

RSA-1527-1996 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(215)

RSA-1527-1996 (O&M)

Date of decision:- 24.01.2024

The State of Punjab and another

... Appellants

Versus

J.S.Sandhu

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Athar Ahmed, DAG, Punjab

Respondent was proceeded ex-parte vide order dated 09.10.1996.

SUVIR SEHGAL, J. (ORAL)

1. Defendants are in second appeal before this Court challenging the concurrent finding of fact recorded by both the Courts below.
2. Plaintiff-respondent, who retired from the post of Superintending Engineer on 31.03.1984, has filed a suit for declaration to the effect that the fixation of cut-off date of 31.03.1985 in the revised pension formula notified by memo dated 09.07.1985 is void. It has been pleaded that by this notification, the recommendations of Second Punjab Pay Commission were accepted after being notified on 22.12.1980 and computation of pension, D.C.R.G. was liberalised. It has been averred that as the plaintiff retired before the cut-off date, he has been excluded from the grant of the benefit. He has sought declaration to the effect that he is entitled to the retiral benefits along with interest @ 18%. Upon being served, defendants filed a written statement taking various objections. A stand has been taken that as the instructions were issued after the retirement of the plaintiff-respondent and were made applicable w.e.f. 01.04.1985, he is not entitled to the

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benefits, which have flown therefrom. On the basis of pleadings of the parties, issues were framed and after they led evidence, by judgment and decree 15.09.1989, suit was decreed and it was held that the plaintiff-respondent is entitled to revised pensionary benefits w.e.f. 01.04.1985 in accordance with the formula notified vide memo dated 09.07.1985. Appeal by defendants-State and cross objections by plaintiff-respondent were dismissed by the learned Additional District Judge vide judgment dated 03.01.1996. It is in this background that the State is before this Court in the instant appeal.

3. I have heard the State counsel and examined the record with his able assistance.

4. The controversy, which has come up for determination before this Court, has been settled by the Supreme Court in ***State of Punjab and others Versus Boota Singh, 2000 (3) SCC 733***, which has been followed in ***State of Punjab Versus J.L.Gupta, 2000 (3) SCC 736***. The observations of the Apex Court in ***J.L.Gupta's*** case (supra) deserve to be noticed and are reproduced hereunder:-

“4. In Boota Singh's case it has also been held that the benefit conferred by the notification dated 9th July, 1985 can be claimed by those who retire after the date stipulated in the notification and those who have retired prior to the stipulated date in the notification are governed by different rules. They are governed by the old rules, i.e., the rules prevalent at the time when they retire. The two categories of persons are governed by different sets of rules. They cannot be equated. The grant of additional benefit has financial implications and the specific date for the conferment of

additional benefits cannot be considered arbitrary. It was further held that:

*"In the case of **Indian Ex-Services League & Ors. Vs. Union of India & Ors. Etc. (1991) 2 SCC 104** this Court distinguished the decision in Nakara's case (supra) and held that the ambit of that decision cannot be enlarged to cover all claims by retirees or a demand for an identical amount of pension to every retiree, irrespective of the date of retirement even though the emoluments for the purpose of computation of pension be different. We need not cite other subsequent decisions which have also distinguished Nakara's case (supra). The latest decision is in the case of **K.L. Rathee Vs. Union of India & Ors. (1997) 6 SCC 7** where this Court, after referring to various judgments of this Court, has held that Nakara's case cannot be interpreted to mean that emoluments of persons who retired after a notified date holding the same status, must be treated to be the same. The respondents are not entitled to claim benefits which became available at a much later date to retiring employees by reason of changes in the rules relating to pensionary benefits."*

5. *The controversy involved in the present appeal and connected appeals is squarely covered by the aforesaid decision. The respondents are thus not entitled to claim benefits under the notification dated 9th July, 1985 since the said benefits became available on a much later date to the retiring employees by reason of change in rules relating to pensionary benefits. In this view, the judgment of the High Court cannot be sustained."*

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5. The matters before the Supreme Court had arisen out of the same notifications as are in question in the present appeal and this Court is bound by the decisions of the highest Court of country.
6. In view of the above legal position, finding recorded by the Courts below cannot be sustained and are reversed.
7. Considering that the plaintiff-respondent retired from service in 1984 and this appeal was admitted in 1987 without any interim order, it is directed that in case the revised pensionary benefits have been disbursed to the plaintiff-respondent, no recovery shall be made from him/his legal heirs.
8. Appeal is disposed of.

24.01.2024
Kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No