

CASE NO.:
Appeal (civil) 129 of 2003

PETITIONER:
State of Punjab & Ors.

RESPONDENT:
Amar Nath Goyal & Ors.

DATE OF JUDGMENT: 11/08/2005

BENCH:
Y. K. Sabharwal & B. N. Srikrishna

JUDGMENT:
J U D G M E N T
With

Civil Appeal Nos. 132/03, 133/03, 1838/03, 1847/03, 902/04, 1061/05,
Civil Appeal No. 4987/05 @ SLP(C) No. 2947/2003,
Civil Appeal Nos. 4988-5018 /05 @ SLP (C) Nos. 6855-6886/2003,
Civil Appeal Nos. 4985-4986 /05 @ SLP (C) Nos. 12071-12072/2004
and T.C. (Civil) Nos. 58/04 and 41/05.

SRIKRISHNA, J.

Delay condoned. Leave granted in the Special Leave Petitions.

This group of Special Leave Petitions and Transferred Cases raise the same issue of law, though the origin of the cases and the paths by which they found their way to this Court are different. A brief resume of the facts is called for.

Civil Appeal No. 129 of 2003:

The respondents are employees of the Government of Punjab who retired during the period 31.7.1993 to 31.3.1995. They sought the benefit of a circular dated 13.12.1996 under which the State Government employees, who retired or died on or after 1.4.1995, were entitled to get retirement gratuity/ death gratuity on the basis of addition of certain portion of the dearness pay to the basic pay. This benefit was refused to them. The respondents challenged the decision of the State Government declining them the aforesaid benefit by a group of writ petitions (numbered CWP No. 4995/97 and others) before the High Court of Punjab & Haryana. The High Court partially allowed the writ petition and held that such of the State Government's employees, who had retired on or after 1.7.1993, were entitled to the higher amount of death gratuity and retirement gratuity consequent upon the merger of a portion of dearness allowance into the basic pay. The High Court, however, refused to grant this benefit to employees who had retired before 1.7.1993.

The High Court also directed the State Government and its officers to calculate the death/ retirement gratuity of the respondents who had retired on or after 1.7.1993 in accordance with the notification dated 13.12.1996. The said judgment of the Division Bench of the Punjab & Haryana High Court is challenged in this appeal.

Civil Appeal No. 1061 of 2005:

The respondents, retired employees of the Education Department of the Government of Punjab, were superannuated during the period 31.7.1993 to 31.3.1995. They also sought the benefits flowing from the order of the Government of Punjab dated 13.12.1996 and sought a higher quantum of death-cum-retirement gratuity. These benefits having been refused to them, they too moved the High Court of Punjab & Haryana by a Civil Writ Petition (CWP No. 17666/98). This writ petition was allowed by order dated

3.5.2002 following the judgment in CWP No. 4995/97. Being aggrieved thereby, the State of Punjab is in appeal.

Civil Appeals @ Special Leave Petitions (Civil) Nos. 12071-12072 of 2004:

The respondent-employees in this case retired on 28.2.1994 from Postal Department Service, H.P. Circle i.e. prior to the prescribed cut-off date of 1.4.1995. He sought the higher amount of death-cum-retirement gratuity subject to the increased maximum limit under the Office Memorandum ("O.M.") dated 14.7.1995 issued by the Government of India. This O.M. directed that a certain percentage of dearness allowance was to be treated as part of basic pay for the purpose of calculating the death gratuity and retirement gratuity in respect of the Central Government employees who retired after 1.4.1995. However, the Central Government rejected his claim on the ground that he had retired prior to 1.4.1995. The employee then moved the Central Administrative Tribunal ("CAT") (Chandigarh Bench) by his Original Applications. The CAT directed that the benefit of O.M. dated 14.7.1995 be extended to the employee concerned, on the undertaking that, if the connected matters pending at the time in the Bombay High Court were to be adversely decided against him, he would refund the monies with interest.

The Union of India moved the High Court of Himachal Pradesh by writ petition CWP No. 462/03, which was dismissed on the ground that a similar matter was pending before the Bombay High Court against a decision of the Full Bench of the CAT (Mumbai Bench), and that the decision given by the Bombay High Court would decide the rights and contentions of the parties. The Union of India's Civil Review No. 32/03 was also dismissed on 11.09.2003. Aggrieved thereby, the Union of India is in appeal.

Civil Appeal No. 132 of 2003:

The respondents in this case were employees of the Punjab Government who retired from service of Municipal Committee, Malerkotla on attaining the age of superannuation. They retired on different dates, but between 31.10.1993 and 28.2.1994. They were paid gratuity in accordance with the then applicable rules. The respondents demanded gratuity in accordance with the orders of the Government of Punjab. This would have given them the benefit of increased quantum of death gratuity and retirement gratuity pursuant to the merger of certain percentage of the dearness allowance with the basic pay. This benefit having been refused to them, they moved the Punjab & Haryana High Court by their writ petition CWP No. 942/99. This writ petition was also allowed by a common judgment dated 3.5.2002 rendered by the Punjab & Haryana High Court in CWP No. 4995/97. Being aggrieved thereby, the appellant-Municipal Committee is before this Court.

Civil Appeal No. 133 of 2003:

The appellants in this case retired from the Education Department of the Government of Punjab upon attaining the age of superannuation on various dates before 1.7.1993. They claimed the benefit of increased amount of retirement-cum-death gratuity consequent upon the merger of a portion of dearness allowance with the basic pay as indicated in the instructions of the State Government dated 13.12.1996, made effective in the case of Government employees who retired or died on or after 1.4.1995. Their claims were rejected by the State Government. The employees moved the High Court of Punjab & Haryana by their writ petition CWP No. 15212/98, which was disposed of following the common judgment rendered by the High Court in CWP No. 4995/97. The High Court rejected the claims of this group of employees who had retired prior to 1.7.1993. Hence, this appeal by the aggrieved employees.

Civil Appeal No. 1838 of 2003:

The First Respondent in this case was an employee of the Punjab State Electricity Board, who retired before the prescribed cut-off date of 1.04.1995. His claim for increased amount of death-cum-retirement gratuity was similarly rejected by the Punjab State Electricity Board. His writ

petition CWP No. 12260/98 was allowed following the common judgment in CWP No. 4995/97. The Punjab State Electricity Board is here in appeal.

Civil Appeal No. 1847 of 2003:

The first respondent was an employee of the Punjab State Electricity Board who retired between 1.7.1993 and 31.3.1995. His claim for increased amount of death-cum-retirement gratuity was similarly rejected by the Electricity Board. His writ petition CWP No. 12957/98 before the High Court of Punjab & Haryana was decided by the common judgment in CWP No. 4995/97. Hence, this appeal by the Punjab State Electricity Board.

Civil Appeal @ Special Leave Petition No. 2947 of 2003:

This appeal is against the judgment in CWP No. 552/99 decided by the common judgment of the High Court of Punjab & Haryana in CWP No. 4995/97. The High Court of Punjab & Haryana took the view that Government employees retiring on or after 1.7.1993, but before the cut off date of 1.4.1995 would also be entitled to the gratuity calculated in accordance with the provisions of the Government of Punjab order dated 13.12.1996. The respondent in this case is an employee of the Punjab State Electricity Board who had retired during the aforesaid period. Being aggrieved by the High Court's judgment, the Punjab State Electricity Board is before this Court by way of this appeal.

T. C. No. 58/04:

The respondents in this case are all employees of the Central Government in the Postal Department in the Maharashtra Circle who had retired between 1.7.1993 and 31.3.1995. They claimed the benefit of the Central Government order dated 27.9.1993 read with order dated 14.7.1995, seeking higher benefits of death-cum-retirement gratuity pursuant to the merger of a portion of the dearness allowance with basic pay and the consequential raising of the ceiling on the death cum retirement gratuity amount. Their claims were refused by the Central Government. They filed Original Applications before the CAT (Mumbai Bench). The issue as to the validity of the decision of the Central Government in fixing the cut-off date of 1.4.1995 was referred to the Full Bench of the CAT. The CAT by its order dated 21.9.2001 held that there was no nexus or rational consideration in fixing the aforesaid date of 1.4.1995 for availability of the benefit and allowed the Original Applications. Being aggrieved thereby, the Union of India preferred Writ Petition No. 884/2002, which was pending before a Division Bench of the Bombay High Court. Since the identical issue was being agitated before this Court, by the order dated 27.7.2004, this writ petition was ordered to be transferred to this Court to be heard along with the connected matters.

Civil Appeals @ Special Leave Petitions (C) Nos. 6855-6886 of 2003:

The respondents are retired employees of the Government of Punjab who retired on or after 1.7.1993, but before the cut-off date of 1.4.1995. By the common judgment rendered in CWP No. 4995/97, the High Court held that they were entitled to death-cum-retirement gratuity calculated in accordance with the provisions of the Government of Punjab Order dated 13.12.1996. Aggrieved thereby, the State of Punjab is before this Court.

Civil Appeal No. 902 of 2004:

The respondents in this appeal were employees of the Government of Punjab who retired from various departments/ institutions of the Government of Punjab before the prescribed cut-off date. When their claim for enhanced death-cum-retirement gratuity was rejected by the Government, they filed CWP No. 15032/98. By the common judgment rendered in CWP No. 4995/97, the High Court of Punjab & Haryana held that they were entitled to the benefit of gratuity calculated in accordance with the provisions of the Government of Punjab order dated 13.12.1996. Being aggrieved thereby, the State of Punjab is in appeal.

T.C. No. 41 of 2005:

The petitioner in this case retired on 10.11.1994 as a Judge of the Bombay High Court, Aurangabad Bench. He claimed gratuity in accordance with O.M. dated 14.7.1995 issued by the Government of India, but contended that the cut-off date of 1.4.1995 was arbitrary and was liable to be struck down. His claim for the benefit of death-cum-retirement gratuity under the O.M. dated 14.7.1995 with higher ceiling was refused. He moved the Bombay High Court by a writ petition No. 129/97, which has been transferred to this Court by order dated 27.7.2004 made in Civil Appeal No. 129/03, to be heard along with this group of connected matters.

The Office Memoranda:

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.

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.

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.

The Litigation:

A large number of employees, both of the Central Government as well as the State Governments of Punjab and Himachal Pradesh, who had retired prior to 1.4.1995, applied for getting the additional benefits of increased quantum of death-cum-retirement gratuity up to the increased limit of Rs. 2.5 lacs. Their claims were rejected in some cases and in other cases, the CAT and the High Court took the view that such of the employees who had retired between 1.7.1993 and 31.3.1995 were also eligible for the aforesaid benefits.

Thus, the employees whose cases were wholly rejected or partly

rejected and partly granted, as well as the Union of India and the State Governments are in appeal before us.

Contentions:

The thrust of the arguments by the learned counsel on behalf of the employees has been on the alleged violation of Article 14 of the Constitution. They contend that the decision of the Central Government/ State Governments to make available the increased quantum of gratuity (with revised ceiling) only to employees, who retired or died on or after 1.4.1995, is discriminatory and arbitrary. They also contend that all retirees/dead persons form a homogeneous class and any discrimination or distinction between retirees/ dead persons prior to 1.4.1995 and those who retired/died on or after 1.4.1995 had no rational basis, nor was intended to serve any purpose. Heavy reliance was placed on the judgment of this Court in D.S. Nakara v. Union of India ("D.S. Nakara"). We are afraid that the refrain of D. S. Nakara (supra) has been played too often to retain its initial charm, which has been worn thin by subsequent dicta.

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.

The learned counsel for the Union of India made available the Government's file from which it is seen that the Government took a conscious decision that the benefit of the increase in the quantum of gratuity, pursuant to the merged portion of the dearness allowance and the revised ceiling shall be made available from 1.4.1995, which was the date recommended in the Interim Report of the Fifth Central Pay Commission. The Government noticed that the consequential financial burden would be very heavy. Hence, the Central Government decided that these benefits would be made available only from 1.4.1995. The State Governments followed suit.

The only question, which is relevant and needs consideration, is whether the decision of the Central and State Governments to restrict the revision of the quantum of gratuity as well as the increased ceiling of gratuity consequent upon merger of a portion of dearness allowance into dearness pay reckonable for the purpose of calculating gratuity, was irrational or arbitrary.

It is difficult to accede to the argument on behalf of the employees that a decision of the Central Government/ State Governments to limit the benefits only to employees, who retire or die on or after 1.4.1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government, at the Centre or at the State level.

Even by O.M. dated 19.10.1993, all that happened was that a portion of the dearness allowance linked to average Consumer Price Index of 729.91 obtaining as on 1.3.1988 (i.e. 20% of the basic pay) was treated as dearness pay. This would count only for reckoning the emoluments for the purpose of calculating retirement-cum-death gratuity under the applicable rules and for no other purpose. This change was brought into effect from 16.9.1993.

Even at that time, interestingly, the benefits were not made admissible from 1.3.1988, i.e. the date of the Average Consumer Price Index of 729.91, but from a much further date i.e. 16.9.1993. The Central Government adopted the same policy while issuing the O.M. dated 14.7.1995. Although,

dearness allowance linked to the All India Average Consumer Price Index 1201.66 (as on 1.7.1993), was treated as reckonable part of dearness allowance for the purpose of calculating the death-cum-retirement gratuity, the benefit was actually made available to the employees who retired or died on or after 1.4.1995. Similarly, the increase in the ceiling of gratuity was a mere consequential step, which was also made applicable from 1.4.1995. As we have already noticed, 1.4.1995 was the date suggested by the Fifth Central Pay Commission ("Pay Commission") in its Interim Report. The Central Government took a conscious stand that the consequential financial burden would be unbearable. It, therefore, chose to taper down the financial burden by making the benefits available only from 1.4.1995. It is trite that, the final recommendations of the Pay Commission were not ipso facto binding on the Government, as the Government had to accept and implement the recommendations of the Pay Commission consistent with its financial position. This is precisely what the Government did. Such an action on the part of the Government can neither be characterized as irrational, nor as arbitrary so as to infringe Article 14 of the Constitution.

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 classifications 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 Ors. ("Veerasamy"). In any event, this is not a case of a continuing benefit like pension; it is a one-time benefit like gratuity.

In Union of India v. P.N. Menon and Ors, 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 cut-off 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."

In Action Committee South Eastern Railway Pensioners v. Union of India, 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, Indian Ex-Services League v. Union of India, State Government Pensioners' Association v. State of A.P., and All India Reserve Bank Retired Officers' Association v. Union of India 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.

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 Anr. v. Amritlal Gandhi & Ors., 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-off 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"

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. 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.

In State of Punjab and Ors. v. Boota Singh and Anr., ("Boota Singh") after considering several judgments of this Court in D.S. Nakara (supra) to K.L. Rathee v. Union of India, 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.

In State of Punjab and Anr. v. J. L. Gupta and Ors., 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.

In Ramrao and Ors. v. All India Backward Class Bank Employees Welfare Association and Ors., a Division Bench of this Court said, even for the purpose of effecting promotion, the fixing of a cut-off date was neither arbitrary, unreasonable nor did it offend Article 14 of the Constitution. Moreover, the Court held that possible hardship to be endured by a person as a result did not make cut-off dates violative of Article 14.

In the instant case before us, the cut-off date has been fixed as 1.4.1995 on a very valid ground, namely, that of financial constraints. Consequently, we reject the contention that the fixing of the cut-off date was arbitrary, irrational or had no rational basis or that it offends Article 14.

The learned counsel for the employees have referred to Union of India v. Bidhubhushan Malik and Ors., All India Judges Assn. & Ors. v. Union of India, M.C. Desai & Ors. v. Union of India, M.J. Sivani and Ors. v. State of Karnataka and Ors., Chairman, Railway Board & Ors. v. C.R. Rangadhamaiah & Ors. and Union of India and Anr. v. Pratibha Bonnerjea and Anr. Having perused these judgments, we find

that the issue urged before us, which has been considered in the several judgments that we have referred to in detail, has not been adverted to. In our view, these judgments are of no assistance in resolving the issue before us.

In the result, we set aside the common judgment and order of the High Court of Punjab & Haryana in CWP No. 4995/97 and in connected matters decided thereby, in so far as they purport to grant the revised death-cum-retirement gratuity to government employees who died or retired before the prescribed cut-off date of 1.4.1995. We also set aside judgment and orders of the High Court of Himachal Pradesh in CWP No. 462/03 (dated 24.6.2003) and in Civil Review No. 32/2003 (dated 11.9.2003).

We further allow Civil Appeal Nos. 129/03, 132/03, 1838/03, 1847/03, 902/04, 1061/05 Civil Appeals @ SLP (C) Nos. 12071-12072/04, Civil Appeal @ SLP (C) No. 2947/03, Civil Appeals @ SLP (C) Nos. 6855-6886/03 and T.C. No. 58/04 (and set aside the order dated 21.9.2001 of the CAT (Mumbai Bench) in O.A. Nos. 542/97, 942/97 and 943/97) and dismiss Civil Appeal Nos. 133/03 and T.C. No. 41/05.

In the circumstances of the case, there shall be no order as to costs.