

(5) Apart from the fundamental breach in the requirement of law in taking a decision without serving a notice in the manner that the law requires, I do not even find the manner as to how the amount was arrived at by the respondents. To a query to the counsel as to how the amount has been arrived at, his only response is that such an information could be made available in course of time. The order has to be supported by the reasoning that it must contain. If the impugned order itself does not spell out the manner of assessment, we cannot look for props to find out as to how the amount could have been arrived at. It is also seen that the assessment makes merely a reference to the delay as a justification for the levy of damages. In a decision of Hon'ble Supreme Court in "**Employees' State Insurance Corporation versus HMT Ltd. and another**" (2), it has been held that power under Section 85-B provides for recovery of damages, it should not be understood that the levy of damages would be imperative in all situations. The impecunious condition of the petitioner as pleaded does not appear to have gone into reckoning at all. The impugned order of demand for damages is quashed. Insofar as it relates to the claim for interest, which has been made, it was admitted that amount has been paid by the petitioner. I will maintain the demand for interest. The notices Anneuxres P-5 and P-8 that contained references to assessment of damages against the petitioner are alone quashed.

(6) The writ petition is partly allowed as above.

J. THAKUR

Before K. Kannan, J.

DR. GANDA SINGH,—Petitioner

versus

STATE OF PUNJAB AND ANOTHER,—Respondents

CWP No.1978 of 1989

14th September, 2011

Constitution of India, 1950 - Art.14 & 226 -Petitioner retired on superannuation - Petition claims retrial benefits under instructions dated 31.1.1978 of Punjab Government - Petitioner retired before applicability of instructions - Petition dismissed.

(2) 2008(3) SCC 35

Held, That the petitioner cannot have any benefit since the manner of reckoning pension including dearness allowance as the basis that come through recommendation of the Punjab Finance Commission cannot be said to be discriminatory in the light of decisions referred to above. The petitioner cannot secure the reliefs sought for. The writ petition is dismissed.

(Para 6)

M.S. Kang, Advocate, *for the petitioner*.

Anu Pal, Asstt. Advocate General, Punjab.

K. KANNAN J.

(1) The petitioner is said to have been retired from the Punjab Government on attaining the age of superannuation on 16.01.1974 as PCMS Class I. The last drawn pay of the petitioner was said to be Rs.1952.87. The grievance of the petitioner is twofold : (i) he had not been paid the cash equivalent in respect of the period of earned leave to his credit at the time of retirement and (ii), the denial of retiral benefits as per the provisions contained in the Punjab Instructions dated 09.07.1985 from March 31, 1985.

(2) The petitioner would rely on the instructions of the Punjab Government to enable the employees retired on superannuation on or after 31.01.1978 to be paid the cash equivalent to leave salary in respect of period of earned leave to their credit at the time of retirement. The only restriction was the number of days for which such benefit could be claimed. The reliance was placed on the instructions issued on 24.11.1988 by the Department of Finance, Government of Punjab to all Heads of Departments. In so far it is relevant to the case, the instructions included, “encashment of leave at the time of retirement shall be admissible upto 240 days to those employees, who opt for the revised orders contained in this circular letter, the other conditions shall remain unchanged.” The latter part of the same communication also states that “decision contained in the circular letter shall be effective from the date of issue except decisions regarding encashment of leave, which will be admissible to those women employees also, who had proceeded on maternity leave before the date of issue of circular letter.”

(3) The Government has filed the reply stating that this benefit was extended only to those Government employees, who retired from service on or after 30.09.1977 as per the instructions contained in the letter of the Government dated 25.01.1978 and 12.09.1977, which originally restricted the claim to 180 days. Later, by virtue of the circular, the number of days were enlarged to 240 days but this was also applicable only w.e.f. 01.01.1986. Since the petitioner had retired from service on 16.01.1974, he was not entitled to the said benefit. Making provision for application of certain benefits with a specified cut off date, cannot at all times be said to be arbitrary. The provision for leave encashment for 240 days came through 3rd Punjab Pay Commission and if there was no particular provision, which was available for such facility at the time when the petitioner retired, then such a benefit cannot be claimed. The petitioner cannot rely on a notification that came on 24.11.1988 and if he should place such a reliance, then he should read other portion of the said circular also to claim the benefit. I have already abstracted the portion of the circular, which clearly laid down that the decision contained in the circular shall be effective only from the date of issue, which in this case, was issued on 24.11.1988. The only exception was in the case of engagement of leave admissible to women employees, who proceeded on maternity leave. The claim of the petitioner, therefore, to leave encashment is not justified.

(4) As regards the second part of the prayer relating to the grant of retiral benefits, the petitioner would seek for additional pensionary, gratuity or death-cum-gratuity benefit extended to Government employees by virtue of notification issued on 09.07.1985. The said notification directed that the matter regarding treating dearness allowance and ad hoc dearness allowance for the purpose of pensionary benefits was considered favourably with the decision of the Punjab Government that the pension and other benefits will be calculated on the basis of basic pay plus dearness allowance for employees retiring on or after 31.03.1985. The grievance of the petitioner is that his pension and other retiral benefits had been worked out only on the basis of basic pay and the component of dearness allowance had not been taken for the reckoning of the retiral benefits. The petitioner claimed that the instructions issued restricting the claim only to persons, who had retired after 31.03.1985 was quashed by a judgment of

this Court in C.W.P. No.6863 of 1986 dated 18.04.1988. The petitioner would also rely on the judgment of the Hon'ble Supreme Court in **D.S. Nakara versus Union of India (1)** in respect of his contention that the cut off date cannot be arbitrary. I must point out that the cut off in **D.S. Nakara's case** (supra) has been explained in several decisions of the Hon'ble Supreme Court subsequently. In a recent judgment in **Sudhir Singh Consul versus Allahabad Bank (2)**, the Hon'ble Supreme Court held that fixing the date for grant of retirement benefits such as gratuity or pension under different schemes creation of distinct and separate classes of employees was well within the ambit of Article 14 of Constitution of India. The Hon'ble Supreme Court said that cut off date may be justified even on the ground that additional outlay was involved or effected under the terms of appointment and hence employee was not entitled to such benefit. Even the grant of liberlised pension to persons, who would retire but making the same as applicable after the particular date was held to be intravires in **Union of India versus Lieutenant E. Lacats (3)**. The decision in **D.S. Nakara's case** (supra) must be understood as applicable only in cases where the issue of grant of pension itself is a subject of discrimination. In **Hari Ram Gupta versus State of UP**, the Hon'ble Supreme Court said that revised scheme in respect of post retirement benefits, if implemented with cut off date, which is reasonable and rational in the light of Article 14 need not be held to be invalid. When a revision takes place, the Hon'ble Supreme reminded that a cut off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government. I have pointed out to the decisions where the cut-off date for application of a pension scheme would be relevant and not violative of Article 14.

(5) In this case, it is not as if pension became applicable only to some class of persons after particular date. It is the manner of reckoning pension that was in dispute. The petitioner had been allowed the benefit of pension but his grievance is that only the basic salary was taken into

-
- (1) AIR 1983 SC 130
 - (2) (2011) 3 SCC 486
 - (3) (1997) 7 SCC 334
 - (4) 1998(6) SCC 328

reckoning and the component of dearness allowance was not made such as it was done to persons retiring after particular date. The discrimination complained of is the manner of reckoning pension and not on the grant of pension itself. In **Amarnath Goel and others versus State of Punjab and others (5)** a Division Bench of this court was considering the case of revision in pensionary benefits on the basis of change in the Consumer's Price Index Level. Employees who retired after 31st March, 1985 were not entitled to such revision. Pay Commission was recommending the benefit to the employees who retired or whose death occurred on or after 1st July, 1993. The Court had held that there was no difference between the circumstances of those who retired on or after 1st July, 1993 and 1st April, 1995. Decision of the Government in not granting the benefit to the employees who retired on or after 1st July, 1993 was held to be discriminatory, and they were also held entitled to the same benefit. This judgment had been reversed by the Supreme Court in **State of Punjab versus Amarnath Goel (6)**. The Supreme Court raised the question whether the decision of Central and State Government to restrict revision of quantum of gratuity as well as increased ceiling of gratuity on merger of portion of dearness allowance into dearness pay reckonable for purpose of calculating gratuity was irrational or arbitrary. The court held that the decision of Central Government to prescribe cut-off date was neither arbitrary nor irrational or violative of Article 14. The Supreme Court held that the State or Central Government could limit the benefits in consonance with their financial position and that a reasonable nexus existed with limiting benefits and financial position. This decision and the other decisions of the Supreme Court squarely answer the issue against the petitioner.

(6) The petitioner cannot have any benefit since the manner of reckoning pension including dearness allowance as the basis that come through recommendation of the Punjab Finance Commission cannot be said to be discriminatory in the light of decisions referred to above. The petitioner cannot secure the reliefs sought for. The writ petition is dismissed.

J. THAKUR

(5) (2002) 2 ILR 535 (P&H)

(6) AIR 2006 SC 171