

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWPOA No. 466 of 2019
Decided on: September 30, 2020

Dhanminder Kaur and anotherPetitioners
Versus	

State of H.P. and another	...Respondents
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Coram

Hon’ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting¹?

For the petitioners:	Mr. Prem P. Chauhan, Advocate, through video-conferencing.
For the respondents:	Mr. Sudhir Bhatnagar and Mr. Arvind Sharma, Additional Advocates General with Mr. Kunal Thakur, Deputy Advocate General, through video-conferencing.

Sandeep Sharma, J. (Oral)

Precisely, the question which falls for adjudication in the case at hand is “whether decision of the respondent-State to not to give the benefit of approved military service towards fixation of pay to the petitioner is arbitrary and not sustainable in law?”

2. In the case at hand, it is not in dispute that the Malkiat Singh, husband of petitioner No.1 and son of petitioner No. 2, after having rendered military services of 15 years 7 months, came to be reappointed as Peon in July, 1999, on the

Whether reporters of the Local papers are allowed to see the judgment? .

recommendation made by Ex-serviceman Employment Cell, Hamirpur, Himachal Pradesh.

3. The claim of the petitioners is that Malkiat Singh is entitled for benefit of counting his past approved military services of 15 years 7 months, for the purpose of pay fixation in terms of Rule 5 of the Demobilized Armed Forces Personnel (Reservation of Vacancies in Himachal Pradesh State Non- Technical Services) Rules, 1972.

4. The parties are ad-idem that issue raised in the present petition, as has been taken note hereinabove, stands duly adjudicated by Co-ordinate Bench of this Court in CWPOA No.231 of 2019, **Amar Nath and others** versus **State of Himachal Pradesh and others** and CWPOA No.237 of 2019, **Jeet Ram and others** versus **State of Himachal Pradesh and others**, vide judgment 15.7.2020, whereby Co-ordinate Bench of this Court while holding action of the respondent-State not to give benefit of past approved military service for the purpose of pay fixation arbitrary and not sustainable in the eye of law, has categorically held that the right stands conferred upon the petitioner by virtue of provisions of Sub-rule (1) of Rule 5 of the 1972 Rules and such, right still exists in the Rules in issue.

5. Co-ordinate Bench of this Court in aforesaid judgment has clarified that though Hon'ble Division Bench of this

Court in CWP No.488 of 2011, **V.K.Behal and others vs. State of Himachal Pradesh and others**, decided on 29.12.2008, has held the grant of benefit of approved military service towards fixation of seniority in the case of Ex-servicemen, who did not join Armed Forces in emergency to be unconstitutional, but it did not comment upon that part of sub-rule (1) of Rule-5, which specifically deals with the grant/ benefit of approved military service towards fixation of pay.

6. Consequently, in view of the aforesaid, this Court finds no impediment in accepting the prayer made in the petition and accordingly same is allowed by making the directions in **Amar Nath and Jeet Ram (supra)** *mutatis mutandis* applicable, also to the present petition.

Pending applications, if any, also stand disposed of accordingly.

(Sandeep Sharma)
Judge

September 30, 2020
(Vikrant)