[2025] 4 S.C.R. 806 : 2025 INSC 494

Irwan Kour
v.
Punjab Public Service Commission & Ors.

(Civil Appeal No. 5235 of 2025)

16 April 2025

[Pamidighantam Sri Narasimha* and Manoj Misra, JJ.]

Issue for Consideration

Issue arose whether recruitment advertisement issued by the Punjab Public Service Commission providing reservation for "ex-servicemen" would include personnel from the Indian Military Nursing Service.

Headnotes†

Punjab Recruitment of Ex-Servicemen Rules, 1982 – rr.2(c), 3, 4 – Reservation in recruitment – Recruitment by the Punjab Public Service Commission – Reservation for "ex-servicemen", if includes personnel from the Indian Military Nursing Service-IMNS – Advertisement for recruitment to posts under the Punjab Civil Service (Executive Branch), wherein reservation provided for Ex-Servicemen – Appellant, an ex-servicemen having worked as Captain in the Medical Core of Indian Army, was appointed under the advertisement, however, the respondent released from IMNS, applied under the same advertisement as an 'ex-serviceman', but her candidature rejected on the ground that she did not qualify under this category – Writ petition by the respondent – Dismissed by the Single Judge, however allowed by the Division Bench – Interference with:

Held: Not called for – Respondent no. 4 squarely falls within the definition of "ex-servicemen" defined in r.2(c) of the Punjab Rules – Considering the intention of the Punjab Rules to provide employment opportunities to those who served in the armed forces, and the language of r.2(c) that specifically includes Military personnel, no reason to exclude IMNS personnel from the category of "ex-servicemen" – Further, respondent no. 4 satisfies the requirements of Clause (iv) of r.2(c) as she was released from service upon completion of her service and was also paid gratuity – Kendriya Sainik Board's purpose and objective is to

* Author

formulate, advise on, and implement resettlement and welfare policies for ex-servicemen and their dependents – While the Board may determine the eligibility for these schemes and policies, such determination does not have any bearing on the Rules formulated by the State Government to provide reservations to ex-servicemen – Clarifications issued by the Board do not have a direct bearing on the Punjab Rules – Appellant has uninterruptedly continued in service since appointment in 2022 – Considering the passage of time, and her appointment and continued service in the post, it would cause great injustice if her appointment is cancelled or set aside at this point in time – Her eligibility has not been doubted in any manner or at any time – Respondent no. 4 qualifies as an ex-serviceman and must be considered under the "ex-servicemen" category – She is found to be meritorious, and if otherwise eligible, must be given an appointment. [Paras 17-22]

Case Law Cited

Sansar Chand Atri v. State of Punjab **[2002] 2 SCR 881 : (2002) 4 SCC 154;** *Jasbir Kaur v. Union of India* **[2003] Supp. 5 SCR 516 : (2003) 8 SCC 720 – referred to.**

List of Acts

Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979; Punjab Recruitment of Ex-Servicemen Rules, 1982; Government of India Act, 1935; Army Act, 1911; Constitution of India.

List of Keywords

Military Nursing Service Ordinance, 1943; Ex-servicemen; Indian Military Nursing Service; Reservation; Notional benefits of service; Recruitment; Indian army; Auxiliary force of Indian Military; Part of Indian Military; Serving the nation; Resettlement of ex-servicemen; Kendriya Sainik Board; Resettlement and welfare policies for ex-servicemen; Reservation to ex-servicemen; No automatic termination.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5235 of 2025

From the Judgment and Order dated 03.02.2024 of the High Court of Punjab & Haryana at Chandigarh in LPA No. 636 of 2022

Appearances for Parties

Advs. for the Appellant:
Vinay Kumar Garg, Sr. Adv., Ankur Chhibber, Nikunj Arora, Vardhman Kaushik, K S Rekhi, Ms. Elaisha Asher, Mrs. P S Vijayadharni, Arindam Sarin.

Advs. for the Respondents:
Vivek Jain, D.A.G., Ms. Nupur Kumar, Sadiq Noor, Nishanth Patil, MV Mukunda.

Judgment / Order of the Supreme Court

Judgment

Pamidighantam Sri Narasimha, J.

1. Leave granted.

2. The short question arising for our consideration is whether the recruitment advertisement issued by the Punjab Public Service Commission inter alia providing reservation for "ex-servicemen", would include personnel from the Indian Military Nursing Service.[1]

3. The appellant, an ex-serviceman, having worked as Captain in the Medical Core of Indian Army, was selected and appointed under the advertisement as Extra Assistant Commissioner (Under Training) in the Punjab Civil Services (Executive Branch). She joined service on 09.12.2022. The contesting party, respondent no. 4, was released from IMNS and also applied under the same advertisement as an 'ex-serviceman', but her candidature was rejected by the State on 20.05.2021 on the ground that she does not qualify under this category. Her writ petition against the rejection of her candidature was dismissed by the learned single judge, holding that IMNS personnel cannot claim reservation benefits under the "ex-servicemen" category. This decision was based on the interpretation of the Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979.[2] The division bench, however allowed respondent no. 4's writ appeal by the order impugned before us. It concluded

1 Hereinafter "IMNS".

2 Hereinafter "Central Rules, 1979".

that the relevant rules governing the recruitment, i.e., the Punjab Recruitment of Ex-Servicemen Rules, 1982[3] do not disqualify persons who have retired from or been released from the IMNS from claiming the benefit available to ex-servicemen. Consequently, the High Court directed that respondent no. 4, if found meritorious, be appointed forthwith and be given notional benefits of service.

4. Pending disposal of the Special Leave Petition filed by the appellant, this Court granted an interim order staying the judgment and order passed by the High Court and as such the appellant, appointed on 09.12.2022 is continuing in service.

5. We have heard Mr. Vinay Kumar Garg, learned senior counsel appearing on behalf of the appellant, Mr. MV Mukunda for contesting respondent no. 4, and Ms. Nupur Kumar for the State of Punjab.

6. Short and necessary facts are as follows. The Punjab Public Service Commission issued an advertisement on 12.12.2020 inviting applications for recruitment to number of posts under the Punjab Civil Service (Executive Branch). Clause 2 of the advertisement provided the number of vacancies as well as the posts for which reservation is provided. This included reservation for *Ex-Servicemen (ESM) and Lineal Descendants of Ex-servicemen (LDESM)* as provided for under the Punjab Rules, 1982. Note (1)(b) of Clause 11 confines the reservation only to residents of Punjab.

7. Rules 3 and 4 of the Punjab Rules, 1982 relate to the scope and extent of their application and reservations provided. The relevant portion of the said Rules are extracted hereinbelow for ready reference:

> "***Rule 3. Extent of Application. -*** *These rules shall apply to all the State Civil Services and posts connected with the affairs of the State of Punjab, except the Punjab Vidhan Sabha Secretariat Service and the Punjab Superior Judicial Service.*
>
> ***Rule 4. Reservation of Vacancies****. (1) Subject to the provision of rule 3, 13% of vacancies to be filled in by direct appointment in all the State Civil Services and posts connected with the affairs of the State of Punjab shall be reserved for being filled in by recruitment of Ex-servicemen.*"

3 Hereinafter "Punjab Rules, 1982".

8. The reservation for 'ex-servicemen' under the advertisement must be understood as per the definition in Rule 2(c) of the Punjab Rules, 1982, which is as under:

> "*2. Definitions - In these rules, unless the context otherwise requires 'Armed Forces of the Union' means the Naval, Military and Air Forces of the Union of India;*
>
> *…*
>
> *(c)"Ex-serviceman" means a person who has served in any rank, whether as a combatant or a non-combatant, in the Naval, Military and Air Forces of the Union of India (hereinafter referred to as the Armed Forces of the Union of India), and who has, -*
>
> > *(i) retired or released from such service at his or her own request after earning his or her pension; or*
> >
> > *(ii) has been released from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension; or*
> >
> > *(iii) been released, otherwise than on his own request, from such service as a result of reduction in establishment; or*
> >
> > *(iv) been released from such service after completing the specific period of engagement otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency and has been given a gratuity; But does not include a person who has served in the Defence Security Corps, the General Reserve Engineering Force, the Lok Sahayak Sena and the Para Military Forces, but includes personnel of the Lok Sahayak Sena of the following categories, namely:-*
> >
> > *(i) pension holders for continuous embodied service.*
> >
> > *(ii) persons with disability attributable to military service; and*
> >
> > *(iii) gallantry award winners*

> *Explanation.—The persons serving in the Armed Forces of the Union, who on retirement from service would come under the category of 'ex-serviceman', may be permitted to apply for re-employment one year before the completion of the specified terms of engagement and avail themselves of all concessions available to ex-servicemen but shall not be permitted to leave the uniform until they complete the specified terms of engagement in the Armed Forces of the Union….*"

9. Before we proceed further, it is necessary to clarify that the Central Rules, 1979 do not apply to the facts of the present case as the recruitment advertisement was issued by the Punjab Public Service Commission for posts under the state government. As per Article 309 of the Constitution, the state government is entitled to regulate the recruitment and conditions of service of persons appointed to these posts. The Punjab Rules, 1982 have been framed by the state government in exercise of this power under Article 309 read with Articles 234 and 318 of the Constitution. Further, Rule 3 of the Central Rules, 1979 (as amended in 2012),[4] restricts their applicability to Central Civil Services and posts up to the level of Assistant Commandant in paramilitary forces. Therefore, the Central Rules, 1979 will not apply to determine the eligibility under "ex-servicemen" category for appointment under the advertisement issued by the Punjab Public Service Commission. In *Sansar Chand Atri v. State of Punjab,*[5] considering a claim for reservation as "ex-servicemen" for appointment to a post under an advertisement by the Punjab Public Service Commission, this Court relied only on interpretation of Rule 2(c) the Punjab Rules, 1982.[6]

10. In this light, the inquiry before us is whether respondent no. 4 would qualify as an "ex-serviceman" under Rule 2(c) of the Punjab Rules, 1982. In so far as the appellant is concerned, there is no doubt about her eligibility under the "ex-servicemen" category after her release from the Indian Army upon completion of service. Our enquiry is thus confined to the eligibility of respondent no. 4, who joined the MNS in

4 By G.S.R. 757(E) dated 04.10.2012.

5 (2002) 4 SCC 154.

6 ibid, paras 4-7.

2013 as a Short Service Commissioned officer and was released on 04.09.2018, upon completion of her service period with applicable entitlement to gratuity. We will now examine the status of IMNS.

11. Military Nursing Service Ordinance, 1943[7] was promulgated in exercise of powers under the provisions of the Government of India Act, 1935. By virtue of Article 372 of the Constitution, it continues to remain in force to this date. The "Indian Military Nursing Service" is constituted as an auxiliary force of the Indian Military and as part of the armed forces of the Union. Section 3 of the MNS Ordinance provides for the constitution of MNS in the following terms:

> "***Section 3. Constitution of Indian Military Nursing Service.-*** *(1) There shall be raised and maintained, in the manner hereinafter provided, as part of the armed forces of the Union and for service with the Indian Military forces an auxiliary force which shall be designed the Military Nursing Services (India).*"
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> (emphasis supplied)

12. Section 4 of the MNS Ordinance, provides that: "*The members of the Indian Military Nursing Service shall be liable for service only with forces and persons subject to the Army Act, 1950*." Section 5 provides that, "*All members of the Indian Military Nursing Service shall be of commissioned rank and shall be appointed as officers of the Indian Military Nursing Service by the Central Government by notification in the Official Gazette.*" Section 6 provides for eligibility for appointment, Section 7 for dismissal, Section 8 on training and performance of duties, and Section 9 deals with application of the Army Act, 1911 to members of IMNS, and reads:

> *"**Section 9. Application of Army Act and Indian Army Act, 1911 to members of Indian military Nursing Service**–(1) The provisions of the Indian Army Act, 1911 shall, to extent and subject to such adaptations and modifications as may be prescribed, apply to members of the Indian Military Nursing Services as they apply to Indian commissioned officers, unless they are clearly inapplicable to women.*"

7 Hereinafter "MNS Ordinance".

12.1 Further, Sections 10 and 11 deal with the power of the Central Government and the Chief of Army Staff to make Rules and Regulations under the MNS Ordinance, respectively.

13. From a combined reading of these provisions, it is clear that IMNS has been constituted as a "part of the Indian military" and "part of the armed forces of the Union". Its personnel are officers of commissioned rank, whose service and conduct are regulated by the MNS Ordinance, 1943 and certain provisions of the Army Act, 1911, Regulations made by the Chief of Army Staff, and Rules made by the Central Government. This Court in *Jasbir Kaur v. Union of India*[8] has also held that the IMNS is an auxiliary force of the Indian military and is a part of the Indian Army, but is a distinct and separate class in itself.[9]

14. We will now interpret the term "ex-serviceman" as defined under Rule 2(c) of the Punjab Rules, 1982 to determine whether IMNS personnel are eligible thereunder. Before dealing with the language of the rule, it is essential to recognise its purpose and object. If we understand the significance of the policy of the State and the larger public purpose it seeks to subserve, the language of the law opens up and the interpretative journey will lead up to the right destination.

14.1 The State Government recognises the contribution of a resident of the State of Punjab by joining the armed forces of the Union. Serving the nation as part of the armed forces of the Union requires physical fitness and that has everything to do with age. As they serve and exit the armed forces, they may be spent force for military, but continue to be young and capable for civil life. Their engagement in civil society is not merely a matter of employment opportunity for ex-servicemen but also subserves the larger interest of the nation and also in building a fair and a healthy society.

15. The policy decision of the State Government is in recognition of the fact that the strength of army personnel from Punjab is about 89000 persons.[10] This accounts for 7.7% of the Army's rank and file even though its share in the national population is 2.3%. Effective resettlement of ex-servicemen is necessary to keep the morale of

8 (2003) 8 SCC 720.

9 ibid, paras 5 and 13.

10 'Punjab second among all states in contributing to Army's rank and file', The Tribune (March, 15, 2021).

the serving members of the defence forces. If the resettlement of veterans is neglected, the talented youth of the nation may not be motivated to join armed forces.

16. Rule 2(c) of the Punjab Rules, 1982, defines "ex-serviceman" as a person who has served in any rank, as a combatant or non-combatant, in the Naval, *Military*, or Air Force of the Union, and who has retired or been released from service in certain specified circumstances. Clause (iv) of the said rule is relevant for our purpose. It deals with persons who have been released from service after completing their period of engagement, otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency and has been given gratuity.

17. Respondent no. 4 squarely falls within this definition. She served as a Short Service Commissioned officer in the IMNS. Rule 2(c) specifically includes "Military", along with Navy and Air Force, and as per the MNS Ordinance, 1943 and this Court's decision in *Jasbir Kaur* (supra), the IMNS is a part of the Indian Military and armed forces of the Union.

18. Considering the intention of the Punjab Rules, 1982 to provide employment opportunities to those who served in the armed forces, and the language of Rule 2(c) that specifically includes Military personnel, we see no reason to exclude IMNS personnel from the category of "ex-servicemen". Further, respondent no. 4 satisfies the requirements of Clause (iv) of Rule 2(c) as she was released from service upon completion of her engagement period and was also paid gratuity.

19. At this stage, we find it necessary to deal with the submission made by the State of Punjab that IMNS must be excluded from "ex-servicemen" under the Punjab Rules, 1982 in view of certain clarifications dated 31.07.2019 and 10.08.2021 issued by the Kendriya Sainik Board, Ministry of Defence, Government of India to this effect. We are unable to agree with this submission as the Kendriya Sainik Board's purpose and objective is to formulate, advise on, and implement resettlement and welfare policies for ex-servicemen and their dependents. While the Board may determine the eligibility for these schemes and policies, such determination does not have any bearing on the Rules formulated by the State Government to provide reservations to ex-servicemen. The clarifications issued by the Board do not have a direct bearing on the Punjab Rules, 1982, which are formulated in exercise of powers under Article 309 of the Constitution.

20. In view of the above, we agree with the decision of division bench of the High Court that respondent no. 4 is eligible to claim benefit under the category of "ex-servicemen" as defined in the Punjab Rules, 1982. This is so far as respondent no. 4 is concerned.

21. So far as the appellant is concerned, although the High Court has not specifically dealt with her appointment, we find it necessary to clarify the position. There is no dispute that the appellant was eligible under "ex-servicemen" category. The issue arises because the appellant and respondent no. 4 are perhaps competing for the same post under this category. The appellant was appointed to the post of Extra Assistant Commissioner (Under Training) in the Punjab Civil Services on 09.12.2022 and has uninterruptedly continued in service ever since. Considering the passage of time, and her appointment and continued service in the post, we are of the opinion that it will cause great injustice to her if her appointment is cancelled or set aside at this point in time. Her eligibility has not been doubted in any manner or at any time.

22. In view of the above discussion, we direct that respondent no. 4 qualifies as an ex-serviceman and must be considered under the "ex-servicemen" category. She is found to be meritorious. If she is otherwise eligible, she must be given an appointment. She will be entitled to notional benefits of service but will not be entitled to any backwages. We, however, clarify that the appointment of respondent No. 4 will not result in automatic termination of appellant's service.

23. For the reasons stated above, we see no reason to interfere with the judgment of the High Court. The civil appeal is dismissed with directions as indicated.

24. The parties shall bear their own costs.

25. Pending applications, if any, stand disposed of.

Result of the case: Appeal dismissed.

†*Headnotes prepared by:* Nidhi Jain