2024:PHHC:095130

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

207

CWP-17383-2017 (O&M)
Date of decision: 29.07.2024

ML Sachdeva and others

....Petitioners

Versus

State of Haryana and Others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

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Present : Mr. Salil Dev Singh Bali, Advocate for the petitioners.

Ms. Vibha Tewari, AAG, Haryana.

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**AMAN CHAUDHARY, J. (ORAL)**

1. The prayer in the present petition is for quashing para 8 of OM No.2/51/2008-1 Pension dated 06.02.2015, Annexure P3 and directing the respondents to re-fix the pension of the petitioners w.e.f. 01.01.2006 instead of 06.02.2015.

2. Learned State counsel submits that the issue involved herein has already been decided against the petitioner by the Full Bench in the case of **Shamsher Singh and others vs. State of Haryana and others,** CWP-17310-2015, along with batch of petitions, vide judgment dated 19.07.2024 , the relevant paras whereof read thus:-

> “48. In order to appreciate the respective contentions raised by the learned counsel for the petitioners and the respondent-State, it may be

noticed at the cost of repetition that the State had issued two Notifications on 17.04.2009, one dealing with the arrears of pension of the employees, who had retired upto 01.01.2006 i.e. Part-I Rules, 2009 and the second qua the employees who were in service as on 01.01.2006 as to how their pension is to be calculated under Part-II Rules, 2009. The pensionary benefits of the retirees who were retired prior to 01.01.2006 were revised under the formula envisaged by Part-I Rules, 2009, whereas, certain benefits were given to the employees, who were in service as on 01.01.2006 with regards to the manner in which their pension was to be computed upon their retirement. In Part-II Rules, 2009 in order to become eligible for full pension, the qualifying service had been reduced from 33 years to 28 years and the said Rules were made effective from 01.01.2006, which cut off has already been upheld in R.K. Aggarwal and others (supra).
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51. It is a settled principle of law that the recommendations, which have been made by Pay Commission are to be implemented subject to the approval to be granted by the State. The State has a jurisdiction to adopt the said recommendations from a particular date keeping in view various factors, financial liability being one of them.

52. The contention has been raised on the basis of the judgment in D.S. Nakara and others (supra) is that all the retirees irrespective of their date of retirement, constitute a homogeneous class, which cannot be bifurcated for the grant of benefit by the State and once, a particular benefit has been extended to a retiree, no cut off date can be fixed and the same is to be extended to all the retirees irrespective of their date of retirement.

53. The said judgment in D.S. Nakara and others (supra) came up for consideration before 05 Judges Bench in Writ Petition (Civil) Nos.13550-55 of 1984 titled as Indian Ex-Services League and others Vs. Union of India and others, decided on 29.01.1991. The judgment in D.S. Nakara (supra) was interpreted to mean that all the retirees/pensioners cannot demand the same pension irrespective of their date of retirement ignoring the fact that reckonable emoluments for the purpose of their pension to be different. The denial of certain benefits to pre 01.04.1979 retirees, which benefit was made available to the retirees after 01.04.1979, was upheld. The relevant paragraphs 14, 21 and 22 of the said judgment are as under :-

> "14. An attempt was made by learned counsel for the petitioners to confine this meaning of Nakara only to civilian retirees. It was contended that the position in the case of exservicemen was different. It was urged that for the

ex-servicemen, the relevant Memorandum (Ex. P-2) dated 28-5-1979 which contained appendices showing the calculation of pension for each rank had to be equally applied to pre-1-4-1979 retirees since the only portion struck down in the Memorandum was the offending cut-off date confining the grant of the benefits of the liberalised pension scheme to those retiring after the specified date. In our opinion, no such distinction in the case of exservicemen can be made. A perusal of the Memorandum dated 28-9-1979 shows that it was the consequent action to liberalisation of the pension formula for civil servants extending the same benefit to the Armed Forces with no further addition. Appendices 'A', 'B' and 'C' to this Memorandum merely indicated the computation of the pension made for each rank according to the revised liberalised pension formula, the rates being calculated on the basis of emoluments payable for those ranks on 1-4-1979 since the Memorandum was confined in application only to service officers retiring on or after 1-4-1979. In that Memorandum, therefore, no occasion arose for computation of revised pension for pre-1-4-1979 retirees. It is only as a result of the Nakara decision holding that the same liberalised pension formula for computation would apply to all pre-1-4-1979 retirees also that the question of re-computation of the pension of the earlier retirees on the basis of the liberalised formula arose and this is what has been done in the G.Os. dated 22-11-1983 and 3- 12-1983 challenged in these writ petitions. It is a misreading of the Memorandum dated 28-9-1979 to contend that the appendices to that Memorandum became automatically applicable even to pre- 1-4-1979 retirees as a result of the Nakara decision. That amounts to reading something in that decision which would be contrary to its ratio.

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21. Another claim made is for merger of D.A. backwards also. From 1-1-1973 everyone is being paid D.A. in addition to the pension. The reckonable emoluments which are the basis for computation of pension are to be taken on the basis of emoluments payable at the time of retirement and, therefore, there is no ground to include D. A. at a time when it was not paid. This claim also is untenable.

22. Learned counsel for the petitioners referred to certain

> decisions which it is unnecessary to consider at length since they were cited only for reading the Nakara decision in the manner suggested by petitioners. The decision of this Court in Union of India v. Bidhubhushan Malik and others, (1984) 3 SCC 95 by which special leave petition was dismissed against the decision of the Allahabad High Court reported in AIR 1983 Allahabad 209 is also of little assistance in the present case. This Court while dismissing the special leave petition upheld the Allahabad High Court's view that the liberalised pension became operative under the High Court Judges (Conditions of Service) (Amendment) Act, 1976, from 1-10- 1974 and applied to all retired High Court Judges irrespective of the date of their retirement and there is no question of payment of arrears of pension for the period preceding 1-10-1974. We are unable to appreciate the relevance of this case to support the petitioner's claim in these writ petitions."

54. Again the issue of cut off date came up for consideration before the Hon'ble Supreme Court of India with regard to the fixation of cut off date in Transfer Case (C) No.106 of 2006 titled as Union of India Vs. S.R. Dhingra and others, decided on 14.12.2007. The Hon'ble Supreme Court of India held that when two set of employees of a same rank retired at different points of time, one set of employees cannot claim the benefit extended to the other set of employees on the ground that they are similarly situated though they might have retired but they are not of the same class or a homogeneous group hence, Article 14 of the Constitution of India has no application and an employer can validly fix a cut off date for introducing any new pension/retirement scheme or for discontinuance of any existing scheme. The relevant paragraph 25 of the said judgment is as under :-

> "25. It is well settled that when two sets of employees of the same rank retire at different points of time, one set cannot claim the benefit extended to the other set on the ground that they are similarly situated. Though they retired with the same rank, they are not of the same class or homogeneous group. Hence, Article 14 has no application. The employer can validly fix a cut-off date for introducing any new pension/retirement scheme or for discontinuance of any existing scheme. What is discriminatory is introduction of a benefit retrospectively (or prospectively) fixing a cut-off date arbitrarily thereby dividing a single homogenous class of pensioners into two groups and subjecting them to different treatment (vide Col B.J. Akkara (Retd) vs. Govt of India, (2006) 11 SCC 709, D.S. Nakara vs. Union of India (1983) 1 SCC 305, Krishna Kumar vs. Union of India (1990) 4 SCC 207, Indian Ex-Services League vs. Union

> of India (1991) 2 SCC 104, V. Kasturi vs.Managing Director, State Bank of India (1998) 8 SCC 30 and Union of India vs. Dr. Vijayapurapu Subbayamma(2000) 7 SCC 662)."

55. Keeping in view the judgments which have been cited hereinbefore, the serving employees and the employees who have retired upto a particular date, have not been treated as a homogeneous class so as to be treated in a similar manner while granting a particular benefit. The State can grant certain benefits to the serving employees and no right accrues to the retired employee to claim the same as a matter of right.

56. The grant of a benefit to the serving employees by fixing a cut off date can also be seen from an angle of financial issues relating to a particular state. The details of the financial consideration before issuing the Part-II Rules, 2009 on 17.04.2009 have already been reproduced here-in-before, hence, the same are not being repeated. After considering the recommendations of the High Power Committee the government for the grant of full pension only reduced the requirement of qualifying service from 33 years to 28 years and granted the said benefit only with effect from 01.01.2006 to employees who were in service on the said date despite recommendations of the pay commission to reduce the same to 20 years.

57. The Hon'ble Supreme Court of India in Amar Nath Goyal and others(supra), held that the grant of benefit of increased quantum of death-cumretirement gratuity and the cut off date fixed for the grant of the said benefit was held to be valid. After considering the judgment in D.S. Nakara (supra), Hon'ble Supreme Court of India held that financial constraints for granting of benefit prospectively cannot be termed to be arbitrary and illegal or to violate Articles 14 and 16 of the Constitution of India. The relevant paragraphs of the judgment are as under :-

> "29. D.S. Nakara (supra), which is the mainstay of the case of the employees, arose under special circumstances, quite different from the present case. It was a case of revision of pensionary benefits and classification of pensioners into two groups by drawing a cut-off line and granting the revised pensionary benefits to employees retiring on or after the cut-off date. The criterion made applicable was "being in service and retiring subsequent to the specified date". This Court held that for being eligible for liberalised pension scheme, application of such a criterion is violative of Article 14 of the Constitution, as it was both arbitrary and discriminatory in nature. The reason

given by the Court was that the employees who retired prior to a specified date, and those who retired thereafter formed one class of pensioners. The attempt to classify them into separate classes/groups for the purpose of pensionary benefits was not founded on any intelligible differentia, which had a rational nexus with the object sought to be achieved. However, it must be noted that even in cases of pension, subsequent judgments of this Court have considerably watered down the rigid view taken in D.S. Nakara (supra) as we shall see later in T.N. Electricity Board v. R. Veerasamy and others, 1999(3) SCC 414, ("Veerasamy"). In any event, this is not a case of a continuing benefit like pension; it is a one-time benefit like gratuity.

30. In Union of India v. P.N. Menon and others, 1994(4) SCT 91 (SC) : 1994(4) SCC 68, while implementing the recommendations of the Third Pay Commission with regard to dearness pay linked to average index level 272, which was to be counted as emoluments for pension and gratuity under Central Civil Services (Pension) Rules, 1972, the Central Government had fixed a certain cutoff date and directed that only officers retiring on or after the specified date were entitled to the benefits of the dearness pay being counted for the purpose of retirement benefits. This was challenged as arbitrary and violative of Article 14 of the Constitution. This Court turned down the challenge and observed : "Not only in matters of revising the pensionary benefits, but even in respect of revision of scales of pay, a cut-off date on some rational or reasonable basis, has to be fixed for extending the benefits. This can be illustrated. The Government decides to revise the pay scale of its employees and fixes the 1st day of January of the next year for implementing the same or the 1st day of January of the last year. In either case, a big section of its employees are bound to miss the said revision of the scale of pay, having superannuated before that date. An employee, who has retired on 31st December of the year in question, will miss that pay scale only by a day, which may affect his pensionary benefits throughout his life. No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service. As such the concern of the Court should only be, while examining any such grievance, to see, as to whether a particular date for extending a particular benefit or scheme, has been fixed, on objective and rational considerations." [Ibid at pp. 75-76 (para 14)]."

31. In Action Committee South Eastern Railway Pensioners v. Union of India, 1991(1) SCT 485 (SC) : 1991 Supp. (2) SCC

544, it was held that, on merger of a part of dearness allowance as dearness pay on average price index level at 272 with reference to different pay ranges, fixing a cut-off date in such a manner was not arbitrary and the principle enunciated in D.S. Nakara (supra) was not applicable. In this connection, the ratios in Krishena Kumar v. Union of India, 1990(4) SCC 207; Indian Ex-Services League v. Union of India, 1991(1) S.C.T. 468 : 1991(2) SCC 104; State Government Pensioners' Association v. State of A.P., 1986(3) SCC 501 and All India Reserve Bank Retired Officers' Association v. Union of India, 1992 Supp. (1) SCC 664 are apt. In all these cases, the prescription of a cut-off date for implementation of such benefits was held not to be arbitrary, irrational or violative of Article 14 of the Constitution.

32. The importance of considering financial implications, while providing benefits for employees, has been noted by this Court in numerous judgments including in the following two cases. In State of Rajasthan and another v. Amritlal Gandhi and others, 1997(1) SCT 699 (SC) : AIR 1997 Supreme Court 782 this Court went so as far as to note that : "... Financial impact of making the Regulations retrospective can be the sole consideration while fixing a cut-of date. In our opinion, it cannot be said that this cut-off date was fixed arbitrarily or without any reason. The High Court was clearly in error in allowing the writ petitions and substituting the date of 1.1.1986 for 1.1.1990." [Ibid at p. 78 (para 17)] (emphasis supplied).

33. More recently, in Veerasamy (supra), this Court observed that, financial constraints could be a valid ground for introducing a cut-off date while implementing a pension scheme on a revised basis. 1999(3) SCC 414 at p. 421 (para 15)]. In that case, the pension scheme applied differently to persons who had retired from service before 1.7.1986, and those who were in employment on the said date. It was held that they could not be treated alike as they did not belong to one class and they formed separate classes.

34. In State of Punjab and others v. Boota Singh and another, 2000(3) SCC 733, ("Boota Singh") after considering several judgments of this Court in D.S. Nakara (supra) to K.L. Rathee v. Union of India, 1997(3) SCT 478 (SC) : 1997(6) SCC 7, it was held that D.S. Nakara (supra) should not be interpreted to mean that the emoluments of persons who retired after a notified date holding the same status, must be treated to be the same. [2000(3) SCC 733 at p. 735 (para 8)].

35. In State of Punjab and another v. J.L. Gupta and others, 2000(2) SCT 8 (SC) : 2000(3) SCC 736, where one of us was

on the Bench (Sabharwal, J.), the views expressed in Boota Singh (supra) were reiterated, and it was held that for the grant of additional benefit which had financial implications, the prescription of a specific future date for conferment of additional benefit, could not be considered arbitrary. [Ibid at p. 737 (para 4)]"

58. Learned counsel for the petitioners has placed reliance upon the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 10857 of 2016 titled as All Manipur Pensioners Association by its Secretary Vs. State of Manipur and others, decided on 11.07.2019 to contend that as per the said judgment, the amendment to the Part-II Rules, 2009 so as to insert Rule 8(1-A) prospectively, is contrary to the said judgment. It may be noticed that in All Manipur Pensioners Association by its Secretary (supra) though, Hon'ble Supreme Court of India held that even the financial aspect cannot be brought into operation so as to bifurcate a homogeneous class but the same judgment has been considered by the Hon'ble Supreme Court of India in Himachal Road Transport Corporation (supra). After taking note of the judgment in All Manipur Pensioners Association by its Secretary (supra), the Hon'ble Supreme Court of India once again held that the serving employees and the retired employees do not constitute a homogeneous class hence, the benefit to be granted to the employees who are in service by prescribing a cut off date keeping in view the financial capability of the employer is perfectly valid. The relevant paragraph Nos. 17, 18, 19 and 23 of the said judgment are as under :-

"17. By O.M. dated 27.9.1993, the Ministry of Finance, Government of India directed that the dearness allowance payable to the Central Government employees with effect from 1.7.1993 would stand modified as declared therein at varying rates linked to the basic pay. By another O.M. dated 19.10.1993, the Government of India notified that for Central Government employees who retired or died on or after 16.9.1993, a portion of the dearness allowance as linked to Average Consumer Price Index of 729.91 obtaining as on 1.3.1988 (i.e. 20% of basic pay) would be treated as dearness pay. This would count only for reckoning emoluments for the purpose of retirement gratuity and death gratuity under the Central Civil Services (Pension) Rules, 1972 and for no other purpose. The said orders came into effect from 16.9.1993. It was directed that the death-cum- retirement gratuity of persons who have already died or retired on or after 16.9.1993 should be recalculated on the basis of the said orders and arrears, if any, be paid.

18. By O.M. dated 14.7.1995, the Central Government directed that, as recommended by the Fifth Central Pay Commission in

its Interim Report, dearness allowance as linked to the average All India Consumer Price Index ("AICPI") 1201.66 would be treated as dearness pay for reckoning emoluments for the purpose of death gratuity and retirement gratuity under the Central Civil Services (Pension) Rules, 1972. Further, it was directed that the ceiling on gratuity would stand enhanced to Rs. 2.50 lacs. The said O.M. indicated different percentages of dearness allowance, depending upon the basic pay drawn, to be added to pay for calculating gratuity.

19. Following the aforesaid O.M. issued by the Central Government, the Government of Punjab in the Department of Finance issued orders dated 13.12.1996, wherein it was notified that the Governor of Punjab was pleased to decide that dearness allowance as admissible to the employees as on 1.7.1993 (linked to All India Consumer Price level 1201.66) would be treated as dearness pay for reckoning emoluments for the purpose of retirement gratuity and death gratuity under the Punjab Civil Services Rules- Volume II. This was in respect of "Punjab Government employees who retire or whose death occurs on or after 1.4.1995". The said order indicated the varying percentages of dearness allowance to be added to the pay for calculating gratuity at different pay slabs. The order also notified that the ceiling of maximum amount of retirement gratuity and death gratuity was to be raised from Rs. 1 lac to Rs. 2.50 lacs with effect from 1.4.1995.

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23. The learned counsel for the Union of India and the State Governments contended that, though it is a fact that certain percentage of dearness allowance was to be merged with the basic pay with effect from 1.7.1993 (linked to the All-India Consumer Price level 1201.66) and that the said dearness allowance admissible to the employees on 1.7.1993 was to be treated as dearness pay for reckoning emoluments for the purpose of death gratuity and retirement gratuity, financial constraints impelled the Governments, both at the Centre and the State, to restrict such payments only to the employees who had died or retired on or after 1.4.1995."

59. The settled principle of law noticed here-in-before, clearly goes to show that the financial aspect is a relevant factor to be taken into account for the grant of benefit and retired employees and serving employees do not form a homogenous class and a cut off date can be prescribed by the State while extending benefit to serving employees."

3. Learned counsel for the petitioners was unable to draw out any distinctive aspects in the aforementioned judgment or cite any contrary law.

4. In view of the aforesaid, the present petition is dismissed.

**29.07.2024**
ashok

**(AMAN CHAUDHARY)**
**JUDGE**

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|---|---|---|
| Whether speaking/reasoned | : | Yes / No |
| Whether reportable | : | Yes / No |