of the 1965 Rules clearly showed that military service had not been subsequently defined by way of including service rendered during the second Emergency, and accordingly, a petitioner who had served during both the first and second Emergency periods was held entitled to the benefit of the first Emergency period alone, with the relief in respect of the second Emergency period being declined.

In **Pritam Singh versus Punjab State Electricity Board, 1997(4) SCT 471**, a Division Bench of this Court, following the Full Bench decision in **Rajender Kumar versus State of Haryana, 1992(2) PLR 754**, categorically held that the benefits as spelled out in Rule 4 of the 1965 Rules, including increments and seniority, are limited to the period of the first Emergency and cannot be extended to the second Emergency declared by the President on 03.12.1971, and that any earlier Division Bench decision to the contrary was rendered per incuriam, not having been decided with reference to the Full Bench authority.

10. The Hon'ble Full Bench of this Court, in **Dei Chand Phaugat v. State of Haryana 1980 SCC OnLine P&H 91**, extensively dealt with the rationale for confining the benefit only to those who had enrolled or been commissioned during the Proclamation of Emergency, and not to those who joined either earlier or later. It was held that persons who voluntarily come forward to enroll or seek a commission during the subsistence of an Emergency, in the face of the imminent danger of war, constitute a class distinct from professional career servicemen who join in times of peace or continue in service thereafter as a matter of ordinary employment. Those already in service prior to the Emergency stand obligated, by the very nature

of their engagement, to serve during the war whether willingly or not; whereas those enrolling during the Emergency do so voluntarily, without any pre-existing obligation, answering the call to arms precisely when the country's need is at its highest and the hazards of war are most imminent. It was for this reason that this Court held the classification, restricting the benefit to those who willingly enrolled or were commissioned during the operation of the Emergency alone, to be neither arbitrary nor discriminatory, but a natural and reasonable classification sustainable in law. Relevant paragraph is extracted hereunder:-

"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 enroll 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."

11. The respondent(s)-plaintiff admittedly, joined military service on 30.04.1963, during the subsistence of the first Emergency (26.12.1962 to 10.01.1968) and continued in service until 16.04.1973, a period that happened to overlap with the second Emergency (03.12.1971 to 15.04.1973). The respondent(s)-plaintiff was thus not a person who volunteered for military service in response to the call of the second Emergency; he was already a serving member of the Armed Forces when the second Emergency was proclaimed, having enrolled nearly eight years prior thereto. His continued service during the second Emergency period was not a voluntary act of patriotic enlistment in the face of imminent danger of war, it was a continuation of his pre-existing contractual obligation as a career serviceman, of the very kind that the Full Bench in ***Dei Chand Phaugat's case (supra)*** distinguished from those who voluntarily enrolled during the Emergency.

12. In the light of discussion made hereinabove, the benefit of military service under the 1965 Rules is confined to the first Emergency period alone, and mere continuance of pre-existing service during the second Emergency, in the absence of any governmental declaration bringing such service within the definition of 'military service' under Rule 2 of the 1965 Rules, confers no entitlement to the benefit thereof. There being no rules, regulations or guidelines issued by the State of Haryana for holding that the services rendered during the second Emergency shall also be counted as

military service, the respondent(s)-plaintiff cannot be held entitled for the counting of service rendered by him during the second Emergency w.e.f. 03.12.1971 to 15.04.1973 for drawing the benefits towards increments and pension in terms of the 1965 Rules.

13. Accordingly, the judgments and decrees dated 22.12.2001 and 28.03.2008 passed by the Courts below in favour of the respondent(s)-plaintiff are hereby modified to the extent that the respondent(s)-plaintiff shall be entitled for grant of benefits of increments and pension in terms of the 1965 Rules by counting the military service rendered by him during the first Emergency period w.e.f. 26.12.1962 to 10.01.1968.

14. Ordered accordingly.

15. At this stage, learned counsel for respondent(s)-plaintiff submits that in terms of judgments and decrees passed by the Courts below, the benefits were released to the respondent(s)-plaintiff much prior to his demise on 18.07.2007 and, at this stage, his legal heirs may not be called upon to refund the benefits so received.

16. In the peculiar facts and circumstances of the case, once the benefits in terms of judgments and decrees passed by the Courts below were released to the respondent(s)-plaintiff, who unfortunately passed away on 18.07.2007, it may not be appropriate to call upon the legal heirs of the deceased-plaintiff to refund the benefits already received by him. This view finds support from the decision rendered in ***Sukhbir Singh and Another versus State of Haryana and Others, 2006(12) SCT 408***, wherein Hon'ble Division Bench of this Court, relying upon the Hon'ble Apex Court's judgment in ***Sahib Ram versus State of Haryana, 1995(1) Suppl. SCC 18***, held that where benefits have been paid to a party pursuant to an order

passed without any misrepresentation or fraud on his part, recovery of such benefits already enjoyed cannot be effected. The said principle applies squarely to the present case, and in view thereof, the benefits received by the respondent(s)-plaintiff in pursuance of valid judgments and decrees of the Courts below, it would be wholly inequitable to now saddle his legal heirs with the liability to refund amounts that were legitimately received and consumed by the deceased during his lifetime.

17. Pending application(s), if any, also stand disposed of.

01.07.2026

sonika

(HARKESH MANUJA)

JUDGE

Whether speaking/reasoned:	Yes
Whether reportable:	Yes