

(9) The workmen were, under the circumstances, definitely entitled to treat themselves as still in employment and claim the wages that they were demanding for the period when they were not allowed to rejoin duty. The delay in filing the petition does not take away the rights of the workman. The basis of the calculations themselves were not denied by the management. What was, however in denial was their entitlement. In view of my finding that the workmen were deliberately denied by the management to resume duty, the resultant finding in answer to claims made by the workmen shall also be that the workmen are entitled to recover full wages for the period as claimed. The management shall also be liable to pay interest at 9% from the date of the respective petitions filed before the Labour Court till the date of payment.

(10) The orders of the Labour Court are set aside and the claim petitions are allowed as prayed for with interest and cost assessed at Rs. 5,000 for each case.

R.N.R.

Before M. M. Kumar & Jaswant Singh, JJ.

G. L. BATRA.—Petitioner

versus

STATE OF HARYANA AND OTHERS.—Respondents

C.W.P. No. 13029 of 1997

4th November, 2009

Constitution of India, 1950—Arts. 14, 16 & 226—Haryana Public Service Commission (Conditions of Service) Regulations, 1972—Reg. 6—Punjab State Public Service (Conditions of Service) Regulations, 1958—Reg. 5(1)—Two distinct classes—Non-pensioners and re-employed pensioners—Fixation of pay differently—Regulations contemplating a valid classification between in-service employees and re-employed pensioners—No reason to frown at different treatment being given to different classes of persons in matter of fixation of pay—Punjab and Haryana Regulations are not hit by Articles 14 and 16(1) of the Constitution—Constitutional

validity of proviso (i) to Reg. 5(1) of Punjab Regulations and Reg. 6(2) of Haryana Regulations upheld—Petitions dismissed.

Held, that the Equal Protection Clause of Article 14 cannot be construed to mean that the same rules of law should be applicable to all persons irrespective of difference of circumstances. The Punjab and Haryana Regulations have created two independent and mutually exclusive classes of Members of Chairman who are to work in Public Service Commission of their respective States. The salary of those who are not earning pension is to be fixed differently than those who have superannuated and have been re-employed pensioners. Both classes are distinct. The persons belonging to first category has no retiral benefits to their credit and they are paid full salary. They are also relatively younger in age. The re-employed pensioners have all the retiral benefits to their credit and are employed after superannuation. The regulations in fact seek to restore equality by bringing the remuneration of both the classes nearly equivalent.

(Para 27)

Further held, that the Punjab Regulations and Haryana Regulations have contemplated a valid classification and the re-employed pensioners constitute a separate class than those who have not attained superannuation. Therefore, there is no reason to frown at the different treatment being given to different classes of persons in the matter of fixation of pay. Therefore, in principle and on available precedents, both the Punjab and Haryana Regulations are not hit by Articles 14 and 16(1) of the Constitution.

(Para 31)

R.K. Malik, Senior Advocate, with Manish Jain, Advocate, (in CWP No. 13029 of 1997).

Neelofer A. Perveen, Advocate, (in CWP No. 5684 of 2007) for the petitioner(s).

Sanjeev Kaushik, Addl. AG, Haryana, for the respondents (in CWP No. 13029 of 1997)

Piyush Kant Jain, Addl. AG, Punjab, for respondent Nos. 1 and 3 (in CWP No. 5684 of 2007)

M.M. KUMAR, J.

(1) This order shall dispose of CWP Nos. 13029 of 1997 and 5684 of 2007 as common question of law and facts are involved.

(2) The petitioner Shri G.L. Batra has approached this Court with a prayer for quashing order dated 15th April, 1997/6th May, 1997 (P-13) fixing his pay as Chairman, Haryana Public Service Commission (for brevity, 'HPSC') with effect from 6th July, 1994, under Regulation 6 of the Haryana Public Service Commission (Conditions of Services) Regulations, 1972 (for brevity, 'Haryana Regulations'). His grievance is that his basic pay has been reduced from Rs. 7,500 per month to Rs. 4,135 per month by deducting the retiral benefits being paid to him.

Facts Re : C.W.P. No. 13029 of 1997—Haryana Matter

(3) The petitioner was working as Additional Secretary, Lok Sabha Secretariat and drawing salary of Rs. 13,250. His basic pay at that time was Rs. 7,500 per month. He was appointed as Chairman of the Haryana Public Service Commission,—*vide* order, dated 6th July, 1994 (P-1). His service conditions as the Chairman of HPSC were to governed by the Haryana Regulations. Regulation 6(1) postulates that the Chairman would receive a remuneration of Rs. 7,000 a month, which was enhanced to Rs. 7,500,—*vide* notification, dated 3rd October, 1996. Besides this he was also entitled to such other allowances as may be admissible to a Government employee drawing the same pay. However, Regulation 6(2) prescribes the remuneration of a person who is appointed as Chairman after his retirement from Government service. In such an eventuality, the incumbent would be entitled to Rs. 7,500 in addition to the pension sanctioned to him. The first proviso to sub-regulation (2) of Regulation 6 stipulates that the amount of remuneration *plus* the gross amount of pension or the pension equivalent to other forms of retiral benefits is not to exceed the pay last drawn by him before his retirement or the remuneration mentioned in sub-regulation (1) whichever is higher. The second proviso further provides that the total remuneration *plus* the gross amount of pension and the pension equivalent to other forms of retirement benefits, excluding the allowances, was not to exceed Rs. 8,000 per month in any case. Regulation 6 of the Haryana Regulation further provides that a member who on the date of his appointment

to the Commission was in the service of the Central or State Government would be deemed to have retired from such service with effect from the date of his appointment as member of the Commission. As per Regulation 2(d) of the Haryana Regulation, the expression 'member' also includes Chairman of the Commission.

(4) The principal ground of challenge of the petitioner is that had he remained in his parent department i.e. Lok Sabha Secretariat as Additional Secretary, he would have earned increment with effect from 1st September, 1994 and his basic pay would have been Rs. 7,600 per month. He was senior most Additional Secretary and was likely to be promoted as Secretary General, Lok Sabha, which is a post equivalent to the status of Cabinet Secretary. It has, thus, been asserted by the petitioner that the last pay drawn by him was required to be protected upon his appointment as Chairman of the HPSC. In that regard he made a representation to the State Government as well as the HPSC (P-3 & P-4). On 15/18th March, 1996, in relaxation of the provisions contained in Regulation 6 of the Haryana Regulations, his pay was fixed at Rs. 7,500 per month with effect from 6th July, 1994 as a personal measure to him (P-5). The aforementioned order was silent about the date of admissibility of allowance. Therefore, the HPSC sent a reference to the Government on 20th June, 1996 seeking clarification as to whether the allowances were to be given with effect from 1st January, 1986 as given to other State Government employees or with effect from 1st January, 1989 when Regulation 6 was amended to include 'allowances' in addition to the basic pay (P-6). The petitioner separately, also represented to the Government through the Chief Secretary, Haryana (P-8). The aforementioned request was rejected,---*vide* order dated 23rd October, 1996 and the Government reiterated its earlier decision (P-9). Subsequently, order, dated 18th March, 1996 fixing the remuneration of the petitioner in relaxation of Regulation 6 was withdrawn and the excess payment made to him were ordered to be recovered,---*vide* order, dated 29th November, 1996 (P-10).

(5) On 26th December, 1996, the petitioner again represented to the Governor of Haryana (P-11) followed by another letter, dated 3rd February, 1997 (P-12). However,---*vide* order, dated 15th April, 1997/ 6th May, 1997, the pay of the petitioner was re-fixed at Rs. 4,135 as basic pay per month (P-13), which is subject matter of challenge in the instant petition.

(6) In the written statement filed by respondent No. 1, the factual position as noticed above has not been controverted. Justifying fixation of pay of the petitioner it has been asserted that as per the provisions of Regulation 6 of the Haryana Regulations the pay of a retired Government employee on his appointment as Chairman of HPSC, has to be fixed in such a manner that by including the amount of pension and amount of pension equivalent to other forms of retirement benefits, it does not exceed the last pay drawn by him before his retirement or Rs. 7,500 as provided in Regulation 6(1), whichever is higher and that if the pay last drawn before his retirement is admissible then it was subject to the ceiling of Rs. 8,000 per month.

(7) On 20th January, 1998, when the writ petition came up for consideration, the Division Bench passed the following order :---

“Learned counsel for the petitioner submits that some writ petitions involving similar points as in the present writ petition stand admitted and in those writ petitions, interim directions were given as to how the emoluments are to be disbursed to those petitioners during the pendency of the writ petition. In para 18 of the reply filed on behalf of the respondents, it has been stated as under :

“18. In reply to para 18 it is submitted that civil writ petition Nos. 1355/91, 4029/87, 11839 of 89, 2898 of 92 and 15159 of 1995, wherein the vires of the provisions of regulation 6 were challenged, have been admitted for regular hearing. As explained in the foregoing paras there is no force in the contention of the petitioner. The provisions of the regulations are valid and constitutional. It is, however, submitted that in the two civil writ petitions cited in this para by the petitioner, the Hon’ble High Court had directed not to deduct the amount of pension etc. for the emoluments. In CWP No. 15159 of 1995 the direction was, however, subject to the furnishing of adequate security and undertaking that the amount will be returned with 18% interest.”

In view of the above, we admit this writ petition to regular hearing and order it to be heard with C.W.P. No. 15159 of 1995. As an interim measure it is ordered that during the pendency of the writ petition, respondents would not deduct the pension and gratuity from the pay of the petitioner subject to the petitioner furnishing adequate security and undertaking to the respondents that in case the writ petition is dismissed, the said amount would be returned with 18% interest. Let such security/undertaking be filed within a month.”

(8) On 4th March, 1998, the Division Bench modified the interim order to the following extent :—

“After hearing learned counsel for the parties, we modify interim order, dated January 20, 1998, to the extent that in the last line of the order which read “subject to the furnishing of adequate security and undertaking that the amount will be returned with 18% interest” would now be read “subject to furnishing an undertaking that the amount would be refunded.”

(9) In terms of the order, dated 4th March, 1998, the petitioner furnished his undertaking on 10th March, 1998. According to the order dated 20th January, 1998, the instant petition was required to be heard along with CWP No. 15159 of 1996 (Ram Phal Singh *versus* State of Haryana and others), which was disposed of by a learned Single Judge of this Court on 8th September, 2004. Accordingly, the petitioner filed an application under Article 226 of the Constitution read with Section 151 CPC, bearing C.M. No. 1000 of 2005, for disposal of the writ petition in terms of the decision rendered in Ram Phal Singh’s case (*supra*). In reply to the aforementioned application the respondent State took the stand that against the judgment rendered in Ram Phal Singh’s case (*supra*) and other connected petitions, appeals bearing LPA Nos. 110 to 116 of 2005, were preferred by the respondent State of Haryana and the Letters Patent Bench admitted the same. However, the prayer for stay was declined. In view of the aforementioned stand, while disposing of CM No. 1000 of 2005,— *vide* order, dated 29th August, 2005, learned Single Judge ordered that the instant petition be listed after the decision of LPA Nos. 110 to 116 of 2005.

(10) Another Application under Section 151 CPC, bearing CM No. 7372 of 2007, was filed by the petitioner pointing out that LPA Nos. 110 to 116 of 2005, which were filed against the judgment dated 8th September, 2004 rendered in CWP No. 15159 of 1995 (*supra*), were dismissed by the Letters Patent Bench,—*vide* order dated 19th March, 2007, upholding the judgment of learned Single Judge (P-21). The Letters Patent Bench also noticed the fact that the judgment of learned Single Judge in CWP No. 15159 of 1995 (*supra*) was relied upon by a Division Bench of this Court in the case of **M.P. Pandove versus State of Punjab and others (CWP No. 85 of 2005, decided on 26th February, 2005)** and the Special Leave Petition against the said order was dismissed by Hon'ble the Supreme Court.

(11) In para 3 of the reply to C.M. No. 7372 of 2007, respondent No. 1 asserted as under :—

“3. That in reply to para 3, it is submitted that this writ petition is covered by the judgment of Hon'ble Single Judge which has also been upheld by the Division Bench except the point raised by the petitioner in his writ petition regarding fixation of pay as a special case. However, in CWP No. 15159 of 1996-Ram Phal Singh *versus* State of Haryana, the petitioner has agreed the proviso of Regulation 6(2) of the Haryana Public Service Commission (Conditions of Service) Regulation, 1972. The petitioner has also prayed in that writ petition that the reduction of pension and pension equivalent to gratuity should not be deducted from the pay of the petitioner. It is, therefore, stated that the controversy *involved in the writ petition is not squarely covered as has been stated by the petitioner.*”
(emphasis added)

(12) On 4th May, 2009, learned Single Judge noticed that the petitioner has challenged certain statutory provisions in this writ petition. Accordingly, after appropriate orders having been passed by Hon'ble the Chief Justice, the matter has been placed before us.

Facts Re : C.W.P. No. 5684 of 2007—Punjab Matter

(13) The petitioner in this petition has challenged the constitutional validity of proviso (i) to Regulation 5(1) of the Punjab State Public Service (Conditions of Service) Regulations, 1958 (for brevity, 'the Punjab Regulations') being ultra vires of Articles 14 and 16 of the Constitution. He has also sought quashing of order dated 7th September, 2006 (P-2),—*vide* which his basic pay has been fixed at Rs. 12,425 per month instead of basic pay of Rs. 27,600 per month. He has further sought a direction to the respondents to fix his basic pay at Rs. 27,600 from the date of his appointment as Member of the Punjab Public Service Commission (for brevity, 'PPSC') and to pay arrears along with interest.

(14) The petitioner-Shri D.S. Grewal stood retired from Indian Army as Brigadier on attaining the age of superannuation on 31st December, 2005. Thereafter, he was appointed as a Member of PPSC, —*vide* notification dated 9th May, 2006. The conditions of service of the petitioner as Member of PPSC are governed by the Punjab Regulations. Regulation 5(1) proviso (i) appended thereto of the Punjab Regulations relates to emoluments of the Chairman or a Member of the PPSC.

(15) On 7th September, 2006, an order was passed by respondent No. 2 fixing the pay of the petitioner at Rs. 12,425 (P-2). The petitioner has claimed that his basic pay ought to have been fixed at Rs. 27,600. The petitioner has prayed for allowing the instant petition by placing reliance on the judgment of learned Single Judge rendered in Ram Phal Singh's case (*supra*), Division Bench judgment rendered in M.P. Pandove's case (*supra*) and orders passed by Hon'ble the Supreme Court dismissing the special leave petitions.

(16) While admitting the factual position, the stand taken by respondent Nos. 1 and 3 is that the pay of the petitioner has been rightly fixed under the provisions of Regulation 5 of the Punjab Regulations. It has been submitted that the judgments relied upon by the petitioner are not applicable in the instant petition because the respondent State of Punjab has never given any concession, as has been given by the learned State Counsel in Haryana matters. In that regard reliance has been placed on the

judgment of Hon'ble the Supreme Court rendered in the cases of **Uptron India Ltd. versus State Shammi Bhan, (1)** and **Central Council for Research in Ayurveda versus Dr. K. Santha Kumari, (2)**.

Rival Contentions :

(17) Mr. R.K. Malik, learned senior counsel and Ms. Neelofer A. Perveen, learned counsel for the petitioner(s) have argued that Regulation 6(1) and (2) of the Haryana Regulations have already been declared as ultra vires of Articles 14, 16(1) and 318(2) of the Constitution. In that regard he has placed reliance on the Single Bench judgment of this Court rendered in **Ram Phal Singh's case (supra)** and argued that once two persons coming from different sources are put to work on the same post and they are to discharge the same functions which are inter-changeable then in the matter of pay there could not be any discrimination. According to the learned senior counsel, the petitioner was working as Joint Secretary, Lok Sabha in the year 1994 when he was appointed as a Chairman of HPSC. Mr. Malik contended that proviso to Regulation 6 of the Haryana Regulations contemplates an anomalous situation, inasmuch as, a person like the petitioner with 10 years or more service would be entitled to a maximum of the pay drawn by him and the salary is not to exceed the last pay drawn. If the aforesaid principle is worked out, learned counsel has submitted then the petitioner would be entitled to a sum of Rs. 7,500 with further condition that the pension or other retiral benefits representing pension have to be deducted. As compared to the aforesaid in case of a person, who has not earned any pension being ex-employee and who is appointed as the Chairman/Member of the Commission then he would continue to get full pay which would be much more because there would be no cut applied in his case. Illustrating his argument Mr. Malik has submitted that a lawyer after thriving practice would earn full pay whereas an ex-employee has to suffer cut from the salary by deduction pension amount. Therefore, he has maintained that for the same duty, the-petitioner would get the pay which is reduced by the amount of pension whereas the person who has come from the open field would get full pay. Therefore, there is hostile discrimination in the matter of pay although both are the incumbent to the same office albeit from a different source.

(1) (1998) 6 S.C.C. 538

(2) (2001) 5 S.C.C. 60 .

(18) Ms. Neelofer A. Perveen, learned counsel in Punjab matter has adopted the aforesaid argument by submitting that Regulation 5(i) of the Punjab Regulations in sum and substance is the same.

(19) Mr. P.K. Jain, learned Additional Advocate General, Punjab and Mr. Sanjeev Kaushik, learned Additional Advocate General, Haryana, have submitted that Regulation 5 of the Punjab Regulations and Regulation 6 of the Haryana Regulations respectively do not suffer from any constitutional invalidity and are liable to be upheld. They have argued that in the matters of pay an employee who has not yet earned pension, can lawfully be treated differently than the one who has started to earn pension. They have maintained that the distinction between the two classes of employees is explicit because in the first case a person continues to be an employee whereas in the second case he becomes an ex-employee earning pension. Both the categories constitute two different distinct classes and un-equals cannot be treated equally. Both the learned State counsel have challenged the view taken by learned Single Judge in **Ram Phal Singh's case** (*supra*) and have argued that the learned Single Judge has committed a serious error of law by treating un-equals equally. The theory of persons coming from different sources forming one cadre and then becoming entitled to same salary is wholly in-applicable to the facts of the instant petitions because both the Punjab Regulations and Haryana Regulations make a rationale classification. They have further submitted that the reliance of the learned Single Judge in **Ram Phal Singh's case** (*supra*) on the judgments of Hon'ble the Supreme Court rendered in the cases of **Mervyn Continho versus Collector of Customs, Bombay**, (3) **Roshan Tandon versus Union of India**, (4) **S.M. Pandit versus State of Gujarat**, (5) and **Ramchandra Shanker Deodhar versus State of Maharashtra**, (6) is wholly misplaced because no such principle of law has been laid down in those cases, which may lead to a conclusion that a retiree with pension would be entitled to the same pay scale without deducting pension, which are given to a regular employee who is yet to retire.

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- (3) 1967 S.L.R. 1
(4) 1967 S.L.R. 12
(5) 1972 S.L.R. 79
(6) 1974 (1) S.L.R. 470

(20) The controversy raised in these petitions is dependent on the interpretation of Regulation 5 of the Punjab Regulations and Regulation 6 of the Haryana Regulations. Both the regulations are reproduced as under :---

Regulation 5 of the Punjab Regulations

“5(1) “The Chairman shall receive pay in the scale of Rs. 22,400-525-24,500 and other Members in the pay scale of Rs. 18,400-500-22,400 and in addition thereto they shall also be entitled to get such other allowances as may be admissible from time to time to Government employees getting similar pay.”

“Provided that :--

- (i) If the Chairman or a Member at the time of appointment as such is a person who has retired from service under the Central Government, a State Government, a local authority, a university, a privately managed recognised school or an affiliated college or any other body wholly or substantially owned or controlled by the Punjab Government, and who is in receipt of or has received or has become entitled to receive and retirement benefit by way of pension, gratuity, contributory provident fund or otherwise, the pay specified in this regulation shall be reduced by the gross amount of any kind of pension including any portion of the pensions which may have been commuted :

Provided that the amount of pension not exceeding five hundred rupees per mensem, shall not be taken into consideration for fixing the pay.”

Regulation 6 of the Haryana Regulations

“6 (1) The Chairman shall receive a remuneration of seven thousand rupees a month. They shall also be entitled to such other allowances as may be admissible in future from time to time, to

Government employees drawing the same pay in addition to four hundred rupees a month as car allowance provided a car is maintained.

- (2) Chairman or the member, if, at the time of his appointment as such, is a retired Government employee he will be entitled to the remuneration mentioned in sub regulation (1) in addition to the pension sanctioned to him :

Provided that the amount of remuneration plus the gross amount of pension or the pension equivalent to other forms of retirement benefits does not exceed the pay last drawn by him before his retirement or the remuneration mentioned in sub-regulation (1) whichever is higher :

Provided further that the total remuneration plus the gross of pension and the pension equivalent to other forms of retirement benefits, excluding the allowances, shall in no case exceed eight thousand rupees per month.

- (3) The Chairman or the Member who at the time of his appointment as such, is in the service of the Central or State Government and does not exercise option under sub-regulation (1) of regulation 9 shall be paid the remuneration drawn by him immediately before his appointment as Chairman or Member, as the case may be or the remuneration mentioned in sub-regulations (1) whichever is higher, till the date of his retirement from Government Service in the normal course and thereafter his remuneration shall be regulated as provided in sub regulation (2).
- (4) A Member who, in the absence of the Chairman on leave or otherwise, is asked to perform the additional duties of the Chairman, shall be entitled to an additional remuneration at the rate of two hundred rupees a month :

Provided that such additional duties are performed for a period of not less than fourteen days.”

(21) A bare perusal of Regulation 5 of the Punjab Regulations would show that the Chairman of PPSC is to receive pay in the scale of Rs. 22,400—525—24,500. The member of the PPSC is to get salary in the pay scale of Rs. 18,400—500—22,400. They are also entitled to get such other allowances as may be admissible to the government employees getting similar pay scale in addition. It is, thus, clear that this is the pay scale given to the Chairman and the Members of the PPSC, if incumbents of those posts do not enjoy any retiral benefits.

(22) The proviso underneath Regulation 5(1) clarifies that if the Chairman or a Member at the time of appointment as such is a pensioner having retired from service either of the Central Government, State Government, a local authority, a university, a privately managed recognised school or an affiliated college or any other body wholly or substantially owned or controlled by the Punjab Government and who is in receipt of or has received or has become entitled to receive retirement benefits by way of pension, gratuity, contributory provident fund or otherwise, then the pay specified in Regulation 5(1) has to be reduced by the gross amount of any kind of pension including any portion of pension which may have been commuted. It is further qualified with another proviso that the amount of pension not exceeding Rs. 500 per month is not to be taken into account for fixing the pay. In other words, the pay of re-employed pensioner or a person who has been appointed as Chairman or Member of PPSC has to be reduced by the gross amount of any kind of pension, which he was receiving or became entitled to receive during the currency of service. The maximum amount of pension, which is permitted to be included in the pay of a chairman or a Member of PPSC, is Rs. 500. Therefore, if a Member of the PPSC is a re-employed pensioner and getting pay Rs. 15,000 as pension then his pay fixed in the pay scale of Rs. 18400–500–22400 would be worked out after deducting Rs. 15,000 which is the gross amount of pension minus Rs. 500. The regulation clearly makes a distinction between the re-employed pensioner who are in receipt of retiral benefits and other Member/Chairman who have no benefits of such a nature to their credit.

(23) The Haryana Regulations in contents and substance are similar to the Punjab Regulations although differ slightly in details. The controversy revolves around interpretation of two provisos underneath sub-regulation (2) of Regulation 6 of the Haryana regulations. According to sub-regulation

(1) of Regulation 6, the Chairman of the HPSC is entitled to remuneration of Rs. 7,000 per month. He is also entitled to such other allowances as may be admissible from time to time to government employees drawing the same pay. In case the Chairman maintains a car then Rs. 400 per month as car allowance is also payable to him. Sub-regulation (2) envisages that if the Chairman or the Member is a retired government employee then he would be entitled to remuneration as prescribed in sub-regulation (1) in addition to pension sanctioned to him. However, the first proviso makes it clear that the amount of remuneration after adding the amount of pension plus other forms of retiral benefits does not exceed the pay last drawn by him before his retirement. It also provides that it should not exceed the remuneration postulated by sub-regulation (1) of Regulation 6. Such a Member or the Chairman is entitled to fixation either the last pay drawn by him before his retirement or the one mentioned in sub-regulation (1) of Regulation 6 whichever is higher. The second proviso engraft maximum ceiling by providing that in no case the remuneration shall exceed Rs. 8,000 per month, which has been further clarified by sub-regulation (3) of Regulation 6. Therefore, it is evident that the basic distinction drawn by Regulation 6 of the Haryana Regulations is between Member/Chairman who are re-employed pensioners as it is discernible from Regulation 6(2) & (3) and those who have not been earning any retiral/pensionary benefits as is evident from Regulation 6(1) of the Haryana Regulations.

(24) A close examination of both Punjab Regulations and Haryana Regulations would show that different principles of fixation of pay have been incorporated in respect of re-employed pensioners and non-pensioners. Conceptually and jurisprudentially there is no difficulty to adopt different principles of fixation of pay in respect of two distinct classes of persons subject of course to the limits provided by statutes, rules and statutory regulations because the classification of pensioners and non-pensioners in two different groups satisfy the twin test laid down in the case of **State of West Bengal versus Anwar Ali Sarkar (7)**. Those two conditions are (a) the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others ; and (b) that differentia must be having a rationale relation to the object sought to be achieved by the statute. It has been clarified that the differentia which is

(7) AIR 1952 S.C. 75

the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be nexus between them. It is also well known that there is presumption in favour of constitutionality of an enactment because a legislature is presumed to understand and appreciate the needs of its own people and its laws are presumed to be directed to problems made manifest by experience. Its discriminations are presumed to be based on adequate grounds unless of course shown otherwise. The classification does not require to be scientifically perfect or logically complete as long as the classification is based on any of the factors that satisfy the twin test.

(25) A 7-Judge Constitution Bench in **Special Courts Bill, 1978, In re. (8)** took the opportunity to analyze a large number of judgments including the view expressed by the Constitutional Benches. The authoritative judgment rendered by 7-Judge Constitution Bench has extracted the following propositions of law, which reads thus :—

“(1) XXX XXX XXX

(2) XXX XXX XXX

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and

another if as regards the subject-matter of the legislation their position is substantially the same.

- (5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality ; but if a law deals with the liberties of a number of well defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.
- (6) XXX XXX XXX
- (7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.
- (8) The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense abovementioned.

(9) XXX XXX XXX

(10) XXX XXX XXX

(11) Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.

(12) XXX XXX XXX

(13) XXX XXX XXX"

(26) On close examination of the aforesaid propositions extracted by their Lordships' it becomes evident that the Equal Protection Clause of Article 14 cannot be construed to mean that the same rules of law should be applicable to all persons irrespective of difference of circumstances. According to proposition No. 4 laid down by their Lordships', it only means that all persons similar circumstanced shall be treated alike both in privileges conferred and liabilities imposed. In the prevailing scenario the challenge to a lawyer is to find out whether the classification is founded on an intelligible differentia which distinguishes those that stand together from others. The aforesaid condition stand satisfied in the cases in hand because the classification is founded on an intelligible differentia and distinguishes two groups for the purposes of fixation of pay, namely, re-employed pensioners and others. The intelligible differentia also has a rationale relation to the object sought to be achieved by the Punjab Regulations and Haryana Regulations because a re-employed pensioner cannot be permitted full salary attached to the office of a Member or Chairman of the Public Service Commission as it would result into much more pay to a retired employee after superannuation than what he was getting before his superannuation. Accordingly, even the second test stands satisfied. In these cases not only the classification is founded on an intelligible differentia on the basis of earning pension but has also a rationale relation to the object of the Regulations which make an attempt to bring at par the salary of both the

groups by allowing an additional sum of Rs. 500 to the re-employed pensioners. Therefore, we find that the Punjab Regulations and Haryana Regulations are in complete conformity with the requirement of Articles 14 and 16(1) of the Constitution.

(27) From the aforesaid discussion it is evident that the Punjab and Haryana Regulations have created two independent and mutually exclusive classes of Members or Chairman who are to work in Public Service Commission of their respective States. The salary of those who are not earning pension is to be fixed differently than those who have superannuated and have been re-employed pensioners. Both classes are distinct. The persons belonging to first category has no retiral benefits to their credit and they are paid full salary. They are also relatively younger in age. The re-employed pensioners have all the retiral benefits to their credit and are employed after superannuation. The regulations in fact seeks to restore equality by bringing the remuneration of both the classes nearly equivalent.

(28) Apart from the aforesaid constitutional and legal position we are further of the view that it is an age old concept that re-employed pensioners are always treated differently in the matters of fixation of pay in comparison to the ones who are yet to earn pension. Both Punjab and Haryana Regulations laid down a general principle of paying remuneration. But special provisions have been made clarifying that if a Chairman or Member of the Public Service Commission start earning pension or is re-employed as pensioner then the pay has to be fixed in accordance with the provisions of Regulation 5 in case of Punjab Regulations and Regulation 6 in case of Haryana Regulations. In fact, a complete chapter has been devoted to the method of fixation of pay of re-employed pensioners in the Punjab Civil Service Rules, Volume-II (for brevity, 'the Rules'). Chapter 7 of those Rules clarifies the aforesaid position. The issue is no longer *res integra*. In that regard reliance can be placed on a judgment of Hon'ble the Supreme Court rendered in the case of **M.S. Chawla versus State of Punjab (9)**, where the broad principles of fixation of pay of re-employed pensioners have been considered. In that case the order fixing the pay similar to the one in hand was challenged and the aforesaid order was upheld which has deducted the gross amount of pension from the remuneration to be paid

to a former District Judge when he was appointed as President of District Consumer Forum. Making a detailed reference to Rule 7.18 and Note 3(a) of the Rules their Lordships' of the Supreme Court proceeded to hold as under :—

“The appointment of a District Judge, after his superannuation as the President of the District Consumer Forum under the Consumer Protection Act, cannot but be held to be a case of re-employment of a pensioner inasmuch as the said District Judge is in receipt of a pension for the services rendered as a District Judge in accordance with the provisions contained in the Punjab Civil Services Rules, Volume II. Since Section 2.1 of Chapter II of Volume II, unequivocally states that every pension shall be held to have been granted subject to the conditions contained in Chapter VII and Chapter VII contains Rule 7.18 as well as Note 3(a)(i), which have been extracted before, the conclusion is irresistible that the appropriate authority will have to decide the pay and allowances, which the retired District Judge is entitled to receive on being appointed as the President of the District Forum notwithstanding the fixation of such pay under the Rules framed under Consumer Protection Act and while fixing the same, the principle underlined in Note 3(a)(i) has to be followed. This being the position, we see no infirmity with the Government Order dated 25th of January, 1996 and under the said notification the salary of re-employed District Judges as President of the District Consumer Forum, have rightly been fixed, taking into account the pension, which they are in receipt of, as retired District Judges. The contention of Mr. Rao that the salary fixed under the Act and the Rules framed thereunder is being altered by an administrative order is of no force, in view of the legal provisions enumerated above and in fact it is the provision of the Punjab Civil Services Rules, dealing with the salary of re-employed pensioners, which governs the field. The other contention on the basis of the judgement of this Court in D.S. Nakara [AIR 1983 SC 130], that pension is not a bounty is also of no consequence.....” (emphasis added)

(29) Likewise, another judgment of Hon'ble the Supreme Court rendered in the case of **V. S. Mallimath versus Union of India (10)**, deal with a similar question. In that case the question of fixation of pay of a re-employed retired Judge of the High Court was raised. The order deducting the pension from the salary was challenged by the Member of the National Human Rights Commission. The constitutional validity of Rule 14 of the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986, was challenged and the same was upheld. The observations made by their Lordships' read as under :—

- “4. Coming to the question whether a Member of the Human Rights Commission, is entitled to gratuity for the period he serves the Commission, it appears that there has been no such provision in the Rules, entitled a Member to claim gratuity. Rule 10 of the Rules, however stipulates that the conditions of service of the Chairperson and the Members for which no express provision is made in the Rules shall be determined by the rules and others applicable to a Secretary to the Government of India belonging to Indian Administrative Service. So far as the service conditions of Secretary to the Government of India belonging to the Indian Administrative Service is concerned, the same is governed by a set of Rules framed under Section 3(1) of the All India Services Act, 1951 called the All India Services (Death-cum-Retirement Benefits) Rules, 1958. Under the aforesaid Rules, retirement gratuity is granted to a Member of the service, who retires or is required to retire under Rule 16, as provided in Rule 17 of the Rules. The amount of gratuity is computed under Rule 18. The enabling provision contained in Rules 16, 17 and 18 do not provide for payment of gratuity for a re-employed person. The President of India, however in supersession of all the earlier orders in relation to fixation of pay of re-employed pensioners, promulgated an Order called the Central Civil Services (Fixation of Pay of Re-employed Pensioners.) Orders, 1986. The aforesaid order applies to all the persons who are re-employed in Civil Services and posts in connection with the affairs of the Union Government, after

retirement on getting pension, gratuity and/or Contributory Provident Fund benefits. Rule 14 of the orders, stipulates that re-employed officers shall not be eligible for any gratuity/death/retirement gratuity, for the period of re-employment, except in those cases covered in Rules 18 and 19 of the Central Civil Services (Pension) Rules, 1972. The petitioner's case is not covered under the aforesaid provisions of the Central Civil Services (Pension) Rules, 1972. Therefore, the question for consideration is whether the appointment of the petitioner as a Member of the Human Rights Commission would tantamount to re-employment. In the absence of any definition of the expression 're-employment' and applying the common parlance theory, the conclusion is irresistible that the said appointment would tantamount to 're-employment' and, therefore, for such period of service as Member of the Human Rights Commission, no gratuity would be payable."(emphasis added).

(30) The question of re-employed pensioners and in-service employees and treating them differently came up for consideration before a 5-Judge Constitution Bench of Hon'ble the Supreme Court in the case of **Confederation of Ex-Servicemen Associations versus Union of India (11)**. Following the judgment in the case of **Special Courts Bill, 1978**, In re (supra) the issue has been answered conclusively by their Lordships' in para 31 where the classification has been upheld in the following words. "*Classification between in-service employees and retirees is legal, valid and reasonable classification and if certain benefits are provided to in-service employees and those benefits have not been extended to retired employees it cannot be successfully contended that there is discrimination which is hit by Article 14 of the Constitution. The two categories of employees are different. They form different classes and cannot be said to be similarly situated. There is, therefore, no violation of Article 14 if they are treated differently*". (Italics by us).

(31) When the principles aforesaid are applied to the facts of the present cases, no doubt is left that the Punjab Regulations and Haryana Regulations have contemplated a valid classification and re-employed

pensioners constitute a separate class than those who have not attained superannuation. Therefore, there is no reason to frown at the different treatment being given to different classes of persons in the matter of fixation of pay. Therefore, we find that in principle and on available precedents, both the Punjab and Haryana Regulations are not hit by Articles 14 and 16 (1) of the Constitution. Therefore, the impugned order dated 15th April, 1997 (P-13 in CWP No. 13029 of 1977) is liable to be upheld. A perusal of the order shows that the last pay drawn by Shri G.L. Batra, who was appointed as Chairman of the HPSC while working as Additional Secretary, Lok Sabha Secretariat, was Rs. 7,500 per month and his pay was to be fixed as the Chairman of HPSC by deducting the pension and other retrieval benefits. It has remained undisputed that he was allowed pension of Rs. 2,614 and gratuity amounting of Rs. 751 per month. The total amount of pension and gratuity works out to be Rs. 3,365, which has to be deducted from Rs. 7,500, which was the last pay drawn by him as Additional Secretary, Lok Sabha Secretariat and his salary has been rightly fixed at Rs. 4,135. Accordingly, the excess amount paid to the petitioner has to be refunded in terms of undertaking dated 10th March, 1998, which has been furnished in pursuance of interim order dated 4th March, 1998 passed by this Court.

(32) In so far as CWP No. 5684 of 2007 (Punjab matter) is concerned the impugned order dated 7th September, 2006 (P-2) is liable to be upheld as it has rightly deducted the amount of pension being paid to the petitioner while fixing his pay in terms of Regulation 5(1)(i) of the Punjab Regulations and the petition is liable to be dismissed.

(33) The primary reliance by the learned counsel for the petitioner(s) has been on the judgment of learned Single Judge of this Court rendered in the case of **Ram Phal Singh** (supra) and the order passed by the Division Bench following the aforesaid judgment in **M.P. Pandove's case** (supra). With utmost humility, in our view the aforesaid judgment does not lay down correct law. Learned Single Judge proceeded on the assumption that the first proviso to Regulation 6(2) of the Haryana Regulations is referable to proviso to Article 318 of the Constitution which envisages that the conditions of the members of the HPSC cannot be varied to the disadvantage of those who have been in Government service earlier. It was observed that the controversy in that case was whether the first proviso

to Article 318 is aimed at protecting and preserving the wages drawn by a member under the Government prior to his appointment as a member of the Public Service Commission in terms of the mandate of Article 318 of the Constitution. The learned Judge on that issue has concluded as under :—

“In so far as the first category, namely, members of the Public Service Commission, who were earlier employees under the Government and were drawing wages in excess of the remuneration under Regulation 6(1) of the 1973 Regulations, is concerned, they are entitled to the constitutional protection envisaged by the proviso under Clause (b) of Article 318 of the Constitution of India. There is an obvious justification for the aforesaid, namely, had such members of the Public Service Commission continued to discharge duties under the government they would have continued to draw wages in excess of the remuneration stipulated under Regulation 6(1) of the 1973 Regulations. So as to ensure that the best available talent would readily accept membership of the Public Service Commission, it was imperative to ensure that they would not suffer any monetary loss by accepting the instant assignment. The proviso under Clause (b) of Article 318 of the Constitution of India, therefore, provides that the conditions of service of the member of the Public Service Commission who were earlier employees under the Government, would not be varied to their disadvantage after their appointment. The first proviso under Regulation 6(2) of the 1973 Regulations, also stipulates that a member of a Public Service Commission who was drawing a remuneration under the Government in excess of the one fixed under Regulation 6(1) of the 1973 Regulations, would not be entitled to draw a remuneration in excess of the last pay drawn by him under the government. The emoluments which would have been drawn by such members, had they continued to serve under the Government, will have to be paid to such members. The remuneration payable to such members will therefore, be ascertained from the wages that would be payable to such member as if he had continued, by a fiction of law, to serve

under the Government. To pay such members of the Public Service Commission the last wage drawn by them before their appointment as members of the Public Service Commission, would violate the constitutional protection granted to them by the proviso under Clause (b) of Article 318 of the Constitution of India. Accordingly, it is obvious that the first proviso under Regulation 6(2) of 1973 Regulations, which restricts the remuneration payable to a member of the Public Service Commission (who was drawing wages under the Government at a level higher than the remuneration fixed under Regulation 6(1) of the 1973 Regulations), the last pay drawn by him under the government at time of his appointment as a member of the Public Service Commission, is violative of the proviso under clause (b) of Article 318 of the Constitution of India. In view of the above, the first proviso under Regulation 6(2) of 1973 Regulations, whereby the emoluments payable to an erstwhile employee under the Government who were drawing a wage in excess of the remuneration fixed under Regulation 6(1) of the 1973 Regulations, is restricted to the last wages drawn by him under the Government, is liable to be set aside and is, accordingly, set aside. The remuneration payable to such member shall have to be, the same as the wage he would have drawn had he continued to serve under the Government.”

34. It appears to us that the learned Single Judge has proceeded on an erroneous assumption that Article 318 of the Constitution is aimed at protecting the salary of Government employees who are to join as member of HPSC. We are afraid that such is not the import of Article 318 of the Constitution. In order to clarify any doubt it may be pertinent to notice Article 318 of the Constitution which reads thus :—

“318. Power to make regulations as to conditions of service of members and staff of the Commission.—

In the case of the Union Commission or a Joint Commission, the President and, in the case of

State Commission, the Governor of the State may by regulations :

- (a) determine the number of members of the Commission and their conditions of service; and
- (b) make provision with respect to the number of members of the staff of the Commission and their conditions of services :

Provided that the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment.”

(35) A perusal of Article 318 of the Constitution clearly shows that the President in the case of Union Public Service Commission or a Joint Commission or the Governor in the case of State Public Service Commission may by regulation determine the number of members of the Commission and their conditions of service. It may also make provisions with respect to the number of members of the staff of the Commission and their conditions of service. The proviso under Article 318 further envisages that the condition of service of a Member or Chairman of the Public Service Commission are not to be varied to his disadvantage after his appointment. With greatest respect to the view expressed by the learned Single Judge the provisions of Article 318 are not at all aimed at protecting the salary of a government servant who joins the service of a Public Service Commission. The basic object of Article 318 of the Public Service Constitution seems to be that the working of the Union or State Commission shall remain independent and should not be controlled by any exterior authority. In order to protect their independence Article 318 clearly provide that the conditions of service of a member of the Union or State Public Service Commission cannot be varied to his disadvantage after his appointment. The Article seeks to protect the service conditions of a Member or Chairman of the Public Service Commission. Therefore, it is erroneous to presume that Article 318 is aimed at protecting the conditions of service of a government employee or its aim is to attract best talent available amongst government departments. In that regard reliance may be placed on **Bhagat Ram Sharma versus Union of India (12)**. In that case the provisions of Article 318 of the Constitution came to interpreted. It was held that the member of the Public

Service Commission could not be denied pension on account of subsequent amendment in the regulations. It is in this context that the conditions of service of a member of HPSC or PPSC are sought to be protected.

(36) The second premise on which the judgment in **Ram Phal Singh's case (supra)** proceeds is that once two persons becomes member of the same service although drawn from different sources then for the purposes of pay there cannot be any discrimination. For the aforesaid principle reliance has been placed in **Ram Phal Singh's case (supra)** on various judgments of Hon'ble the Supreme Court namely, **Mervyn Continho (supra)**; **Roshan Lal Tandon (supra)** and **S. M. Pandit (supra)**. Reliance has also been placed on the judgment of Hon'ble the Supreme Court in **Ramchandra Shanker Deodhar's case (supra)**. According to the view expressed by the learned Single Judge, Hon'ble the Supreme Court has evaluated the rights of the concerned officers/officials for onward promotion. The cadre post from which further promotions were sought were manned by appointment by way of direct recruitment and also by way of promotion from the feeder cadre. For further promotion the rule permitted promotion only to direct recruit. The feeder cadre was classified into two categories one comprised of promotee and the other comprising of direct recruit. The direct recruit alone to the exclusion of the promotees were eligible for further promotion. In the absence of any distinction between the promotee members of the cadre and the direct recruit belonging to the same cadre the classification based on their origin which origin which disentitled promotee from further promotion was held to be violative of Articles 14 and 16 of the Constitution. Based on the aforesaid conclusion, the learned Single Judge has held that irrespective of their origin or broad category to which they belong no member of Public Service Commission can be paid less remunerations stipulated under Regulation 6(1) of Haryana Regulations and 5(1) of Punjab Regulations. The learned Single Judge also concluded that all the members of HPSC/PPSC perform same functions and the Commission functions as collective body. The duties assigned to the members of the Commission are also interchangeable irrespective of source of their appointment. The learned Single Judge has also accepted that in the absence of any material placed on record depicting any justifiable distinction between two categories the statutory regulations which envisage lower emoluments for one category of member in comparison to higher emoluments payable to the other member

would be violative of Article 14 and 16 of the Constitution read with Article 39(a) and (d) thereof. The view of the learned Single Judge is discernible from the following paragraph :—

“The petitioner in the instant case was drawing a wage under the government which was less than the remuneration stipulated under Regulation 6(1) of the 1973 Regulations. It is not matter of dispute that the duties and responsibilities discharged by the members of the Commission irrespect of their source of appointment, are the same. It is also not a matter of dispute that duties assigned to the members of the Commission recruited from the broad sources expressed in Article 316(1) of the Constitution of India, are inter-changeable. It is, therefore, inevitable to conclude that the members of the Public Service Commission cannot be justifiable classified on the basis of the duties and responsibilities assigned to them. The Apex Court in Mervyn Continho’s case (*supra*) and the Ramchandra Shankar Deodhar’s case (*supra*), has repeatedly concluded that the source of recruitment of an incumbent cannot be the basis of a valid classification. The written statement filed on behalf of the respondents does not disclose any justification on the basis of which different members of the Public Service Commission can be paid different levels of remuneration. Thus viewed, it is imperative to conclude that the impugned order which requires the petitioner in the instant case Ramphal Singh to be paid remuneration less than the one stipulated under Regulation 6(1) of the 1973 Regulations, violates the principle of equal pay for equal work. In this behalf, it would be pertinent to mention that while calculating the emoluments payable to the petitioner, deduction of pension payable to him (on account of service rendered by him under the government), as well as, deduction of pension equivalent to Death-cum-Retirement Gratuity paid to him (for service rendered by him under the government) are being made from the stipulated remuneration of Rs. 6000/-, under Regulation 6(1) of the 1973 Regulations. The aforesaid deductions comprising of pension, as well as, pension equivalent to Death-cum-Retirement Gratuity, constitute earnings of the petitioner in lieu of the service rendered by him under the government. The action of making the instant

deductions amounts to depriving the petitioner of his existing rights, prior to his appointment as a member of the Public Service Commission. The aforesaid earnings are not relatable to the duties and responsibilities which a member of the Public Service Commission discharges as a member of the Public Service Commission. It is wholly unreasonable to make the aforesaid deductions from the remuneration of the petitioner because the aforesaid payments have no nexus to the duties and responsibilities of the petitioner as a member of the Public Service Commission. The only issue relevant for determining the emoluments payable to the members of the Public Service Commission is the duties and responsibilities discharged by them as members of the Public Service Commission. All the members of the Public Service Commission discharge the same duties collectively as a unified body and the duties and responsibilities of the members of the Public Service Commission are inter-changeable, there can therefore, be no justification to pay them differently for the duties discharged by them. In view of the above, it is natural to conclude, that the first proviso under Regulation 6(2) of 1973 Regulations which envisage a stipulation wherein a member of the Public Service Commission can be paid lesser remuneration than the remuneration fixed under Regulation 6(1) of 1973 Regulations, is clearly ultra vires the provisions of the Constitution of India, and is, therefore, liable to be set aside, and is accordingly, set aside. The petitioners and others who were drawing wages under the government at level less than the remuneration under Regulation 6(1) of the 1973 Regulations (prior to their appointment as members of the Public Service Commission), are hereby held to be entitled to the remuneration fixed under Regulation 6(1) of 1973 Regulations without any deduction therefrom.”

(37) A close analysis of the judgments on which reliance has been placed by the learned Single Judge would show that no such principles are discernible from any of these judgments. In **Mervyn Continho's case** (supra) discrimination was sought to be made between direct recruits and promotees for further promotion to the higher post. Hon'ble the Supreme Court disapproved the discrimination based on the source of recruitment

for further promotion to the post of Principal Appraisers. Likewise, in the case of **Roshan Lal Tandon** (supra) similar view was reiterated. In the instant case two distinct classes have been treated differently. It has been so held in the case of **Confederation of Ex-Servicemen Associations' case** (supra). Therefore, their pay fixation can proceed on different premise. In any case, in a 5-Judge Bench judgment of Hon'ble the Supreme Court rendered in the case of **State of Jammu and Kashmir versus Triloki Nath Khosa** (13), the judgements in **Roshan Lal Tandon's case** (supra) as well as **Mervyn Continho's case** (supra), have been overruled. Therefore, there is no rule of law of universal application that once promotees and direct recruits constitute one cadre then for further promotion there cannot be any discrimination. In **Triloki Nath Khosa's case** (supra) it has been held that educational qualification can constitute a valid basis for further promotion even if the cadre is constituted from two different sources of promotees and direct recruits. Therefore, no reliance could have been placed on the aforesaid judgments. The aforesaid principles have also been explained in **K.R. Lakshaman versus Karnataka Electricity Board**, (14) and **State of Bihar versus Bihar State +2 Lecturer Association** (15). From the aforesaid enunciation of law it is evident that re-employed pensioners constitute a different class of employees than in-service employees because they are yet to earn pension.

(38) For the aforesaid reasons, the constitutional validity of proviso (i) to Regulation 5(1) of the Punjab Regulations and Regulation 6(2) of the Haryana Regulations is upheld and the view taken by the learned Single Judge in **Ram Phal Singh's case** (supra) is hereby overruled. Likewise the view taken in **M. P. Pandove's case** (supra) would also not be available as it is primarily based on the judgment of the learned Single Judge in **Ram Phal Singh's case** (supra). The impugned orders fixing the pay of the petitioners after deducting the pension, gratuity and other retiral benefits are held to be lawful. The writ petitions fail and dismissed. There shall be no order as to cost.

R.N.R.

(13) (1974) 1 S.C.C. 19

(14) (2001) 1 S.C.C. 442

(15) (2008) 7 S.C.C. 231