

PETITIONER:
STATE OF HARYANA

Vs.

RESPONDENT:
DR. A.K. SINHA

DATE OF JUDGMENT: 20/02/1997

BENCH:
K. RAMASWAMY, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This appeal by special leaves arises from the judgment of the Punjab and Haryana High Court, made on March 11, 1982 in CWP No. 5173/81.

The respondent, an IAS, allotted to the cadre of Haryana, while in service has obtained Ph.D. degree in 1979. He filed the writ petition seeking direction to the state to grant him four advance increment for acquiring his doctorate degree. The state by its order had earlier grant of such relief rejected it. Consequently, he filed a writ petition in the High Court. The Division Bench, following the judgment of a learned single judge of that High Court, directed the State to grant him advance increments, as prayed for, on the premise that Rule 2(b) of the All India Services (Conditions of Service Residuary matters) Rules, 1960 (for short, the 'Rules') did not provide for any contrary rules prohibiting the grant of such incentives. As a consequence, the orders of the Government dated October 23, 1978 granting incentives of advance increments to employees of the State of Haryana in Class II and III could be attracted. Therefore, the respondent is entitled to the same benefit. This Court has granted leave and issued the motive to the respondent. Notice was returned with an endorsement that the respondent stood retired from service. He has not entered appearance. The question is: whether an IAS Officer allotted to a cadre of a State is entitled to the advance increments on the basis of an incentive granted to Class II and III officers and even class I employees of the State service and whether the same is applicable to the IAS Officers governed by the Rules in particular rule 2(b) of the Rules, Rule 2(b) reads as under:

"The power of Central Government to provide for residuary matters:- The Central Government may after consultation with the Governments of the State concerned, make regulations to regulate in matters relating to conditions of service of person appointed to All India Service for which there is on

provision in the Rules made or deemed to have been made under the All India Services Act, 1951 (61 of 1951) and until said regulations are made such matters shall be regulated:-

(a) xxx xxxxx
xxxxxx

(b) In the case of persons serving in connection with the affairs of State, by the Rules, regulations and orders applicable to officers to such exceptions and modifications as the Central government may, after Consultation with the State Government concerned, by order in writing make."

A reading thereof would clearly indicate that the Central Government, after consultation with the Government of State concerned, may make regulations to regulate, in matters relating to conditions of service of persons appointed to All India Service, for which there is no provision in the rules made or deemed to have been made under The All India Service Act, 1951 until the said regulations are made and such matters shall be regulated. In the case of persons serving in connection with the affairs of State, the Central Government may, by the rules regulations and orders applicable to officers with such exceptions and modifications, make after consultation with the State Government concerned, by order in writing. In the absence of any concurrence by the Central Government and express order passed in that behalf permitting the State Government to grant incentives to the personnel in All India Service Cadre, The Incentives Provided to the State Government employees governed by the State Services employees governed by the State Services per se are not applicable and, therefore, the respondent, and IAS is not eligible to the incentive of four advance increments for his securing PH.D degree.

The appeal is, accordingly, allowed. The judgment of the High Court stands set aside. The judgment of the High Court stands set aside. The judgment of the learned single judge followed in that judgment stands reversed. No costs.