

Before Arun B. Saharya, C.J. & V.K. Bali, J,  
AMAR NATH GOYAL & OTHERS,—Petitioners

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 4995 of 1997

3rd May, 2002

*Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, Vol. I, Rl. 2.44, Vol. II Rl. 6.16—Punjab Government Notifications dated 9th July, 1985 and 13th December, 1996—Grant of death-cum-retirement gratuity—Government treating the dearness allowance admissible on 1st July, 1993 as dearness pay for reckoning emoluments for the purpose of retirement/death-cum-retirement gratuity—Benefit to the employees who retired or whose death occurred on or after 1st April 1995—Petitioners who retired before the cut off date not eligible for the grant of the benefit—Challenge thereto—Whether the action of the Government arbitrary—Held, no—No change in the method of calculating gratuity in the notifications dated 9th July, 1985 and 13th December, 1996—Revision in pensionary benefits on the basis of change in the Consumer's Price Index Level—Employees who retired after 31st March, 1985 not entitled to such revision—Pay Commission recommending the benefit to the employees who retired or whose death occurred on or after 1st July, 1993—No difference between the circumstances of those who retired on or after 1st July, 1993 and 1st April, 1995—Decision of the Government not granting the benefit to the employees who retired on or after 1st July, 1993 discriminatory, and they also entitled to the same benefit.*

*Held*, that it cannot be urged that all those employees, who retired after March 31, 1985, shall be entitled to gratuity/death-cum-retirement gratuity in tune with notification dated 13th December, 1996. Notification dated 13th December, 1996 does not liberalise the formula of calculating gratuity/death-cum-retirement gratuity, as envisaged in Notification dated 9th July, 1985. In both the notifications, dearness allowance and *ad hoc* dearness allowance are to reckon as

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an emolument for the purposes of pensionary benefits inclusive of gratuity. The only change that is envisaged in notification dated 13th December, 1996 is that the Consumer's Price Index Level is now to be 12th January, 1966, which was so on July 1, 1993, as clearly mentioned in the notification itself. All India Consumer's Price Index Level keeps on changing year after year. The change in consumer's price index level cannot by any means be termed as a change in the method of calculation.

(Para 29)

*Further held*, that while issuing notification dated 13th December, 1996, the benefit has been made available from April 1, 1995, i.e. those who retired on or after 1st April 1995. There is no explanation whatsoever as to why April 1, 1995 has been chosen instead of July 1, 1993, as recommended by the Pay Commission. Surely, an employee, who was getting dearness allowance or ad hoc dearness allowance at AICPI level 1201.66 on 1st July, 1993 was entitled to gratuity by calculating dearness allowance at the same rate. The circumstances of those, who retired on or after 1st July, 1993 and 1st April, 1995 were no different. It is, thus, a case of individual discrimination between the employees situated alike and would come under the vice of Article 14 of the Constitution of India. Hence, whereas we reject the prayer of the petitioners to grant them gratuity in tune with notification dated 13th December, 1996, we further hold that those, who retired on or after 1st July, 1993 shall be entitled to the same.

(Paras 35 & 36)

N.P. Mittal, Advocate,

J.S. Toor, Advocate and

I.P. Singh, Advocate, *for the petitioners*

S.C. Sibal, Additional A.G. (Punjab)

with V.S. Rana, Advocate, *for the respondents*.

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**JUDGEMENT**

*V.K. Bali, J.*

(1) Common questions of law and fact are involved in this bunch of petitions bearing Nos. 4995, 7820 and 10715, of 1997, 5947, 7992, 9955, 10030, 10608, 11742, 11443, 11745, 11749, 12259, 12260, 12269, 12270, 12271, 12272, 12333, 12344, 12620, 12943, 12954, 12955, 12956, 12957, 13141, 13227, 13236, 13344, 13752, 13974, 13983, 14029, 14084, 14450, 14862, 14864, 14890, 14896, 15032, 15122, 15160, 15161, 15162, 15171, 15211, 15212, 15263, 15274, 15295, 15443, 15575, 15724, 15730, 15957, 15967, 16162, 16236, 16359, 16361, 16384, 16409, 16412, 16413, 16673, 16683, 16684, 16685, 16692, 16708, 16802, 16823, 16824, 16859, 16906, 17064, 17090, 17091, 17251, 17307, 17309, 17310, 17332, 17359, 17520, 17575, 17577, 17578, 17662, 17666, 17669, 17675, 17690, 17694, 17710, 17711, 17834, 17917, 18064, 18076, 18094, 18095, 18196, 18222, 18223, 18258, 18465, 18494, 18502, 18521, 18557, 18672, 18705, 18853, 18883, 18947, 19008, 19069, 19161, 19213, 19250, 19252, 19291, 19407, 19435, 19448, 19591, 19798, 19799, 19800, 19814, 19815, and 19846 of 1998, 57, 58, 67, 121, 177, 232, 266, 333, 363, 366, 370, 375, 395, 421, 438, 356, 552, 556 to 560, 607, 693, 726, 730, 731, 732, 758, 797, 832, 894, 926, 940, 942, 943 to 948, 1001, 1106, 1195, 1214, 1248, 1354, 1391, 1400, 1406, 1410, 1440, 1443, 1485, 1493, 1502, 1525, 1773, 1848, 1849, 1965, 1979, 2125, 2803, 2964, 3034, 3038, 3114, 3121, 3296, 3508, 3535, 3846, 3987, 4236, 4269, 4307, 4396, 4652, 4716, 4726, 4814, 4815, 4838, 4865, 5008, 5070, 5101, 5311, 5316, 5317, 5441, 5561, 5651, 5785, 5919, 5947, 5977, 6080, 6234, 6686, 6709, 6784, 6883, 6935, 7012, 7240, 7241, 7269, 7454, 7474, 7570, 7717, 7811, 7888, 8474, 8757, 8855, 8924 and 9502 of 1999 filed by the employees of the State of Punjab, who retired after 31st March, 1985 but before 30th September, 1996, seeking quashing of part of circular, Annexure P-5, applying the benefit of death-cum-retirement gratuity from a particular date and, thus, in the manner, denying the said benefit that accrues to them, -*vide* the said circular. The facts have, however, been extracted from Civil Writ Petition No. 4995 of 1997 (Amar Nath Goyal and Others versus State of Punjab and Others), which, earlier in point of time, like all other cases in hand, was adjourned *sine-die* with liberty to the parties to apply for listing the case after decision of the Supreme Court

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in SLP No. 7946 of 1999 State of Punjab *versus* Harnam Singh and others.

(2) Amar Nath Goyal and 28 others, petitioners herein, retired from Education Department of Government of Punjab, after attaining the age of superannuation during the period commencing from July 1, 1993, as reflected in paragraph 2 of the writ petition. These and others in the connected writ petitions, thus, retired after July 9, 1985 whereas others, once again in the connected writ petitions being disposed today, retired after September 30, 1996. Government of India, Ministry of Finance, Department of Expenditure, New Delhi,—*vide* Annexure P-3 decided to enhance the Dearness Allowance payable to Government employees with effect from July 1, 1993. It is the case of petitioners that their case would fall under the rate of Dearness Allowance payable per month @ 97% of pay being their basic pay up to Rs. 3,500. The Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Pension and Pensioners' Welfare), a noble Ministry of the Government of India, decided for treatment of a part of dearness allowance as dearness pay for purposes of death-cum-retirement gratuity taking into consideration the AICPI level 1201.66 as on July 1, 1993 and applied the same to the Government Employees from 1993 with the order for issuance of formal amendment of Rule 33 of Central Civil Services (Pension) Rules, 1972,—*vide* order dated October 19, 1993. It is the case of the petitioners that the Government of Punjab and other States have been meticulously following and implementing verbatim orders passed by the Government of India qua the enhancement of the dearness allowance and also for treating dearness allowance as dearness pay for reckoning emoluments for the purpose of pensionary benefits/retirement gratuity/death gratuity etc. and, thus, following the enhancement of limit in the pension and other pensionary benefits. The respondent-State of Punjab, Department of Finance, passed order, Annexure P-5, for treating the dearness allowance as dearness pay or reckoning emoluments for the purpose of retirement gratuity/death gratuity and raising the maximum limit of gratuity making a mention therein of the statutory rules, i.e., Punjab Civil Services Rules, Volume II, by providing a schedule in the said order for treating the dearness pay from dearness allowance for calculating gratuity. Even though a mention of Punjab Civil Services Rules, Volume II has been made, yet classification has been made by providing entitlement to only those who retired after

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April 1, 1995, in the manner depriving the petitioners from the benefit of adding dearness pay for the purpose of gratuity. In other words, this order is to be implemented for all from the date of linkage of AICPI level 1201.66 which was applicable on the appointed date, i.e., July 1, 1993, naturally depriving the petitioners of the said benefit, who retired before the aforesaid date. It is the case of petitioner that creation of unreasonable discrimination by the respondent—State of Punjab with the issuance of administrative/executive instructions/circular, Annexure P-5 is hit by—Division Bench judgment of this Court in ***Bhagat Singh versus State of Haryana (1)***, in CWP No. 2323 of 1995 decided on December 20, 1995. It is further the case of petitioners that in the aforesaid case it has been held that Punjab Civil Services Rules, Volume II (Pension and Provident Funds) is a complete code in itself and as such the Government has no power to prescribe any additional requirement either as to eligibility or suitability of any kind by way of instructions/circular are such as contained in Annexure P-5. It is further the case of petitioners that this point has since also been considered by the Supreme Court in ***National Ex-Servicemen Co-ordination Committee etc. versus Controller General of Defence Accounts (2)***, wherein, it has been held that the service conditions can be altered by executive instructions where the field is not occupied by statutory rules. It is the case of the petitioners that the field *qua* the grant of death-cum-retirement gratuity is occupied by the statutory rules mentioned above and, therefore, impugned order, Annexure P-5 to the extent it has been assailed as untenable and, thus, with regard to those, who retired before the cut off date, as mentioned above, is unsustainable.

(3) Before we may proceed any further in this case, we would like to mention that it is conceded position that insofar as petitioners, who retired before the cut off date mentioned in Annexure P-5 but after March 31, 1985, in the matter of death-cum-retirement gratuity were governed by notification No. 16/65/79-6 FR, dated July 9, 1985. The same reads thus :—

“The matter regarding treating Dearness Allowance and  
*Adhoc* Dearness Allowance sanctioned up to the Consumer's  
Price Index Level 568 as Dearness Pay for reckoning

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(1) 1996 (4) SLR 828

(2) 1996 (5) SLR 308

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emoluments for purpose of pensionary benefits has been under consideration of the Government. The President of India is pleased to decide that Dearness Allowance and *Ad hoc* Dearness Allowance sanctioned up to Consumers Price Index Level 568 will be treated as Dearness Pay, for purpose of pensionary benefits, i.e., for calculating pension, gratuity/D.C.R.G. and terminal gratuity in respect of the employee retiring on or after 31st March, 1985.

2. The Dearness Allowance and *Ad hoc* Dearness Allowance sanctioned would be treated as dearness pay with effect from the dates on which they were sanctioned.
3. In cases where the pension calculated in accordance with above decision (paras 1 and 2 above) falls short of the pension, plus *ad hoc* relief, already admissible on the pensions up to Price Index Level of 320 the loss will be made up by the grant of personal pension to the employee concerned. The personal pensions will not be taken into account for determining the commuted value of pension and relief of pension.

There will be no ceiling on the accounts of monthly pension for Government employees retiring on or after 31st March, 1985.

The dearness allowance sanctioned up to Consumers Price Index Level 568 will also be treated as Dearness Pay for calculating the amount of subscription towards contributory provident fund by Government employee and Government as share of the former and latter respectively. This will have effect from 31st March, 1985”.

(4) A perusal of notification dated July 9, 1985 would, thus, make it abundantly clear that all the petitioners, who retired after April 1, 1985 were entitled to death-cum-retirement gratuity, even though same was to be calculated on the basis of dearness allowance and *ad hoc* dearness allowance sanctioned up to the consumer price

index level 568. The benefit now available to the retirees as per the impugned order/circular, Annexure P-5 was available to the petitioners and has since been enhanced, based upon Dearness Allowance as admissible to the employees as on July 1, 1993 (linked to AICPI level 1201.66) for reckoning emoluments for the purpose of death-cum-retirement gratuity under the Punjab Civil Services Rules, Volume II. Relevant part of Annexure P-5 reads thus :—

“Now after considering the recommendations of the Fourth Punjab Pay Commission contained in its interim report, the Governor of Punjab is pleased to decide that dearness allowance as admissible to the employees as on 1st July, 1993 (Linked to SICPI level 1201.66) as indicated below, shall be treated as DP for reckoning emoluments for the purposes of retirement gratuity and death gratuity under the Punjab Civil Services, Volume II in the case of Punjab Government employees, who retire or whose death occurs on or after 1st April, 1995 :—

| Sr. No. | Pay range   | D.A. to be added to pay for calculating gratuity |
|---------|---|--|
| 1       | Basic pay up to 3,500 p.m.                              | 97% of pay                                       |
| 2       | Basic pay above Rs. 3,500 p.m. and up to Rs. 6,000 p.m. | 73% of pay subject to a minimum of               |
| 3       | Basic pay above Rs. 6,000 p.m.                          | 63% of pay subject to a minimum of Rs. 4,300.    |

- The Governor is also pleased to decide that the ceiling on the maximum amount of Retirement Gratuity/Death Gratuity which was fixed at Rs. 1.00 lac,—*vide* Punjab Government Finance Department Letter No. 1/15/89-IFP/8078, dated 31st August, 1989 may be raised to Rs. 2.50 lacs with effect from 1st April, 1995.

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3. In the case of employees who have already retired/died on or after 1st April, 1995, the retirement gratuity/death gratuity may be recomputed suo-motu on the basis of these orders by the Heads of Offices concerned and arrears, if any, paid, if pension/family pension and retirement gratuity/death gratuity has already been authorised by the A.G. Punjab.”

(5) After giving a pay-range and the percentage of dearness allowance that is to be added to pay for gratuity, it has further been mentioned that :—

“The Governor is also pleased to decide that the ceiling on the maximum amount of Retirement gratuity/Death gratuity which was fixed at Rs. 1.00 lac,—*vide* Punjab Government Finance Department Letter No. 1/15/89-IFP/8078, dated 31st August, 1999 may be raised to Rs. 2.50 lacs with effect from 1st April, 1995.”

(6) The cause of the petitioners has been opposed and in the written statement filed on behalf of respondents 1 to 5 it has *inter-alia*, been pleaded that even though petitioners are governed by the provisions of Punjab Civil Services Rules, Volume I and II and have been paid retirement benefits according to the provisions of the said rules, the Government generally follows the Government of India in the matter of grant of dearness allowance to its employees. It has been denied that the Government has no power to prescribe any additional requirement either to eligibility or to the suitability by way of instructions/requirements as it is well settled law that the rules can be supplemented by the Government through executive instructions. It has further been pleased that the issue involved in the present case relates to treatment of certain portion of dearness allowance as dearness pay for the purpose of calculating retirement gratuity/death gratuity. In deciding such matters, the Punjab Government, while taking decisions, keeps in view the Government of India's instructions besides other considerations. Letter, Annexure P-5 was issued by it after considering the recommendations of the Fourth Punjab Pay Commission contained in its interim report submitted in August, 1996 and the Commission, while recommending, with regard to the issues involved in the present case, kept in view the instructions of the Government



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of India, Annexure P-4, in addition to Government of India's instructions dated July 14, 1995, on the basis of which Punjab Government issued the instructions, Annexure P-5. It has been denied that the decision has been taken in arbitrary manner or is discriminatory in any way because it is always permissible to arrive at a particular cut off date from which a particular decision is to be made applicable and such a classification has consistently been held to be valid and reasonable by this Court. Case law relied upon by the petitioners is stated to be irrelevant or not applicable to the facts of the present case. Reference has then been made to some of the decisions, rendered by the Supreme Court, like *State of Rajasthan versus Amrit Lal Gandhi and others* (3), and *State of Punjab versus Justice S.S. Dewan and others* (4).

(7) Contentions raised by learned counsel representing the parties are in tune with the pleadings, as mentioned above. Learned counsel have cited some judicial precedent said to be supporting their respective cases, reference of the same shall, however, be made in the proceeding paragraphs of this judgment.

(8) Before we may examine the question that has been debated before us on the anvil of judicial precedents cited for and against the proposition in hand, we have to deal with the contention of learned counsel representing the petitioners that the field qua the grant of death-cum-retirement gratuity is occupied by the statutory rules and, therefore, order, annexure P-5, to the extent it has been assailed is untenable. Rule 2.44 of the Punjab Civil Services Rules, Volume I, defines pay to mean :

2.44 (a) Pay means the amount drawn monthly by a Government employee as :—

- (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre; and

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(3) 1997 (2) SCC 342

(4) 1997 (4) SCC 569

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- (ii) overseas pay, technical pay, special pay and personal pay, and
  - (iii) any other emoluments which may be specially classed as pay by the competent authority.”

Rule 5.1 of Chapter V reads as follows :—

“5.1. Subject to the provisions of rules 5.2 to 5.8 and to the conditions that the amount of compensatory allowance is so regulated that it is not on the whole a source of profit to the recipient, a competent authority may grant such an allowance to any Government Employee.

Unless in this section, it be in any case otherwise expressly provided and subject to the provisions of rule 4.22(c) a compensatory allowance attached to a post will be drawn in full by the Government employee actually performing the duties of that post and will not be drawn in whole or in part by any one else. Save as provided by the rules in this part, a compensatory allowance attached to a post will cease to be drawn by a Government employee when he vacates the post.”

(9) Rule 6.16 of the Punjab Civil Services Rules, Volume II, deals with the gratuity and pension. The same reads as follows:—

“6.16. For Government employees referred to in rule 1.2-B, the amount of superannuation, retiring, invalid and compensation gratuity and pension will be the appropriate amount, set out in view table below and no addition or special Additional Pension will be granted.”

(10) A table is appended to Rule 6.16 aforesaid, in which scale of gratuity and maximum pension has been detailed. Death-cum-retirement gratuity has been dealt with by Rule 6.16-A, relevant part whereof is reproduced below :—

6.16-A. (1) An officer who has become eligible for pension or gratuity under the rules applicable to him and has completed five years qualifying service, may, on his

retirement from service, be granted an additional gratuity not exceeding the amount specified in sub-rule (3).

- (2) (a) If an officer, who has completed five years' qualifying service, dies while in service, a gratuity, not exceeding the amount specified in sub-rule (3), may be paid to the person or persons on whom the right to receive the gratuity is conferred under the rule 6.16-B or if there is no such person, it shall be paid in equal shares to those surviving members of a Government employee's family as detailed in rule 6.16-B who belong to categories (i) to (iv), mentioned therein except widowed daughters. Where there are no such surviving members, but there is/are surviving widowed daughters and/or one or more members of the family of the Government employee who belongs to categories (iv) to (ix), in the definition, the gratuity may be paid to all such persons in equal shares. In cases where the qualifying service is less than the prescribed minimum (viz. 5 years), the deficiency should not be condoned.

(b) xx      xx      xx

- (3) The amount of gratuity will be one-fourth of the 'emoluments' of the officer for each completed six-monthly period of qualifying service subject to a maximum of 15 times the 'emoluments'. In the case of those retiring on or after 1st December, 1968, the amount of gratuity will 1/4th of the 'emoluments' of the officer for each completed six monthly period of qualifying service subject to 16-½ (sixteen and a half) time the 'emoluments' in the case of Class I, II and III service, and 17-½ (seventeen and a half) time the 'emoluments' in the case of Class IV employees, provided that in no case gratuity shall exceed Rs. 36,000. In event of death of an officer while in service the gratuity will be subject to a minimum of 12 times the 'emolument' of the officer at the time of his death; provided that in no case shall exceed Rs. 36,000.

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Provided that in the case of persons governed under the Family Pension Scheme, a deduction of two months 'emoluments', subject to a maximum of Rs. 5,000 will be made from the gratuity admissible under this rule as laid down in the said scheme.

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(11) From the relevant service rules reproduced above, all that can be canvassed on behalf of the petitioners is that retiring employee of the Government is entitled to gratuity/death-cum-retirement gratuity and nothing beyond. In other words, it cannot be successfully urged that a change introduced in the matter of calculating gratuity/death-cum-retirement gratuity must necessarily apply to all the retirees irrespective of their date of retirement. Service rules have not taken into consideration the dearness allowance or *ad hoc* dearness allowance to be counted for the purposes of pay and the maximum gratuity that an employee is entitled to is Rs. 36,000. Concededly, dearness allowance came to be counted for the purposes of pay so as to determine gratuity for the first time by virtue of notification, Annexure P-3 that came into being in the year 1985 and by virtue of notification, Annexure P-5, whereas, dearness allowance continues to be part of the pay for the purposes of calculating gratuity, maximum limit has been raised to Rs. 2.5 lac. Surely be it the method of calculation or raising of maximum limit, has not been dealt with under the service rules. That being so, it cannot be urged that the field under discussion is occupied by the statutory rules.

(12) The way and manner, the gratuity is calculated and the maximum limit thereof, it would, thus, appear, has been undergoing a change from time to time. Rule 6.16-A, as reproduced above, would manifest that to begin with, gratuity was to be 1/4th of the emoluments of the officer for each completed six monthly period of qualifying service subject to a maximum of 15 times the emoluments. Those who were to retire on or after 1st December, 1968, the amount of gratuity was to be 1/4th of the emoluments for each completed six monthly period of qualifying service subject to 16½ times the emoluments in the case of Class I, II, and III servants and 17½ times the emoluments in the case of Class IV employees, provided that in no case gratuity shall exceed Rs. 36,000. Even through, counsel representing the

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parties inform us during the course of arguments that benefit of gratuity to an employee became, admissible for the first time in the year 1985 but Rule 6.16-A would clearly reveal that said benefit became available to a retiree at least from 1st December, 1968, if not earlier. Be that as it may, fixation of the amount of gratuity was commensurate to the qualifying service subject to the maximum of 15 times the emoluments and those who were to retire after 1st December, 1968, it was to be 1/4th of the emoluments for each completed six monthly period of qualifying service subject to 16½ or 17½ times the emoluments. The maximum limit was, however, Rs. 36,000. The manner of calculating the gratuity underwent a change in the year 1985, as would be clear from notification dated 9th July, 1985 Annexure P-3. Opening part of Annexure P-3 reads thus :—

“The matter regarding treating Dearness Allowance and *Ad hoc* Dearness Allowance sanctioned up to the Consumer’s Prime Index Level 568 as Dearness Pay for reckoning emoluments for purposes of pensionary benefits has been under consideration of the Government. The President of India is pleased to decide that the Dearness Allowance and *Ad hoc* Dearness Allowance sanctioned up to Consumer’s Price Index Level 568 will be treated as Dearness Pay, for purpose of pensionary benefits, i.e., for calculating pension, gratuity/DCRG and terminal gratuity in respect of the employee retiring on or after 31st March, 1985.”

(13) Last para of the same very notification reads thus :—

“The Dearness Allowance sanctioned upto Consumer’s Price Index Level 568 will also be treated as Dearness Pay for calculating the amount of subscription towards Contributory Provident Fund by Government employee and Government as share of the former and latter respectively. This will have effect from 31st July, 1985 :—

(14) A perusal of Annexure P-3 would, thus, clearly demonstrate that amount of gratuity was linked with the price index level. It appears that dearness allowance based upon price index level 568 was

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to be treated as dearness pay. Dearness pay, it further appears, was part of the pay for purposes of calculating gratuity or death-cum-retirement gratuity, as the case may be commensurate to the qualifying service, as mentioned in sub Rule 3 of Rule 6, 16-A of the Rules *ibid*. By virtue of Notification dated December 13, 1996 Annexure P-5, it was decided that dearness allowance as admissible to the employees on 1st July, 1993 (linked to AICPI level 1201.65) shall be treated as dearness pay for reckoning emoluments for purposes of retirement gratuity and death-cum-retirement gratuity under the Punjab Civil Services Rules, Vol. II in the case of Punjab Government employees who retired or whose death occurred on or after 1st April, 1995. Once again, dearness allowance as admissible to an employee on 1st July, 1993, was treated as pay for purposes of calculating gratuity and once again, it appears same was to be calculated commensurate to the qualifying service as envisaged in sub Rule 3 of the Rule 6. 16-A of the Rules *ibid*.

(15) Dearness allowance by virtue of notifications issued in 1985, Annexure P-3 and P-5, has become dearness pay and is to count for purposes of gratuity commensurate to the qualifying years of service of an employee. Dearness allowance based upon price index level has, thus, become dearness pay and it so became for the first time when notification., Annexure P-3 came to be issued in the year 1985.

(16) The other significant aspect of the case that needs to be noted is that gratuity is the time payment as distinguished to other post retiral dues like pension. Even though not argued nor spelled out from the rules but it appears to us that gratuity is to be paid to retired employee in recognition of the successful services rendered by him with the employer State. The same, in the very nature of things, has thus to be one time payment. Relevant para 130.6 dealing with the report of IVth Pay Commission eventually leading to issuance of notification. Annexure P-5 reads thus :—

“As regards the demand for reckoning dearness allowance admissible on the date of retirement/death as reckonable emoluments on for the purpose of calculation of gratuity, we may mention that in the public and private Sector gratuity is calculated on the basis of pay plus dearness allowance. The grauity is a one time payment for the services rendered.

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(17) Having noticed in brevity advent of gratuity culminating into notification Annexure P-5 and various aspects thereof, time is now ripe to examine the contention of learned counsel representing the petitioners that notification, Annexure P-5, is only an enlargement of an already existing benefit to a retired employee and therefore, any increase therein has to be made available to at least those employees who retired at a time when the said advantage was available, i.e., in the present case, 1985 when notification, Annexure P-3 came into being.

(18) Learned counsel representing the petitioners in the connected matters in unison urge that the matter herein is covered in favour of the petitioners by the judgment of the Constitutional Bench of Hon'ble Supreme Court in *D.S. Nakara* versus *Union of India*. (5) followed by a Bench of two Hon'ble Judges in *Subrata Sen* versus *Union of India* (6). Against this, Mr. Sibal, representing the respondents-State of Punjab, states that the matter stands covered against the petitioners and in favour of the respondents by a judgement of Supreme Court in *State of Punjab* versus *Justice S.S. Dewan* (retired Chief Justice) and others (7) followed by two other judgements of the same very Court in *State of Punjab and others* versus *Boota Singh and another, Civil Appeal No. 10674 of 1996* decided on 7th August, 1997 and *State of Punjab and another* versus *J.L. Gupta and others*, (8).

(19) The facts in *D.S. Nakara's* case (supra) in brief, show that on 25th May, 1979 Government of India introduced Liberalised Pension Formula. The main feature of this Formula was that it introduced revised method of calculation of pension based on slab system and raised monthly pension to Rs. 1500 per month. The benefit of Liberalised Pension Formula 1979, was made available only to those Government servants who retired on or after 31st March, 1979. On a writ filed in the Apex Court challenging the fixation of cut off date of 31st March, 1979, for payment of liberalised pension, it was claimed that irrespective of date of retirement, the benefit of Liberalised Pension Formula must be made available to all the pensioners. The Court

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(5) 1983 (1) SCC 305

(6) 2001 (4) SCT 424

(7) JT 1997 (5) SC 26

(8) JT 2000 (2) SC 265

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upheld the aforesaid contention and held that all the pensioners governed by 1972 Rules will be governed by this liberalised scheme of pension irrespective of the date of their retirement. Further contentions of the petitioners that they are entitled to receive pension under the relevant rules formed a class irrespective of the date of their retirement and there could not be a mini classification within this class, were also upheld. The classification based on retirement before or subsequent to the specified date was held invalid. The scheme of liberalisation in computation of pension was held must be uniformly enforced with regard to all pensioners.

(20) With a view to correctly appreciate the ratio of decision rendered by Hon'ble Supreme Court in D.S. Nakara's case (supra), it would be appropriate to mention that prior to the liberalisation of the formula for computation of pension made by the memorandum dated 25th May, 1979 average emoluments of the last 30 months of service of the employee provided the basis for calculation of pension. The 1979 memorandum provided that average emoluments must be calculated on the basis of emoluments received by a Government servant during the last 10 months of the service. Further, a new slab system for computation of pension was introduced and the ceiling on pension was raised. As a result of these changes, the pensioners, who retired prior to the specified date suffered triple loss. viz., lower average emoluments, absence of slab system and the lower ceiling. The Supreme Court struck down the provision including the memorandum which provided that the new rates of pension are effective from 1st April, 1979 and will be applicable to all service officers who became/become non-effective on or after that date." It was held that "omitting the unconstitutional part it is declared that all pensioners governed by the 1979 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible," Explaining the correct import of the judgement in D.S. Nakara's case (supra), Supreme Court in ***K.L. Rathee versus Union of India and others, (9)*** held that "it is to be seen that the judgment did not strike down the definition of 'emoluments'. It merely held that if pension was to be calculated on the basis of the last 10 months' emoluments of a



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Government servant, after 1st April, 1979, there is no reason why those who have retired before 1st April, 1979 should get pension calculated on the basis of average of last 36 months' emoluments. In other words, the rule of computation must be the same. The Supreme Court did not hold that those who have retired before 1st April, 1979 must be treated as having the same emoluments as those who have retired on or after 1st April, 1979 for the purpose of calculation of pension. Therefore, on the strength of Nakara's case (supra), the petitioner is not entitled to ask for computation of pension with reference to emoluments which he never got. It was further held that "the average of the last 10 months' emoluments must form the basis for calculation of pension. That means those who were actually drawing larger emoluments in the last 10 months of their service will get larger amounts of pension. Nakara's case (supra) does not lay down that the same amount of pension must be paid to all persons retiring from Government service irrespective of the date of retirement. The contention of the petitioner that there is only one class of Government employees for the purpose of calculation of pension cannot be disputed. The Constitutional Bench in Nakara's case (supra) has clearly laid down that there cannot be any mini classification of Government servants for calculating the amount of pension payable. That means the same method should be adopted for calculating pension for all Government servants. But the question is as to what would be the quantum of pension payable to a Government servant? Even if pension is calculated on the basis of the same formula, the basis of calculation has to be the average of the last 10 months' emoluments. This principle of adopting last 10 months' emoluments as the basis for calculation of pension must be uniformly applied to all persons drawing pension from the Central Government. **This was all that was laid down in Nakara's case** (supra) (emphasis supplied). It, however, did not lay down that the quantum of emoluments drawn during the last 10 months of service of each Government employee must be taken to be the same for this purpose.

(21) The Supreme Court, it would be clear from the report in that very case, as explained in **K.L. Rathee's** case (supra), only held that principle of adopting last 10 months' emoluments as the basis for calculation of pension must be uniformly applied to all persons drawing pension be it Central Government employees or State Government.

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(22) The facts of the case in *Subrata Sen's* case (supra) would reveal that the petitioners in the said case were employees of the Indian Oil Corporation Limited (Assam Oil Division), who had retired prior to 1st December, 1994. They were transferred from Assam Oil Company Limited to the Indian Oil Corporation, Assam oil Division, As per the Assam Oil Company Staff Pension Fund Scheme, they were getting pension on the following basis :

“A sum equal to 40 percent of the ‘average annual basic salary for the last five years of service immediately preceding the date of retirement.’”

(23) The Government of India had issued notification dated 10th March, 1995 providing for revision of pension formula in respect of Indian Oil Corporation (ADD) Officers covered by ADD Staff Pension Scheme, which reads thus :

“Pension for the officers retiring from December, 1994 onwards may be computed on the basis of 40% of the average of the last 10 months salary including average dearness allowance drawn by the officer cover the last 10 months of his service. If and when pay revision takes place retrospectively, the amount of pension may be adjusted accordingly. No dearness allowance will be paid on pension.”

(24) It was urged on behalf of the petitioners before the Supreme Court that cut off date was discriminatory and there could not be any classification of retirees who had retired prior to December, 1994 and who were to retire from December, 1994 onwards and therefore, they were entitled to have pension on the basis of revised formula. For there aforesaid contention, they relied upon the judgement of Supreme Court in *D.S. Nakara's* case (supra). The reliefs that were pressed before the Supreme Court were to quash the cut off date mentioned in the impugned communication dated 10th March, 1995, as date in December, 1994 had been arbitrarily fixed and to issue a writ in the nature of mandamus directing the respondents to extend the benefits of the impugned communication dated 10th March, 1995 to all the pensioners of Indian Oil Corporation (AOD) irrespective of date of retirement. The contention of counsel for the 2nd respondent, Indian Oil Corporation, that the petitioners were governed by the

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Non-Contributory Pension Scheme, namely, IOC (DOD) Staff Pension Fund approved under the Income Tax Act, 1961 was repelled on facts. The question noted by the Supreme Court in **D.S. Nakara's** case (supra), that has been taken into consideration in **All India Reserve Bank Retired Officers Association versus Union of India, (10)** was reproduced, which is being reproduced here as under :

“The pension will have to be recomputed in the light of the formula enacted in the liberalised pension scheme and effective from the date the revised scheme comes into force. And beware that it is not a new scheme, it is only a revision of existing scheme. It is not a new retiral benefit. It is an upward revision of an existing benefit. If it was a wholly new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it.”.....  
“It must be realised that in the case of an employee governed by the CPF (Contributory Provident Fund) scheme his relations with the employer come to an end on his retirement and receipt of GPF amount but in the case of an employee governed under the pension scheme his relations with the employer merely undergo a change but do not snap altogether. That is the reason why this court in Nakara case drew a \*distinction between liberalisation of an existing benefit and introduction of a totally new scheme. In the case of pensioners it is necessary to revise the pension periodically as the continuous fall in the rupee value and the rise in prices of essential commodities necessitates an adjustment of the pension amount but that is not the case of the employees governed under the GPF Scheme, since they had received the lump sum payment which they were at liberty to invest in a manner that would yield optimum return which would take care of the inflationary trends. This distinction between those belonging to the pension scheme and those belonging to the GPF scheme has been rightly emphasised by this Court in Krishena case.”

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(25) After extracting the portion from *D.S. Nakara's* case (supra), as reproduced above, it was held that "same is the position in the present case. As observed in the aforesaid case, in case of an employee governed under the Pension Scheme, relations with the employer merely undergo a change, but are not snapped altogether. There is no new scheme of payment pension, but it is only a revision of the existing pension scheme, Under the new Pension Scheme, pension is required to be paid on the basis of 40 per cent of the average of the last 10 months salary including average dearness allowance drawn by the officer over the last 10 months of his service instead of earlier 40% per cent of the average annual basic salary for the last five years of service immediately preceding the date of retirement."

(26) As mentioned above, as against these two judgments, learned Additional Advocate General, Punjab, has relied upon three judgment of Supreme Court, referred to above. The facts of the case of Justice S.S. Dewan (supra) would show that Justice S.S. Dewan, who retired as Chief Justice, on his retirement elected for computation of his pension under part-III of the 1st Schedule to the High Court Judges (conditions of service) Act, 1954. According to the provisions contained in Part-II, pension of a Judge has to be determined in accordance with the rules of his service. According to the rules that governed his service, i.e. Punjab Superior Judge Service Rules, 1963, his pension was fixed. On 20th February, 1990 Rule 16 of the said Rules was amended by the Government of Punjab and it was provided that in case of a direct recruit to the Punjab Superior Judicial Service the actual period of practice at the Bar not exceeding years shall be added to his service to his qualify for superannuation pension and other retirement benefit. In view of this amendment, he claimed that being a recruit to the Punjab Superior Judicial Service, is entitled to addition of actual period of practice in Bar not exceeding 10 years to his qualifying service and, therefore, his pension and other retirement benefits have to be refixed. Inasmuch as, he was not given the benefits of amended Rule 16 of the Rules, he successfully maintained a writ petition before this Court, which came up before Single Bench of this Court, who, while giving relief to him, followed the judgment of Supreme Court in *D.S. Nakara's* case (supra). The Letters Patent Appeal filed by the State met with no success. In the Letters Patent Appeal that came to be filed by the State of Punjab, the relief was

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restricted to only pension and not other retiral benefits. Thus, appeal in the Supreme Court. The pertinent question that came for adjudication before the Supreme Court was as to what was the nature of change made by amendment in Rule 16. On the question aforesaid, it was held thus :—

“Conceptually, pension is a reward for past service. It is determined on the basis of length of service and last pay drawn. Length of service is determinative of eligibility and the quantum of pension. The formula adopted for determining last average emoluments drawn has an impact on the quantum of pension. In D.S. Nakra’s case (supra) the change in the emoluments by reducing 36 months’ service to 10 months’ service as measure of pension, made with a view to giving a higher average, was regarded as liberalisation or upward revision of the existing pension scheme. On the basis of the same reasoning it may be said that any modification with respect to the other determinative factor, namely, qualifying service made with a view to make it more beneficial in terms of quantum of pension can also be regarded as liberalisation or upward revision of the existing pension scheme. If, however, the change is not confined to the period of service but extends or relates to a period anterior to the joining of service then it would assume a different character. Then it is not liberalisation of the existing scheme but introduction of a new retiral benefit. What has been done by amending Rule 16 is to make the period of practice at Bar, which was otherwise irrelevant for determining the qualifying service, also relevant for that purpose. It is a new concept and a new retiral benefit. The object of the amendment does not appear to be go for liberalisation. The purpose for which it appears to have been made is to make it more attractive for those who are already in service so that they may not leave it and for new entrants so that they may be computed to join it. Though Rule 16 does not specifically state that the amended rule will apply only to those who retired after 22nd

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February, 1995, the intention behind it clearly appears to be to extend the new benefit to those only who retired after that date. For these reasons the principle laid down in D.S. Nakara's case (*supra*) that if pensioners form a class computation of their pension cannot be by different formula affording unequal treatment merely on the ground that some retired earlier and some retired later, will have no application to a case of this type."

(27) The employees, who have retired form service before 9th July, 1985 in Boota Singh's case (*supra*), claimed benefit of Notification, dated 9th July, 1985, issued by the Government of Punjab, where it was decided that Dearness Allowance and *ad hoc* Dearness Allowance sanctioned up to Consumer Price Index Level 568 would be treated as Dearness Pay for purposes of calculating pension, gratuity, death-cum-retirement gratuity and terminal gratuity in respect of the employees retiring on or after 31st March, 1985. By another Circular, date 24th November, 1988, the employees were allowed to accumulate earned leave up to 360 days. It further provided that 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 the circular letter. Circular letter further stated that decision contained in that letter would be affective from the date of issue except from the decision regarding encashment of leave which would be affective from 1st January, 1986. Inasmuch as, the respondents were not given the benefit of both these changes because they had retired much prior to coming into force of these changes, they successfully maintained writ petition before this Court, which was allowed on the basis of **D.S. Nakara's** case (*supra*). Holding appeal maintainable despite earlier order of Supreme Court where in challenge to the judgment of High Court failed on various grounds, as detailed in the judgment. It was further held that "on merits, we find that the retirement benefits which are claimed by the respondents are benefits which are conferred by subsequent orders/notifications. Therefore, persons, who retired after coming into force of these notifications and orders, are governed by different rules of retirement than those who retired under the old rules and were governed by the old rules. The two categories of persons, who retired, were governed by the different sets of rules. They cannot, therefore, be equated. Further, granting of additional

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benefits has financial implications also. Hence, specifying the date for the conferment of such additional benefits cannot be considered as arbitrary. In the case of ***Indian Ex-Services League and others etc. versus Union of India and others*** etc.(11) this Court distinguished the decision in *Nakara's* case (*supra*) and held that the ambit of that decision cannot be enlarged to cover all claims by retirees or a demand for an identical amount of pension to every retiree, irrespective of the date of retirement, even though the emoluments for the purpose of computation of pension be different. We need not cite other subsequent decisions which are also distinguished in *Nakara's* case (*supra*). The latest decision is in the case of ***K.L. Rathee versus Union of India and others*** (12) where this court, after referring to various judgments of this court, has held that *Nakara's* case cannot be interpreted to mean that emoluments of persons who retired after a notified date holding the same status must be treated to be the same. The respondents are not entitled to claim benefits which became available at a much later date to retiring employees by reasons of changes in the rules relating to pensionary benefits.”

(28) Facts in ***J.L. Gupta and others'*** case (*supra*) reveal that the pensionary benefits of the ex-employees of State of Punjab, who retired from service prior to 31st March, 1985, were calculated as per the rules prevalent at the time of their retirement. By a notification/order, dated 9th July, 1985, issued by the Government of Punjab, it was *inter-alia*, decided that the Dearness Allowance and *ad hoc* Dearness Allowance sanctioned up to the consumers prior level index No. 568 will be treated as Dearness Pay for the purposes of pensionary benefits, i.e. for calculating pension, gratuity, DCRG, internal gratuity in respect of the employees retired on or after 31st March, 1985. But since the employees were not given the benefit of the aforesaid notification, they successfully maintained a writ petition in the High Court, which was allowed on 18th November, 1998. In appeal that came to be filed before Supreme Court, it was held that the matter was covered against the employees by the judgments recorded in ***Indian Ex-Service League and others versus Union of India and others*** (13) and ***Boota Singh's*** case (*supra*). Supreme Court held

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(11) 1991 (1) SCR 158

(12) 1997 (4) SC SLR 384

(13) JT 1991 (1) SC 243

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that “the controversy involved in the present appeal and connected appeals is squarely covered by the aforesaid decision. The respondents are, thus not entitled to claim benefits under the notification, dated 9th July, 1985. Since the said benefits became available on a much later date to the retiring employees by reason of change in rules relating to pensionary benefits. In this view, the judgment of the High Court cannot be sustained.”

(29) We have given our thoughtful consideration to the contentions raised by learned counsel representing the parties and the judicial precedents cited by them and are of the view that in the facts and circumstances of this case, it cannot be urged that all those employees, who retired after 31st March, 1985, shall be entitled to gratuity/death-cum-retirement gratuity in tune with notification, Annexure P-5, dated 13th December, 1996. Gratuity as per service rules and in particular, Rule 6.16-A, as reproduced above, was to be 1/4th of the emoluments of the officer for each completed six monthly period of qualifying service subject to a maximum of 15 times, 16-1/2 times and 17-1/2 times the emoluments, as the case may be with an upper limit of Rs, 36,000. Gratuity to a retirees was certainly available before 1985 on the date when notification, Annexure P-3, came into being. The word ‘emoluments’, as mentioned in Rule 6.16-A(3), it appears does not cover dearness allowance and *ad hoc* dearness allowance and it further appears that for the first time when notification, Annexure P-3, came into being, the same was to be reckoned as an emolument for the purposes of pensionary benefits, be it for pension, gratuity, death-cum-retirement gratuity or terminal gratuity. The very opening part of Annexure P-3, as reproduced above, would manifest as observed above. Naturally, if dearness allowance was to be reckoned for the purposes of emoluments, as mentioned in Rule 6.16-A(3), the same had to be in tune with the Consumer’s Price Index Level which, it again appears, was 568 as on 31st March, 1985. Notification, Annexure P-5, in our view, does not liberalise the formula of calculating gratuity/death-cum-retirement gratuity, as envisaged in Annexure P-3. In both the notifications, dearness allowance and *ad hoc* dearness allowance are to reckon as an emolument for the purposes of pensionary benefits inclusive of gratuity. The only change that is envisaged in notification, Annexure P-5, is that the Consumer’s Price Index Level is now to be 1201.66, which was so on 1st July, 1993, as clearly mentioned in Annexure P-5 itself that came to be issued



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on 13th December, 1996. If that be so, surely, *D.S. Nakara's* case (*supra*) can be of no avail to the petitioners. Hon'ble Supreme Court in the case aforesaid was only dealing with liberalisation of the formula for computation of pension made by memorandum dated 25th May, 1979, which provided that average emoluments must be calculated on the basis of emoluments received by a Government servant during the last 10 months of service. Prior to liberalisation of formula aforesaid, average emoluments of last 30 months of service of the employee provided a basis for calculation of pension. It was, thus, a case where an existing formula of calculating the pension was liberalised. As mentioned above, there is no liberalisation of existing benefits. It continues to be the same with the only change, as mentioned above, and which, in view of this Court, has nothing at all to do with the method of calculating the gratuity which, remains the same. The rule of computation, in other words, continues to be the same. The same method is being adopted for calculating the pension for all Government servants, be it a retiree, who retired after 1985 or 1995. In *K.L. Rathee's* case (*supra*). Hon'ble Court, while dealing with the observations of the same very Court in *D.S. Nakara's* case (*supra*) held that definition of emoluments was not struck down and further that it was merely held that if pension was to be calculated on the basis of last 10 months' emoluments of a Government servant after 1st April, 1979, there is no reason why those who have retired before 1st April, 1979, should get pension calculated on the basis of average of last 36 months' emoluments and further that, in other words, the rule of computation must be the same. In the present case as well, basis of calculation of gratuity are being uniformly applied to all persons. Surely, All India Consumer's Price Index Level keeps on changing year after year. The change in consumer's price index level cannot by any means be termed as a change in the method of calculation. To illustrate, in All India Consumer's Price Index Level was to under go a change and became less than it was in 1985, the petitioners herein would themselves say that while calculating gratuity in their case, the Consumer's Price Index Level, as available in 1985 alone, should hold the field.

(30) The demand as per notification, Annexure P—3, from the employees, who retired before July, 1985, was considered by Hon'ble Supreme Court in *Boota Singh's* case (*supra*). The same was rejected while holding that claimed benefits were conferred by subsequent

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orders/notifications, and, therefore, persons, who retired after coming into force of these orders/notification were governed by different rules of retirement than those who retired under the old rules and were governed by the old rules. It is true that in the case aforesaid, it was not urged that gratuity was already available to an employee, who retired before 1st July, 1985 as per Rule 6.16-A.(3) of the rules *ibid* and notification, Annexure P—5, had only enlarged the service benefits. The method of calculating gratuity by notification, Annexure P—3, dated 9th July, 1985, had undergone a change inasmuch as, emoluments, it appears, for the first time were to include dearness allowance and *ad hoc* dearness allowance. The judicial precedents, as mentioned above, far from advancing the case of the petitioners turn against their cause. Be that as it may, as mentioned above, inasmuch as, the Court does not find any change or liberalisation in the existing benefit that might have been introduced by notification, Annexure P—4, the petitioners cannot succeed on the basis of the two judgments of Hon'ble Supreme Court in *D.S. Nakara's* case (supra) and *Subrata Sen's* case (supra).

(31) In addition to what has been stated above, we are also of the view that rule of law enunciated by Hon'ble Supreme Court in *D.S. Nakara's* case (supra) and *Subrata Sen's* case (supra) cannot be applied to one time payments. It could not be disputed and indeed it has also been mentioned in the report of IVth Pay Commission that gratuity is one time payment. It is only to a recurring benefit that a retiree shall be entitled to if the formula of such benefit has been liberalised. One time payments are to be made as per existing criteria on the date an employee retires, otherwise it may result into anomalous situations.

(32) To illustrate, if the subsequent Pay Commissions, in view of inflation, may relate gratuity to All India Consumer's Price Index Level to 2010, by which dated, All India consumer's Price Index Level may be, to say 300 from 1201.66 as the same was in the year 1993 and the maximum limit is to, say Rs. 8 lac, an employee, who might retire after 1968, commensurate to his pay that he was getting at that time, may get gratuity which, in a given case, may be more than earnings, of his whole life time of service carrer.

(33) In view of the discussion made above, the two fold submissions made by counsel representing the petitioners, as mentioned

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above, deserves to be repelled. However, the claim of gratuity commensurate to the one an employee is entitled to by virtue of notification, Annexure P—5 or those, who retired on or after 1st July, 1993 appears to be justified. The IVth Punjab Pay Commission dealt gratuity under Chapter 130. The following demands relating to retirement gratuity were raised by various institutions of the employees/pensioners :—

- (i) The gratuity should be calculated at the rate of one half of emoluments for each completed six monthly period of service instead of 1/4th at present.
- (ii) The full service rendered by an employee should be taken into account for the purposes of computation of gratuity instead of restricting it to 33 years.
- (iii) There should be no monetary ceiling on gratuity.
- (iv) Dearness Allowance actually drawn by the employee at the time of retirement should be taken into account for computation of gratuity.
- (v) The recommendations of the Commission made in the Interim Report dated 23rd August, 1996 for treating D.A. admissible as on 1st July, 1993 (linked to AICPI 1201.66) as Dearness Pay for reckoning emoluments for the purpose of gratuity should be made applicable to the employees who retired or whose death occurred on or after 1st July, 1993 instead of restricting this benefit to those who retired whose death occurred on or after 1st April, 1995.
- (vi) The gratuity of pre 1st January, 1993 retirees should also be re-computed by treating Dearness Allowance admissible at the time of retirement as part of reckonable emoluments.

(34) Demand No. (v), enumerated above, was dealt with by the Commission in the following manner :—

“An Interim Report was submitted by the Commission to the State Government on 23rd August, 1996. That Interim

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Report contained Commission's recommendations for the grant of another instalment of Interim Relief to the employees and pensioners. It also contained the final recommendations of the Commission on certain common general issues. A recommendation was made in that report that Dearness Allowance admissible to the employees as on 1st July, 1993 linked to AICPI 1201.66) should be treated as Dearness Pay for reckoning emoluments for the purpose of Death Gratuity and Retirement Gratuity in the case of State Government employees, who retired or whose death occurred on or after 1st April, 1995. The ceiling on maximum amount of Death Gratuity and Retirement Gratuity was also recommended to be enhanced from Rs. 1.00 lac to 2.5 lacs with effect from 1st April, 1995. All the associations of employees and pensioners have unanimously laid stress on their demand that the benefit of treating Dearness Allowance as Dearness Pay for the purpose of gratuity when it reached close to 100, i.e. 97% on 1st July, 1993, should be extended to all the employees who retired or whose death occurred on or after 1st July, 1993. We find force in this demand. For the future, we have recommended above that Dearness Allowance admissible at the time of retirement/death should be reckoned as emoluments for the purpose of all kinds of gratuity. The price rise reached a Level only marginally below 100 on 1st July, 1993. It would be reasonable and fair to give the benefit of Dearness Allowance of a level close to 100% in computing gratuity to all employees who retired or whose death occurred after the Dearness Allowances reached such level, i.e. on 1st July, 1993. Unless that is done the employees who retired or whose death occurred between 1st July 1993 to 31st March, 1995 would suffer erosion in their gratuity to the extent of 100% and above *viz a viz* those who retired shortly after 1st January, 1986. We do not find any justifiable reason to deny the benefit of treating Dearness Allowance as on 1st July, 1993. As Dearness Pay for the computation of gratuity to the employees

who were actually drawing that Dearness Allowance before their retirement/death and who retired or whose death occurred during 1st July, 1993 to 31st March, 1995. We, therefore, recommend that the Dearness Allowance admissible to the employees as on 1st July, 1993 (linked to AICPI 1201.66) should be treated as Dearness Pay for reckoning emoluments for the purpose of Death Gratuity and Retirement Gratuity in case of State Government employees who retired or whose death occurred on or after 1st July, 1993. We also recommend that the ceiling on maximum amount of Death Gratuity and Retirement Gratuity should be enhanced from Rs. 1.00 lac to Rs. 2.5 lacs with effect from the same date, i.e. 1st July, 1993.”

(35) Not only that the Pay Commission accepted Demand No. (v) and recommended dearness allowance admissible to the employees as on 1st July, 1993 (linked to AICPI 1201.66) should be treated as dearness pay for reckoning emoluments for the purpose of death gratuity and retirement gratuity in case of State Government employees, who retired or whose death occurred on or before 1st July, 1993, the AICPI 1201.66 was clearly related to 1st July, 1993. In other words, AICPI level on 1st July, 1993 was 1201.66. The employees, who retired on or after 1st July, 1993, were held getting dearness allowance linked to AICPI level 1201.66. Despite all this, while issuing notification, Annexure P—5, the benefit has been made available from 1st April, 1995, i.e., those, who retired on or after 1st April, 1995. There is no explanation whatsoever as to why 1st April, 1995, has chosen instead of 1st July, 1993, as recommended by the Pay Commission, Surely, an employee, who was getting dearness allowance or ad hoc dearness allowance at AICPI level 1201.66 on 1st July, 1993, was entitled to gratuity by calculating dearness allowance at the same rate. The circumstances of those, who retired on or after 1st July, 1993, and 1st April, 1995, were no different. It is, thus, a case of individual discrimination between the employees situate alike and would come under the vice of Article 14 of the Constitution of India.

(36) In view of the discussion made above, whereas we reject the prayer of the petitioners to grant them gratuity in tune with notification, Annexure P-5, we further hold that those, who retired

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on or after 1st July, 1993, shall be entitled to the same. Insofar as those, who retired on or after 1st April, 1995, are concerned, there is no dispute with regard to their entitlement to the benefit of Annexure P-5.

(37) The petition is, thus, partly allowed, in the manner fully indicated above. The respondents are directed to calculate gratuity of those, who retired on or after 1st July, 1993 and made over to them the same within six weeks from today. The parties are, however, left to bear their own costs.

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**J.S.T.**

*Before M.M. KUMAR, J*

M/S STANGEN PHARMACEUTICALS,—*Petitioner*

*versus*

RAKESH GUPTA & OTHERS,—*Respondents*

C.R. No. 128 of 2002

22nd April, 2002

*Code of Civil Procedure, 1908—Ss.114, 148 & 151—Suit against the order of termination of services filed—Defendant failing to file the written statement and also to make payment of the costs to the plaintiff despite three effective opportunities having been granted to him—Trial Court striking of the defence—Dismissal to the applications of the defendant seeking review of the order, extension of time to file the written statement and to make payment of costs by the Trial Court—Order upheld by the High Court—Order of Trial Court does not suffer from any material irregularity or illegality—Petition liable to be dismissed.*

Held, that this revision petition is devoid of merit and the same is thus, liable to be dismissed. The order dated 4th December, 1997 does not suffer from any material irregularity or illegality or an error of jurisdiction which may warrant interference of this Court under Section 115 of the Code. Therefore, I have no hesitation in dismissing the revision petition against the order dated 4th December, 1997.

(Para 7 & 8)

Sanjiv Walia, Advocate for the petitioner.

Vimal Kumar Advocate for the respondents.